

**WASHINGTON CHILDREN'S ADMINISTRATION
"CONSULTATION REGARDING TRIBAL LICENSING ISSUES"**

**TRIBAL FOSTER CARE LICENSING
POLICY ANALYSIS AND STATE MODELS REVIEW**

FINAL REPORT

FOR THE WASHINGTON STATE

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BY

THE NATIONAL INDIAN CHILD WELFARE ASSOCIATION

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INTRODUCTION

In June of 2004 the Washington DSHS Children's Administration contracted with the National Indian Child Welfare Association to provide consultation on tribal licensing of foster homes. As part of that consultation, NICWA conducted a review of Washington law and policy in the context of existing federal Indian and general child welfare laws and policy. In addition, NICWA conducted a review of four other states' policy and procedures regarding tribal state relations in the area of foster care licensing.

The review was conducted during the months of June through September, culminating in this report. In order to facilitate the collection of common data across a complex policy environment among diverse states, NICWA created a matrix of data elements that are of particular concern to DSHS. These data elements were derived from a series of meetings between NICWA, the Children's Administration, and the Attorney General's office. Data were gathered via telephone interviews with state and tribal child welfare administrators, recorded in narrative form, and then entered into the matrix. The gaps in the matrix were addressed in follow-up interviews where possible. Comparison states were chosen on the basis of their own emerging solutions to the same set of challenges faced by Washington. While every state is different in its approach, promising solutions often emerge from diverse responses to challenges. New Mexico was chosen because it has a IV-E demonstration waiver that includes tribal operation of IV-E and tribal licensing of foster and kinship homes. Minnesota was chosen because it has the longest history in recognition of tribal licensing. Oklahoma was chosen because it has many issues similar to Washington and arrived at a working solution that represents a working model. North Dakota was chosen for its long-standing use of tribal IV-E agreements and its simple system of recognizing tribal licensing. Each of these states provides examples of what might be done.

At the same time as the comparison state data were being gathered, NICWA's legal consultant conducted a policy analysis of Washington law and policy. Findings of the state comparisons were compared with the Washington analysis to determine if any recommendation would emerge from the comparison. Recommendations were prepared and presented as part of this report.

This report presents the Washington policy analysis first, including recommendations, followed by the matrix of findings from comparison states. The matrix is followed by interview notations. Finally, sample documents from comparison states are included in the appendix.

WASHINGTON STATE POLICY ANALYSIS

General Federal Indian Law/ICWA

Overview—Federal common law has long recognized that “Indian nations” are distinct political communities that retain their original natural rights...¹ Indian tribes possess “attributes of sovereignty over both their members and their territory.”² As summarized by one court, “Indian tribes are neither states, nor part of the federal government, nor subdivisions of either. Rather, they are sovereign political entities possessed of sovereign authority not derived from the United States, which they predate... [and are] qualified to exercise powers of self-government...by reason of their original tribal sovereignty.”³ Congress has been recognized as having the authority to limit the exercise of this sovereignty,⁴ and the courts have held that tribes have been implicitly divested of certain powers by reason of their “dependent status.”⁵ However, in exercising its authority over American Indian and Alaska Native affairs, there is a “distinctive obligation of trust incumbent upon the [federal] Government” that “involves moral obligation of the highest responsibility.”⁶ In recent years, Congress has reaffirmed the principle of tribal self-government repeatedly.⁷

Tribal exercise of jurisdiction over the domestic relations of tribal members who maintain tribal relations has been recognized in a long series of cases dating from the 1800s to the present. In 1916, the United States Supreme Court acknowledged that “personal and domestic relations of the Indians” have been regulated from “an early period...according to their tribal customs and laws.”⁸ This means that states have historically had no jurisdiction over such matters when they involve members of the tribe domiciled on or resident of the reservation because it “would subject a dispute arising on the reservation to a forum other than the one they have established for themselves.”⁹

P.L. 280—In 1953, during the termination era, Congress enacted Public Law 83-280 (hereinafter P.L. 280).¹⁰ It provided for certain states, some as a mandatory matter and others at their option, to exercise criminal jurisdiction over all American Indian and Alaska Native people living within the state and over “civil causes of action” involving American Indian and Alaska Native people residing in the state as well. This was a transfer of certain federal jurisdiction to the state but not a transfer of tribal jurisdiction to the state.

Pursuant to P.L. 280, Washington State asserted jurisdiction over all fee patent (deeded) land within Indian Country. Of relevance to this issue, it also asserted jurisdiction on trust land with regard to the following eight subjects: adoptions, dependent children, juvenile delinquency, compulsory school attendance, public assistance, domestic relations, mental illness, and operation of motor vehicles on public roads (11[i]). There are serious questions as to what extent this assertion of jurisdiction is valid and a rather complicated history that has led to different tribes being affected in different ways. In order to address these issues in a practical and comprehensive manner, two versions of the Washington tribal-state Indian child welfare agreement that were signed. Some tribes signed a version of the agreement that recognizes exclusive tribal jurisdiction over matters involving children resident or domiciled on the reservation. Other tribes signed a version of the agreement that establishes procedures, whereby the state defers to tribal jurisdiction when the tribe chooses to exercise that jurisdiction but retains the right to take action if the tribe declines to act.

¹ Worcester v. The State of Georgia, 31 U.S. (6 Pet.) 515, 559 (1832).

² United States v. Mazurie, 419 U.S. 544, 557 (1975).

³ National Labor Relations Board v. Pueblo of San Juan, 276 F.3d 1186, 1192 (10th Cir. 2002) (citations omitted).

⁴ See, e.g., South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998).

⁵ Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 208-209 (1978).

⁶ Seminole Nation v. United States, 316 U.S. 286, 296-297 (1942).

⁷ See, e.g., Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 et seq.; Indian Tribal Justice Act, 25 U.S.C. 3601 et seq.

⁸ United States v. Quiver, 241 U.S. 602, 603-604 (1916).

⁹ Fisher v. District Court, 424 U.S. 382, 387-389 (1976); see also Raymond v. Raymond, 83 F. 721 (8th Cir. 1897) and In re Lelah-puc-ka-chee, 98 F. 429 (N.D. Iowa, 1899).

¹⁰ 18 U.S.C. 1162; 28 U.S.C. 1360.

The “civil cause of action” phrase in P.L. 280 has been interpreted as having provided state courts in P.L. 280 states with jurisdiction over civil cases filed by or against individual American Indians in court but has not been interpreted to authorize states to exercise general civil regulatory jurisdiction over tribes.¹² A state is exercising civil regulatory jurisdiction when it enacts a law or regulation that permits certain conduct but which subjects that conduct (e.g., regulates it) by prescribing rules that govern how those permitted activities can take place. Applying this principle in the context of child welfare would indicate that P.L. 280 did not give states the authority to impose their civil/regulatory child welfare statutes in the context of an involuntary proceeding, but this is an issue that is still not definitively resolved.¹³

To address this issue in a practical sense, two versions of the Washington tribal-state Indian child welfare agreement were signed. There are some tribes in Washington to whom the State has clearly retroceded all P.L. 280 jurisdiction. They signed a version of the agreement that recognizes exclusive tribal jurisdiction over matters involving children resident or domiciled on the reservation. The other version applies to all other tribes. In that version, the tribe and state agreed to disagree on the scope of state P.L. 280 jurisdiction and established procedures whereby the state defers to tribal jurisdiction when the tribe chooses to exercise that jurisdiction but retains the right to take action if the tribe declines to act.

ICWA—The Indian Child Welfare Act (ICWA) was enacted in 1978.¹⁴ The Indian Child Welfare Act “was the product of rising concern in the mid-1970s over the consequences to American Indian and Alaska Native children, American Indian and Alaska Native families, and American Indian and Alaska Native tribes of abusive child welfare practices that resulted in the separation of large numbers of American Indian and Alaska Native children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.”¹⁵ It has a number of provisions relevant to the issue under consideration.

First, the placement preferences under the Act create a preference, in the absence of good cause to the contrary, for a member of a child’s extended family, followed by “a foster home licensed, approved, or specified by the Indian child’s tribe.”¹⁶ The Act provides that the term “extended family member” is to be defined by tribal law and custom,¹⁷ requires state courts and agencies to follow alternative tribal placement preferences established by tribal resolution (provided it is the least restrictive alternative and taking into account, where appropriate, parental preferences),¹⁸ and further requires that the placement preferences be applied based upon “prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.”¹⁹

Secondly, the ICWA provides that “[f]or purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.”²⁰

ASFA—Under the Adoption and Safe Families Act (ASFA), “foster family home” is defined as a foster home that is licensed by the state.²¹ Licensure must be based upon standards that the state has developed that are reasonably in accord with recommended standards of national organizations that develop such standards and the state agency must apply these standards to any home that receives funding under Title IV-E or IV-B.²² The standards themselves, however, are not part of the Title IV-E eligibility reviews.²³ Limited waivers of those standards are available on a case-by-case basis for relative caretakers.²⁴

¹² *Bryan v. Itasca County*, 426 U.S. 373 (1976); *California v. Cabazon Band of Mission Indians*, 480 U.S. 205, 208-212 (1987).

¹³ See, e.g., *Doe v. Mann*, 285 F.Supp.2d 1229 (N.D. Cal. 2003); *Native Village of Venetie I.R.A. Council v. State of Alaska*, 944 F.2d 548 (9th Cir. 1991). See also Jones, B.J., *The Indian Child Welfare Act Handbook, a Legal Guide to the Custody and Adoption of Native American Children*, American Bar Association, Section of Family Law, 1995.

¹⁴ 25 U.S.C. 1901 *et seq.*

¹⁵ *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32 (1988).

¹⁶ 25 U.S.C. 1915(b).

¹⁷ 25 U.S.C. 1903(2) and (6).

¹⁸ 25 U.S.C. 1915(c).

¹⁹ 25 U.S.C. 1915(d).

²⁰ 25 U.S.C. 1931(b).

²¹ 42 U.S.C. 672(c)(1).

²² 42 U.S.C. 671(a)(10); 45 C.F.R. 1355.34(7).

²³ 65 Fed.Reg. 4072 (2000).

²⁴ 65 Fed.Reg. 4033 (2000); see ACYF-PIQ-85-11.

The regulations also recognize that, for purposes of Title IV-E eligibility, the term “foster family home” includes homes located on or near Indian reservations that are licensed by a tribal licensing or approval authority.²⁵ The commentary to the regulations explicitly recognizes the right of tribes to operate “a system for licensing or otherwise regulating Indian foster and adoptive homes” on or near the reservation.²⁶ In the case where tribes and states have Title IV-E agreements, the commentary indicates that tribes “have the latitude to develop their own procedures for satisfying title IV-E requirements so long as the state child welfare agency’s ultimate responsibility for compliance is assured.”²⁷

WASHINGTON STATE LAW AND POLICY

Washington State law recognizes the authority of Indian tribes to license foster and adoptive homes “within the boundaries of a federally recognized Indian reservation” and that the state or state-licensed agencies may place children in those facilities if criminal background checks have been done.²⁸ State law also authorizes the state “to purchase care” for Indian children who are in the custody of the tribe or a tribally-licensed child placing agency.²⁹

The Washington tribal-state agreement provides that the tribes and state will “jointly seek to recruit and license or approve Indian foster and adoptive homes” and that they will assist “potential homes to comply with tribal or state licensing or approval standards.”

LIABILITY ISSUES

The doctrine of governmental or sovereign immunity means that a government cannot be sued without its consent. The State of Washington has waived its sovereign immunity by passing a law making the state “liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.”³⁰ In *Babcock v. State*,³¹ the Washington Supreme Court held the state could be liable for negligent investigation when it makes recommendations to the court for the placement of dependent children. Subsequent cases where a cause of action has been recognized include a case where an adoption agency did not provide sufficient information about the child’s special needs³² and another case where a claim was made that the state’s investigation of alleged child abuse was inadequate.³³

The United States Supreme Court has held that “[s]uits against Indian tribes are...barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation.”³⁴

ANALYSIS

There are a number of relevant facts to consider:

1. The foster care placement provision in ICWA³⁵ requires, among other things, that an Indian child be placed based upon the standards of the Indian community and within reasonable proximity to his home, taking into account the child’s special needs, and at the same time provides that the second

²⁵ 45 C.F.R. 1355.20(a)(2).

²⁶ 65 Fed.Reg. 4034 (2000). The conclusion is based upon their interpretation of 25 U.S.C. 1931.

²⁷ 65 Fed.Reg. 4051 (2000).

²⁸ RCW 74.15.190.

²⁹ RCW 74.13.031(11).

³⁰ RCW 4.92.090

³¹ 809 P.2d 143 (1991).

³² *McKinney v. State*, 950 P.2d 461 (1998).

³³ *Tyner v. DSHS*, 1 P.3d 1148 (2000).

³⁴ *Oklahoma Tax Comm’n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991).

³⁵ 25 U.S.C. 1915(b), (c) and (d).

preferred foster care placement (after a placement with the extended family) is a tribally approved or licensed home. Nothing in the language of this section suggests that these homes must be on or near the reservation. Indeed, ICWA is a law that by definition applies to all state proceedings, many of which are not located on or near reservations. Thus, where an extended family member is not available, it is difficult to see how the state can comply with all aspects of the placement preference provision (Indian community standards, reasonable proximity, and tribal licensed or approved home) without utilizing off reservation tribal homes.

2. In terms of Title IV-E reimbursement for state placements in tribal homes, it is clear that “on or near reservation homes” would qualify under federal law and regulations and that “off reservation homes” would not qualify (unless they are also licensed by the state) because of the definition of “foster family home” in the regulations. It is worth noting, however, that this definition applies only for the purpose of Title IV-E eligibility; the state is not required to utilize this definition for all purposes.
3. The state statute only recognizes tribally licensed homes located on the reservation.
4. There is a risk of state liability every time the state places a child in any home, whether it is state or tribally licensed, and regardless of where it is located. Thus, the question is not whether that risk ought to prevent the state from using tribal homes off the reservation. Instead, the question is what needs to be done to manage that risk and keep it as low as possible by ensuring that children are safe. Most critically, when a tribal home is utilized it would seem necessary to ensure that there is a clear division of responsibility in terms of who has supervisory control and oversight of the placement. For example, if the tribe is going to supervise placements made in a tribal home, this should be clearly and unambiguously understood at the time of placement. This might be done by a tribal-state agreement or on a case-by-case basis.

RECOMMENDATIONS

1. Amend RCW 74.15.190 by deleting the phrase “located within the boundaries of a federally recognized Indian reservation.”
2. Explore with the tribes whether off-reservation tribally licensed homes might also be licensed by the state with the liberal use of the waiver authority provided for relative homes.
3. Where it is not feasible for off-reservation tribally licensed homes to be licensed by the state, utilize state funds to pay for those placements.
4. Develop tribal-state agreements that specify how supervisory and oversight authority over tribally licensed homes will be exercised to limit liability issues and ensure that children are safe.

TRIBAL-STATE RELATIONS FOSTER CARE LICENSING POLICY MATRIX	State Custody			Tribal Custody		
	On-Reservation	Near-Reservation	Off-Reservation	On-Reservation	Near-Reservation	Off-Reservation
MINNESOTA						
<i>General Federal/ICWA</i>						

	<i>P.L. 280</i>	Minnesota is a P.L. 280 state with the exception of one tribe that is exempt from 280. Policy is implemented county by county. Some counties interpret P.L. 280 as binding the state fiscally when the county asserts jurisdiction.		One tribe has exclusive jurisdiction and handles all CW independent of the state. Other tribes share jurisdiction based on agreements that vary county by county.	May assume jurisdiction under ICWA
	<i>Placement Preferences</i>	...in the absence of good cause to the contrary, for a member of a child's extended family, followed by "a foster home licensed, approved or specified by the Indian child's tribe or tribal placement preferences established by tribal resolution (ICWA).		Determined by tribal policy	
	<i>Transfer of Jurisdiction</i>	Required, absent "good cause" (such as a tribe not having a court).	Not all of the tribes have tribal courts	N/A	
	<i>Tribally Licensed Homes Equivalent to State Licensed Homes</i>	Each tribe developed its own standards in 1979 based on ICWA and have updated since. Tribal licenses are regarded as having the same standing as state licenses based on full faith and credit and placement preferences provisions of ICWA.			
ASFA					
	<i>Single standard Provision</i>	Not reported as an issue of concern			
	<i>Regulations Regarding on-and-near Reservations</i>	Authorized under ASFA regulations for the purposes of IV-E eligibility	Although authorized under ASFA regulations, counties have not implemented in practice and tribes have not tested.	Authorized under ASFA regulations for the purpose of IV-E eligibility. Tribes must meet minimum requirements under ASFA.	N/A
	<i>Cross-Jurisdiction Delay</i>	Proper implementation of ICWA speeds cross-jurisdictional placement, meeting the requirements of ASFA.		N/A	
State Code/Policy					
	<i>State Statute</i>	State has state ICWA that places federal law in state statute.		N/A	
	<i>Administrative Code</i>	Not examined		N/A	
	<i>Licensing Regulations</i>	Some tribal standards are higher than state standards. Tribes may license off-reservation but use state standards. (Some license off-reservation with state funding.)			

Tribal State Agreements							
	<i>ICWA or Other Agreements</i>	ICWA implementation agreements are handled county by county. Where tribes interact with more than one county, a "host county" agreement applies to all other counties.					
	<i>IV-E Agreements</i>	Agreements are under development, but currently no IV-E agreements are in place.					
State Practice, Procedure							
	<i>Foster Home Licensing</i>	Tribes license homes on-reservation regardless of whether custody is county or tribal.					
	<i>Payment System</i>	Tribe bills the county, the county pays the tribe, and tribe pays the foster payment. (Model may vary by county.)					
	<i>Service Design</i>	Both jurisdictions monitor case, with tribes providing primary services.			Tribes provide services		
	<i>Monitoring of Placements</i>	Where county has custody, every case has dual monitoring by county and tribe.			Tribal		
	<i>Investigation of Abuse Allegations in Licensed Home</i>	Allegations of abuse in tribally licensed homes are handled by the tribe.					
	<i>Recognition of Tribally Licensed Homes</i>	Counties frequently place Indian children under their custody in tribally licensed homes on-reservation and reimburse the tribe for the maintenance payment or in some counties may pay the provider directly.	Some tribes also license homes near or off-reservation but use state standards.	Two counties are beginning to withdraw from prior agreements as tribes assert jurisdiction due to fiscal concerns but state is researching a solution.	Some tribes also license homes near or off-reservation but use state standards.		
Liability Issues							
	<i>General Issues</i>	The only liability issues identified concerned IV-E eligibility and federal reimbursement			When state recognizes tribal homes, the tribal homes are considered state approved.		
	<i>State Sovereign Immunity</i>	Sovereign immunity retained			N/A		

	<i>Tribal Sovereign Immunity</i>	N/A	Sovereign immunity retained
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TRIBAL-STATE RELATIONS FOSTER CARE LICENSING POLICY MATRIX		State Custody			Tribal Custody		
NORTH DAKOTA							
		On-Reservation	Near-Reservation	Off-Reservation	On-Reservation	Near-Reservation	Off-Reservation
<i>General Federal/ICWA</i>							
	<i>P.L. 280</i>	ND is not a P.L. 280 state; no state jurisdiction			Exclusive jurisdiction	May assume jurisdiction under ICWA	
	<i>Placement Preferences</i>	...in the absence of good cause to the contrary, for a member of a child's extended family, followed by "a foster home licensed, approved or specified by the Indian child's tribe or tribal placement preferences established by tribal resolution (ICWA).			Determined by tribal policy		
	<i>Transfer of Jurisdiction</i>	Required absent "good cause." State policy is to routinely transfer jurisdiction			N/A		
	<i>Tribally Licensed Homes Equivalent to State Licensed Homes</i>	The state recognizes tribal sovereignty and gives full faith and credit to tribal licenses. Very few cases from ND tribes remain in state custody. The state would seldom use tribally licensed homes.			The state recognizes tribal sovereignty and gives full faith and credit to its licenses.		
ASFA							
	<i>Single Standard Provision</i>	Interpreted as not applicable to tribal licensing			N/A		
	<i>Regulations Regarding on-and near-Reservations</i>	N/A			Authorized under ASFA regulations for the purposes of IV-E eligibility. Tribes must meet minimum requirements under ASFA.	N/A	
	<i>Cross Jurisdiction Delay</i>	Proper implementation of ICWA speeds cross-jurisdictional placement, meeting the requirements of ASFA			N/A		

	State Code/Policy						
	<i>State Statute</i>					N/A	
	<i>Administrative Code</i>	Not examined				N/A	
	<i>Licensing Regulations</i>	State regulations do not apply.	Share with tribal	State only	State recognizes tribal licenses through a process of affidavits.		
	Tribal State Agreements						
	<i>ICWA or other agreements</i>	Not examined					
	<i>IV-E Agreements</i>	Agreements since 1983- Simple format, cover placement, admin, goal to pay for training.					
	State Practice, Procedure						
	<i>Foster Home Licensing</i>	N/A			Tribes license homes using their own standards; tribal licensing standards must meet or exceed minimum federal requirements.	Not examined	
	<i>Payment System</i>	N/A			Under IV-E agreement tribe, determines eligibility and submits to the state. State reimburses tribe for foster care payments.		
	<i>Service Design</i>	Funding allows near total transfer of cases to tribal services			Tribes send IV-E eligibility information to the counties who determine eligibility		
	<i>Monitoring of Placements</i>	N/A			State monitors IV-E eligibility. Tribes required to conduct three-month reviews as is the state standard.		
	<i>Investigation of Abuse Allegations in Licensed Home</i>	Not examined			Not examined		
	<i>Recognition of Tribally Licensed Homes</i>	State recognizes tribal licenses. Tribes must meet minimum requirements under ASFA. State can, but rarely places in tribally licensed homes.			If IV-E eligible tribe submits an affidavit of licensure	Not examined	

Liability Issues						
	<i>General issues</i>	Affidavit certifies the tribal responsibility for the safety of the home. State does not believe they have authority to place children in tribal affidavit home.				
	<i>State Sovereign Immunity</i>	Sovereign immunity retained			N/A	
	<i>Tribal Sovereign Immunity</i>	N/A			Tribes retain sovereign immunity	

TRIBAL STATE RELATIONS FOSTER CARE LICENSING POLICY MATRIX		State Custody			Tribal Custody		
		On-Reservation	Near-Reservation	Off-Reservation	On-Reservation	Near-Reservation	Off-Reservation
NEW MEXICO							
<i>General Federal/ICWA</i>							
	<i>P.L. 280</i>	New Mexico is a non-P.L. 280 state.		State jurisdiction	State recognizes tribal jurisdiction on and near reservations.		May assume jurisdiction under ICWA
	<i>Placement Preferences</i>	...in the absence of good cause to the contrary, for a member of a child's extended family, followed by "a foster home licensed, approved or specified by the Indian child's tribe or tribal placement preferences established by tribal resolution (ICWA)			Determined by tribal policy		
	<i>Transfer of Jurisdiction</i>	Required absent "good cause."			N/A		
	<i>Tribally Licensed Homes Equivalent to State Licensed Homes</i>	State does not place in tribally licensed homes.		N/A	State recognizes tribal licenses or certifications.		
ASFA							
	<i>Single standard Provision</i>	Interpreted as not applicable to tribal licensing			N/A		
	<i>Regulations Regarding on-and near-Reservations</i>	N/A			Authorized under ASFA regulations for the purposes of IV-E eligibility. Tribes must meet minimum requirements under ASFA.		N/A
	<i>Cross Jurisdiction Delay</i>	Proper implementation of ICWA speeds cross-jurisdictional placement, meeting the requirements of ASFA.			N/A		

	State Code/Policy							
	<i>State Statute</i>	NM has a IV-E waiver that involves funding tribes.				N/A		
	<i>Administrative Code</i>	Not examined				N/A		
	<i>Licensing Regulations</i>	Do not apply	Share with tribal	State only				
	Tribal State Agreements							
	<i>ICWA or other Agreements</i>	Not examined						
	<i>IV-E Agreements</i>	Eight IV-E Agreements in place						
	State Practice, Procedure							
	<i>Foster Home Licensing</i>	N/A			Tribes License homes and are "encouraged" to have written procedures, required to renew annually.		State licenses urban and rural non-reservation.	
	<i>Payment System</i>	N/A			Tribes determine IV-E eligibility under agreements. State monitors tribal determination of eligibility and compliance with ASFA requirements.		N/A	
	<i>Service Design</i>				State does not place in tribally licensed homes.			
	<i>Monitoring of Placements</i>				Tribal		N/A	
	<i>Investigation of Abuse Allegations in Licensed Home</i>	Not examined						
	<i>Recognition of Tribally Licensed Homes</i>	N/A			State recognizes tribal licenses or certifications. Tribes must meet minimum requirements under ASFA. State does not place in tribally licensed homes.		N/A	

Liability Issues					
	<i>General issues</i>	State does not see any liability in reimbursement of foster care expenses under tribal licensing.			
	<i>State Sovereign Immunity</i>	Sovereign immunity retained			N/A
	<i>Tribal Sovereign Immunity</i>	N/A			Tribes retain sovereign immunity

TRIBAL STATE RELATIONS FOSTER CARE LICENSING POLICY MATRIX		State Custody			Tribal Custody		
OKLAHOMA		On-Reservation	Near-Reservation	Off-Reservation	On-Reservation	Near-Reservation	Off-Reservation
<i>General Federal/ICWA</i>							
	<i>P.L. 280</i>	Oklahoma is a non-280 state; however, state law provides concurrent jurisdiction for all Indian children. Most tribes do not have reservations but have service areas covering multiple counties. OK child welfare system is a county based system.			Most tribes operate their own child welfare program under P.L. 638 and ICWA. The BIA provides the services in a few areas.		
	<i>Placement Preferences</i>	...in the absence of good cause to the contrary, for a member of a child's extended family, followed by "a foster home licensed, approved or specified by the Indian child's tribe or tribal placement preferences established by tribal resolution (ICWA).			Determined by tribal policy		
	<i>Transfer of Jurisdiction</i>	Required absent "good cause." Oklahoma has its own state ICWA that places the language of the federal law in state law. Since doing this, they have had few if any problems with transfers.			N/A		
	<i>Tribally Licensed Homes Equivalent to State Licensed Homes</i>	The state regards tribally licensed homes as equivalent to state homes.			Oklahoma is a unique situation due to its lack of reservations. To deal with jurisdictional issues, OK relies on the federal definition of "Indian Country" (see narrative).		
ASFA							
	<i>Single standard Provision</i>	Interpreted as not applicable to tribal licensing			N/A		
	<i>Regulations Regarding on-and near-Reservations</i>	Oklahoma is a unique situation due to its lack of reservations. To deal with jurisdictional issues, OK relies on the federal definition of "Indian Country" (see narrative).			Authorized under ASFA regulations for the purposes of IV-E eligibility. Tribes must meet minimum requirements under ASFA.		N/A
	<i>Cross Jurisdiction Delay</i>	MOA serves the purposes of compliance with ASFA.			N/A		

	State Code/Policy						
	<i>State Statute</i>	Oklahoma has its own state ICWA.			N/A		
	<i>Administrative Code</i>				N/A		
	<i>Licensing Regulations</i>	Not applicable to tribally licensed homes/ tribal regulations apply					
	Tribal State Agreements						
	<i>ICWA or other agreements</i>	Tribal-state agreement with 34 of 39 tribes; same for all tribes; individualized through addenda, e.g., tribal licensing standards, background check policy, placement preferences					
	<i>IV-E Agreements</i>	Title IV-E agreements; tribes agree to license homes according to their standards; complete background checks, comply with ASFA.					
	State Practice, Procedure						
	<i>Foster Home Licensing</i>	Tribes license homes on reservation regardless of whether custody is state or tribal.					
	<i>Payment System</i>	N/A			Under IV-E agreement, the tribe determines eligibility and submits to the state. The state reimburses the tribe for foster care payments.		
	<i>Service Design</i>	Tribal-state agreements allow the state to place children in tribally licensed homes.			Tribes submit home study, license, and the state enters home into state data system		
	<i>Monitoring of Placements</i>	Under the MOA, the placing agency monitors the home.					
	<i>Investigation of Abuse Allegations in Licensed Home</i>	Not examined					
	<i>Recognition of Tribally Licensed Homes</i>	State extends full faith and credit provision of ICWA to recognize tribal licenses and issues its own license based on tribal license and can use the home upon notice to the tribe.					

Liability Issues					
	<i>General issues</i>	No liability issues since entering into MOA. Uses a policy framework embedded in practice and procedures to address liability concerns.			
	<i>State Sovereign Immunity</i>	Sovereign immunity retained		N/A	
	<i>Tribal Sovereign Immunity</i>	N/A		Tribes retain sovereign immunity.	

MINNESOTA

Informants

Bunny Jaakola
Vern LaPlante

Fond du Lac, Tribal Planner
State Indian Policy Specialist

(218) 879-6238
(651) 296-4606

General Policy

Minnesota is a P.L. 280 state with the exception of one tribe that is exempt from 280. Child welfare is operated in a county based system and policy is implemented county by county. While a state tribal agreement exists, tribes also have agreements with local counties. Currently no IV-E agreements are in place. When a tribe interacts with more than one county, a "host" county agreement is accepted by all of the other counties involved. Some counties interpret P.L. 280 as binding the state fiscally when the county asserts jurisdiction and a tribal court orders placement. This is written into some county-tribal agreements. One tribe has exclusive jurisdiction and handles all CW independent of the state with BIA funding. Other tribes share jurisdiction based on agreements that vary county by county. Some tribes (without courts of their own), under agreement with the county, file petitions in county court and use the county court to hear child welfare cases. In such cases, the county also assigns a worker to monitor the case.

Minnesota has a state ICWA that places federal law in state statute.

Description of the Process

Tribes license foster homes on-reservation and have had standards since 1979. Although near-reservation licensing is authorized under ASFA regulations, counties have not implemented it in practice, and tribes have not tested.

The tribe bills the county, the county pays the tribe, and the tribe pays the foster payment. (Model may vary by county.) Both jurisdictions monitor the cases, with tribes providing primary services. Where county has custody, every case has dual monitoring by county and tribe. Allegations of abuse in tribally licensed homes are handled by the tribe.

Counties frequently place Indian children under their custody in tribally licensed homes on reservation and reimburse the tribe for the maintenance payment or in some counties may pay the provider directly. Some tribes also license home near-or off-reservation but use state standards. Two counties are beginning to withdraw from prior agreements as tribes assert jurisdiction due to fiscal concerns and IV-E (ASFA) compliance issues, but the state is researching a solution. Some tribes also license home near-or off-reservation.

Practice has evolved without clear statewide policy guidance, and implementation is very diverse across the state.

Liability Issues

The only liability issues identified concerned IV-E eligibility and federal reimbursement. When the state recognizes tribal homes, the tribal homes are considered state approved and covered by the state's liability insurance.

NORTH DAKOTA

Informants

Theresa Snyder	Tribal State Liaison	(701) 328-1816
Paul Rannigen	Director of CFS	(701) 328-1725
Tom Pomonas	10-E Agreement Website	(701) 328-3701
Deb Petree	ICPC and Foster Care Division	

Is not a P.L. 280 state.

All tribal programs are 638; no BIA.

Have had IV-E Agreements since 1983.

“We respect the sovereignty of the tribes.”

Director meets quarterly with tribes to facilitate ICWA compliance and to promote other collaborative efforts.

Currently passing through administrative and maintenance funds.

Goal is to also pay for training.

“State wants to extend all the funding that we can.”

State’s penetration rate is helped by inclusion of tribal IV-E.

Tribal licensing standards meet or exceed minimum federal requirements.

“Our IV-E Agreements are pretty simple and straightforward.”

Description of Process

Tribes develop licensing standards and tribal council ratifies them.

Copy of standards is attached to the IV-E Agreement.

Tribes license homes.

When a child is placed in the home, the tribe sends IV-E eligibility information to the counties. Counties enter the information into their data system and determine eligibility.

If the child is IV-E eligible, the tribe submits an “affidavit” indicating the home meets tribal licensing standards.

“Affidavit program” triggers the IV-E funding.

Affidavits are updated annually.

Liability Issues

The affidavits are used to certify tribal responsibility for the safety of the home.

An additional safeguard is the state’s practice/policy to hold “permanency planning” conferences every three months.

This process builds some additional monitoring safeguards into day-to-day practice by bringing all involved parties to discuss the case plan and status of permanency needs.

State indicated a belief that “the state does not have the authority to place children in an affidavit home.”

That option has not been explored and the following rationale was given:

Because funding is available to tribes through the IV-E Agreement, there are very few ICWA cases that remain in state custody. Majority of cases are transferred to tribal court, so tribes place and monitor placement for all their homes on or near the reservation. Tribes already struggle to develop enough placement options, so there is not a surplus of tribally licensed homes to trigger future consideration of this option.

NEW MEXICO

Informants

Gus Abeita	Laguna Pueblo, Previous SS Director	(505) 977-0920
Tribal Liaison		
Jeff Thompson	IV-E Waiver Program	(505) 827-8440
Linda McNeill	Policy and Program Director	(505) 827-3991
John Murdock	Children, Youth, and Families Director	(505) 841-7945

General Policy

Not a P.L. 280 state.

Different degrees of BIA involvement among the tribes and a variety of CW funding sources.

New Mexico runs a IV-E Waiver Program.

Currently eight Tribal-State Agreements are signed and in place. The first agreement was signed in 1997.

Navajo Nation is the largest. Many of the pueblos have indicated they are not interested in developing an agreement, because the state agreements use a boilerplate and there is little room for negotiation.

Description of Process

New Mexico honors tribal foster home licenses or certificates.

Tribes are "encouraged" to have a licensing process, but must meet a minimum standard of criminal background check and an assurance that homes/providers are "safe." Tribes certify homes "on or near the reservation."

The tribal program determines IV-E eligibility.

The state monitors compliance. Focus on adequate court order language, permanency hearings at targeted intervals, and that tribal licenses are being renewed annually.

Noncompliance results in payment being stopped.

New Mexico is also a Demonstration Waiver Project on guardianship payment.

Tribes have expressed more interest in guardianship payment, as this is a preferred placement option as it meets permanency requirements without TPR.

Liability Issues

New Mexico does not place children in state custody in tribally licensed homes.

Indicated they had not considered this option..

Did indicate that tribal programs do not have a surplus of homes and tend to recruit homes for individual children more than generalized recruitment.

The state recruits tribal foster homes primarily in urban areas, and respondents appear willing to be licensed by the state.

OKLAHOMA

Informants

Anne Davis	Tribal Liaison	(405) 522-0695
Joani Webster	Resource Unit	(405) 521-3779

General Policy

Oklahoma is not a P.L. 280 state.

Oklahoma state law identifies concurrent jurisdiction for all Indian children.

There are significant jurisdictional issues, since most tribes do not have reservations and have service areas that cover a number of counties.

Multiple tribes may serve their own tribal members in a county. BIA may also have a role in some areas. Oklahoma uses a county system.

Because of these jurisdictional issues, significant time has been spent developing and publishing an MOU for clarifying a process and jurisdictional issues (attached).

Tribal-State agreements are in place with 34 of the 39 tribes.

The agreement is the same for all tribes to help bring consistency, but can be individualized to each tribe through addenda. Generally addenda will include tribal licensing standards, their specific placement preferences, criminal background check standards, etc.

Because of the significant jurisdictional issues, tribes and states have collaborated to develop a policy framework and practice supports.

Believe these clearly defined roles and responsibilities have improved services to children and families.

In the IV-E agreements, tribes

- agree to certify homes according to their standards;
- agree to complete criminal background checks;
- agree to ASFA requirements.

Description of the Process

Both the tribes and the state license Indian homes.

The tribes submit their home studies/licensing information to the state, and these homes are entered into the state data system; the same with IV-E eligibility determinations.

The basic process outlined in the MOA is:

- The tribe is responsible for providing services and monitoring the safety of any children they place in a home.
- The state is responsible for providing services and monitoring the safety of any children they place in a home.
- This option is believed to give both the tribes and the state the best pool of resource homes.
- The tribes can place children in state-licensed homes, and the state places children in tribally licensed homes.
- If families are not willing to work with either the state or the tribe, they simply do not accept the placement.
- When the state places a child in a tribally licensed home, it notifies the tribe, and a placement meeting, attended by a tribal worker, the county caseworker, and the foster parents, is held. The roles and responsibilities of each party are reviewed and documented in the case notes.

Liability Issues

Oklahoma believes it has developed a process that adequately addresses liability issues by clearly defining roles and responsibilities both in a published MOU and in each child's case notes. It believes that by extending full faith and credit to tribal licensing capacity, it is better able to comply with the requirements of both ICWA and ASFA and to support better outcomes for Indian children and families.

Oklahoma acknowledges that a truly collaborative relationship does not exist in all counties, but it has not experienced liability issues since negotiating the MOA.
Oklahoma believes its efforts to both develop a policy framework and to embed policy in its practices and procedures is the best way to address its liability concerns.

TRIBAL-STATE FOSTER CARE AGREEMENT

This agreement defines the respective roles of the Oklahoma Department of Human Services (OKDHS) and, _____, a sovereign nation regarding the approval, provision and payment of foster care services for Native American children. This agreement shall become effective the 1st day of July, 2004, and remain in effect until June 30th, 2005.

1. DEFINITIONS

This Agreement recognizes definitions in the Federal and Oklahoma Indian Child Welfare Acts. For the purposes of this Agreement, "Tribe", unless otherwise noted, refers to the Tribe named in this Agreement. "Tribal child" refers to a child who is either a member or eligible for membership in the Tribe named in this Agreement.

2. CONDITIONS

- a. Nothing in this Agreement shall be construed to give the State of Oklahoma or its agents jurisdiction over Indian persons on reservation land, as defined by 25 U.S. C.A. 1903 (10).
- b. In the event funds to finance this agreement become unavailable, OKDHS may terminate the agreement or reduce consideration upon written notice to the Tribe. Notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The effective date of such agreement termination or reduction in consideration shall be specified in the notice and shall be no earlier than the date of service of said notice, or the actual effective date of the federal funding reduction, whichever is later. Reductions shall not apply to payments made for services satisfactorily completed prior to the effective date. OKDHS shall be the final authority as to the availability of funds to support this agreement. In the event of a reduction in consideration, the Tribe may cancel this agreement as of the effective date of the proposed reduction upon the provision of advance written notice to the OKDHS.
- c. This Agreement may otherwise be terminated by either of the parties with or without cause upon 180 days prior written notice to the other. The Agreement may be revised or canceled at any time by written mutual agreement of both parties.
- d. Any modifications or amendments to the Agreement shall be subject to final approval by the Office of Central Services.
- e. OKDHS and Tribal leaders shall bind their staff to the provisions of this Agreement.

3. Assurances

- a. The Tribe shall employ staff necessary to provide Child Welfare services during the terms of this agreement.
- b. Child Welfare services provided by the tribe will promote child safety, permanency and well-being as defined in the Adoptions and Safe Families Act.
- c. The Tribe agrees to keep confidential all information concerning juvenile proceedings covered by this Agreement and not to reveal the information to anyone who does not need the information in order to exercise the Tribe's rights under the Federal and Oklahoma Indian Child Welfare Acts.
- d. Tribal Child Welfare services shall conform with Title IV-B and title IV-E of the Social Security Act, Section 622 of Title 42 of US Code and other relevant provisions of state and federal law. In the event a determination is made that a child in tribal custody does not qualify for IV-E foster care subsidy, payments will be withheld until necessary requirements are met.
- e. The Tribal Child Welfare worker will be responsible for obtaining all information necessary for OKDHS to make initial Title IV-E determinations and reviews for continued eligibility for Tribal custody children.
- f. The Tribe shall participate with OKDHS in case reviews of children for whom title IV-E foster care payments are made. Case reviews assess conformance with safety, permanency and well-being outcomes as defined by the federal Child and Family Services Review as well as conditions of this Agreement. OKDHS will provide the Tribe advance notice of case reviews, training for case

review participants and a written summary of findings. The Tribe will assist in reviews by scheduling interviews, making records available, participating as a team member(s). The Tribe will complete a Program Improvement Plan (PIP) addressing the three greatest challenges to Tribal Child Welfare services as defined by the case review. The PIP will be submitted to the CFSD Tribal Coordinator within 90 days of the case review. The Tribe will submit a quarterly report to the CFSD Tribal Coordinator identifying progress in the implementation of the plan and results of these efforts. The PIP and Quarterly Reports will be prepared in the same format used by OKDHS County offices. The Tribe will also complete a Corrective Action Plan addressing any finding of non-conformity with provisions of the Tribal State Agreement within 90 days of the review or will affirm intent to resolve all non-conforming conditions within 90 days in a statement included in the Tribal State Agreement Review Findings. The CFSD Tribal Coordinator will monitor resolution of non-conforming conditions through focused, follow-up review.

- g. The Tribe and OKDHS agree to abide by the provisions of the Health Insurance Portability and Accountability Act (HIPPA) regulations issued by the Department of Health and Human Services.
- h. The Tribe agrees to develop and maintain, for a period of three years, written records sufficient to document proper fiscal and program management of the Tribe's responsibilities under this agreement. These records include placement agreements entered into between the Tribe and Tribal foster parents for the care of each tribal custody child for whom the OKDHS is responsible for payment.
- i. OKDHS will provide or secure technical assistance as requested to assist with the continued improvement of Child Welfare services and to aid conformance with federal regulations and the terms of this agreement.

1. GENERAL SERVICE PROVISIONS

- A. OKDHS IS RESPONSIBLE FOR SERVICE PROVISION TO CHILDREN IN OKDHS CUSTODY PLACED IN TRIBAL FOSTER HOMES. THE TRIBE IS RESPONSIBLE FOR SERVICE PROVISION TO TRIBAL CUSTODY CHILDREN PLACED IN TRIBAL FOSTER HOMES. COORDINATION IS ACHIEVED IN ACCORDANCE WITH THE ATTACHED PLAN OF OPERATION (ATTACHMENT I).**
- b. The Tribe agrees to assist OKDHS in the removal of a child in OKDHS custody in a foster home located on reservation lands as defined by 25 U.S.C.A. 1903 (10), if removal is necessary. The OKDHS agrees to assist the Tribe in the removal of a child in Tribal custody in a foster home located on state land, if removal is necessary.
 - c. If abuse or neglect allegations occur in a tribal foster home, a determination is made by the OKDHS worker and Tribal ICW worker regarding the immediate safety of the children. If necessary, the child may be removed pending the outcome of the investigation. The Tribe makes decisions about removal from or return to the foster home of Tribal custody children. The OKDHS worker makes decisions about removal from or return to the foster home of OKDHS custody children.
 - d. If discipline policy or other policy violations are identified in a tribal foster home, the Tribe agrees that they will develop a written plan of compliance to correct those conditions if the home is to continue to care for foster children. The tribal foster home must reflect the correction before any additional children are placed in the home.

5. FOSTER CARE SERVICE AGREEMENTS

- b. The Tribe and OKDHS shall cooperate in the placement of Tribal children in foster homes.
- c. OKDHS shall conform with the provisions of the ICWA and OICWA by:
 - 1) Notifying the child's tribe of any allegation involving a Tribal child.
 - 2) Notifying the child's Tribe with 24 hours of the removal of any potential Tribal child from their home.
 - 3) Respecting Tribal sovereignty and Tribal lands and offering the child's Tribe jurisdiction of proceedings involving Tribal children.
 - 4) Respecting the Tribal order of preference, appearing as Attachment 2, in out-of home placement considerations.
 - 5) Consulting with each child's family and Tribal representatives in placement and permanency planning for Tribal children.
- d. OKDHS will support Tribal foster care services by:
 - 1) Providing Tribal Child Welfare staff access to pre- and in-service training afforded OKDHS Child welfare workers. Enrollment in training is arranged by contacting the CFSD Tribal Coordinator's office.
 - 2) Providing Tribal Resource families pre- and in-service training made available to OKDHS resource homes. Training is arranged by contacting either the local county OKDHS or the CFSD Tribal Coordinator's office.
 - 3) Serving as an agent for payment of title IV-E compensable Foster Care services provided to Tribal children in settings that have been approved pursuant to the conditions in this Agreement.
- e. The Tribe agrees to develop and implement rules governing the Child Welfare program, including rules for the approval of foster homes, appearing as Attachment 3. The Tribe agrees to provide OKDHS a copy of any changes to rules for the approval of foster homes within 30 days of approval. Tribal rules conform to safeguards incorporated in state law and policy that require:
 - 1) National criminal background checks for all persons over the age of 18 residing in the home of any prospective foster family. An OSBI name search can be completed and accepted pending the results of the fingerprint checks if the family has lived in Oklahoma for more than 5 years. Foster care payment will not be provided for foster families who have not complied

with the records check requirements. The OKDHS will assist with payment authorizations for fingerprints and OSBI name searches as requested by the Tribe.

- 2) Non-approval of a prospective foster family when the records check reveals a felony conviction for any member of the household for: (1) child abuse or neglect; (2) spousal abuse; (3) crimes against children; or (4) crimes involving violence unless an evaluation has been made, accepted and documented. This evaluation must include the nature and seriousness of the crime, the circumstances under which the crime was committed, the degree of rehabilitation, the number of crimes committed by the person involved, and a showing by clear and convincing evidence that child will not be at risk by such placement.
- a. The Tribe agrees to provide legal notice to Tribal foster parents of review or permanency hearings concerning the foster child, and will grant an opportunity to be heard to the foster parent if desired.
- b. The Tribe agrees to report any suspected abuse or neglect incidents identified in working with tribal families residing on state land to the local OKDHS office.
- c. The Tribe agrees to consider Tribal children of other Tribes who are in either OKDHS or another Tribe's custody for placement in a Tribal foster home.
- d. Both parties agree that a Tribal home may be jointly approved by both the Tribe and the OKDHS. Such approvals are child specific and require approval from the CFSD Tribal Coordinator, the Foster Care programs manager and the Tribe.

6. Judicial and Case Requirements

- e. To implement the Title IV-E foster care maintenance payment program and be eligible for federal funding for foster care maintenance payment, the following judicial requirements must be met:
 - 1) Judicial determination made in the first order that sanctions the removal from the home that "it is (would be) contrary to the welfare of the (child) to remain in the home" or language to that effect.
 - 2) Judicial determination that (1) reasonable efforts were or were not made to prevent the removal of the child from the home; or (2) absence of efforts was reasonable because removal was due to an emergency; or (3) reasonable efforts are not required to prevent the child's removal from the home or to reunify the family (i.e. aggravated circumstances). These findings must be made during the first 60 days that the child is removed from the home, and must be child-specific.
 - 3) The Tribal court conducts a review hearing no less frequently than once every six months in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, compliance and progress with the case plan.
 - 4) The Tribal court conducts an initial permanency hearing no later than 12 months from the date that the child is considered to have entered foster care. A judicial determination is made regarding reasonable efforts to finalize the permanency plan for the child. A permanency hearing with this judicial determination is held every 12 months thereafter.
 - 5) Termination of parental rights is requested and considered when a Tribal custody child has been in foster care for 15 of the last 22 months unless there is documentation for exception to this requirement. Such exceptions include (1) the child is being cared for by a relative; (2) the Tribe has documented in the case plan (which is available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; (3) The Tribe has not provided (when reasonable efforts are required) the services the Tribe deems necessary for the safe return of the child to the child's home.
- b. Case plans are prepared for children within 60 days of removal. The case plans are child specific and indicate the child's case plan goal with the estimated date of achievement. Case plans are updated at least every six months or earlier if the case plan goal changes.
- c. Placement agreements documenting the date of the child's placement into the Tribal foster home are completed and signed by the Tribe and foster parent for each foster care placement.

7. INDEPENDENT LIVING

- a. Independent living services will be provided to Tribal custody youth in the same manner as OKDHS youth in accordance with the Chaffee Act of 1999. The Tribe agrees to assist the youth in developing an independent living case plan based upon an individual independent living assessment and referring the youth for appropriate services. The Tribe further agrees to provide documentation and data to the CFSD Independent Living Coordinator as requested.

8. FOSTER CARE PAYMENT

- f. The OKDHS agrees to provide foster care payments for both Tribal custody and OKDHS custody Tribal children placed in Tribally approved foster homes.
- g. The OKDHS agrees to provide foster care payments for Tribal children who are voluntarily placed with the Tribe.
- h. The OKDHS agrees to provide difficulty of care foster care payments to tribal foster homes who are providing foster care for tribal custody children when it is determined that the tribal custody child meets difficulty of care criteria.
- i. The Tribe, on behalf of the child in tribal custody, agrees to apply for money benefits, to which the tribal custody child may be entitled, e.g., Child Support, Veterans Administration benefits, Supplemental Security Income, etc. The Tribe will notify the CW Tribal Liaison of such benefits. The amount paid by the OKDHS for foster care shall be reduced by the dollar amount of such benefits, which are intended to provide for clothing, shelter and supervision.
- j. Both parties agree that in the event of an overpayment to the foster home by the OKDHS, both parties will work with the foster family to develop a mutually agreeable written repayment plan for such overpayment.
- k. The OKDHS agrees that in the event of an underpayment by the OKDHS, the OKDHS shall pay the balance within a reasonable amount of time, not to exceed 60 days.
- l. The OKDHS agrees to pay foster care for Tribal custody children who are eligible for therapeutic foster care and are placed in a home approved by both the therapeutic foster care agency and the Tribe. Such approval is child specific and no other tribal custody children are placed in the home without the permission of the therapeutic foster care agency. When the tribal custody child leaves the home, the Tribe closes the Tribal foster home.
- m. The Tribe agrees to certify to the accuracy of foster care payments for tribal custody children as requested by the OKDHS.

9. ADOPTION SUBSIDY

- a. Tribal adoptive parents may apply for adoption subsidy for tribal custody children adopted through Tribal court.

10. ENFORCEMENT

- b. The Tribe agrees to provide the OKDHS with the name, address and phone number of the person or persons designated responsible for operating the Tribal Child Welfare program. Any changes in such person or persons shall be reported within 10 working days.
- c. The OKDHS agrees to provide the Tribe with the name, address and phone number of the person or persons designated for managing this Agreement. Any changes in such person or persons shall be reported within 10 working days.
- d. The OKDHS agrees to provide the Tribe with the name, address and phone number of the designated Tribal Liaison and to report any changes within 10 working days.
- e. There will be no penalties for the revocation, termination or violation of this Agreement, except where such revocation, termination or violation causes penalization of the non-violating party; the violating party shall indemnify the non-violating party for the penalization. If issues or questions arise regarding the Agreement that cannot be resolved by OKDHS and Tribal officials, the issues shall be referred to District court.

WE THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE OKLAHOMA STATE DEPARTMENT OF HUMAN SERVICES AND THE _____ OF OKLAHOMA.

Tribal Leader
Tribe of Oklahoma

Director
Department of Human Services

STATE OF OKLAHOMA)
)
COUNTY OF _____) SS

_____, of lawful age being first duly sworn on oath says:

1. He is the duly authorized agent of the _____ Tribe, the contractor under this agreement for the purpose of certifying the facts pertaining to the giving of things of value to government personnel in order to procure this agreement.
2. He is fully aware of the facts and circumstances surrounding the making of this agreement and has been personally and directly involved in the proceedings leading to the procurement of this agreement.
3. Neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value either directly or indirectly in procuring this agreement.
4. No person who has been involved in any manner in the development of the agreement to which this statement is attached while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under aid contract.

Tribal Leader
Tribe of Oklahoma

Subscribed and sworn before me this _____ day of _____, 2004.

NOTARY PUBLIC

My Commission expires: _____

ATTACHMENT I

PLAN OF OPERATION

I. CHILD IN STATE JURISDICTION AND OKDHS CUSTODY

When OKDHS acquires custody in an involuntary proceeding of an Indian child or a child believed to be Indian, or where a new foster care placement selection for such a child already in OKDHS custody is necessary, the OKDHS worker contacts the Tribal worker to discuss the child's situation, including custody status reason for court action, and all pertinent information regarding the child's need for care. The Tribal worker provides information to the OKDHS worker with regard to the availability of potential extended family placements, which is the first placement preference of the Indian Child Welfare Act. The Tribal worker will also provide the OKDHS worker with information concerning available tribally licensed foster homes.

In the event OKDHS determines that foster care is required, the OKDHS worker and Tribal worker shall make a joint selection of the most appropriate foster home for the child. When it is mutually agreed that a tribally licensed foster home capable of meeting the needs of the child is available the tribal worker shall discuss with the prospective foster family their ability and willingness to accept the child for placement in the home and shall notify the OKDHS worker of their decision. The OKDHS worker will confirm with the CW Tribal Liaison or the CFSD Tribal Coordinator that the proposed placement is an approved foster home. If the foster home has decided against placement with them, then the Tribal worker and OKDHS worker makes a new selection.

When a tribally approved foster home agrees to the placement, the OKDHS worker and Tribal worker meets with the foster family. At this meeting, the OKDHS worker:

- 1) Reviews the specific care needs of the child.
- 2) Reviews agency policy and procedure relevant to meeting the child's physical, emotional, social, educational, medical and special needs.
- 3) Discusses the method of reimbursement to be used for monthly claims.
- 4) Advises the Tribal worker and the prospective foster family of the date and time of placement.
- 5) Gives the foster parents and the Tribal worker the OKDHS workers office and home phone numbers.
- 6) Gives the foster parents and Tribal worker the office and home phone numbers of the supervisor or other person to be contacted in case of emergency.
- 7) Reviews the Department's grievance process with the foster parents.

At this meeting, the Tribal worker:

- 1) Assists in answering any questions with regard to the foster parents' responsibilities and procedures to be used during the child's stay with the foster parents.
- 2) Explains the Tribe's role in the placement of the child with the foster family.
- 3) Assists the foster parents in filling out forms.
- 4) Gives the foster parents and OKDHS worker the Tribal worker's office and home phone numbers.

The OKDHS worker transports the child to the foster home for placement. At the time of placement, Forms DCFS-19, CWS-KIDS-7 and OCA-GR-1, properly completed, are provided to the foster parent. The foster parent signs Forms DCFS-19 and CWS-KIDS-7 and receives a copy. Ongoing supervision of the placement shall be a cooperative effort between the OKDHS worker and the Tribal worker, who shall exchange information regarding the placement or any concerns regarding care given. The Tribal representative may participate with the OKDHS worker

in arrangements for and provision of transportation visits with parents and other relatives in a mutually agreed upon manner. Provision of other services to the child in foster home care shall be coordinated between the Tribal worker and the OKDHS worker in a manner that best serves the needs of the child and the foster parent. The combined efforts of both parties shall be reflected in the overall permanent planning for the child, including reports prepared for the court of jurisdiction and participation in the Post Adjudication Review Board process. For children in OKDHS custody, tribal foster parents are authorized by OKDHS to provide both legal and informed consent for routine medical services e.g. immunizations, Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services, treatment for minor illness and well child services. Appropriate procedures are followed and authority is obtained from OKDHS, the parent/guardian or the court of jurisdiction for emergency medical services, hospital admissions and treatment, and surgical procedures for OKDHS custody children in Tribal foster care.

If at any time the OKDHS is considering a change in placement, or the Court requires a change in placement, the OKDHS worker notifies both the Tribal worker and the foster parent immediately.

The Tribal worker notifies the Department's contact person in writing of any variance from the placement preferences that is adopted by the Tribe.

Upon approving or re-approving a foster home, the Tribal worker shall provide a copy of the home study, including the foster home name, address and a verified social security number, to the CFSD Tribal Coordinator. The Tribe shall notify the CFSD Tribal Coordinator of the effective date of closure of any tribally approved foster home within five days of such closure.

II. CHILD IN TRIBAL CUSTODY:

When the Tribal Court or an Oklahoma District Court awards custody of a child to the Tribal Child Welfare Program, and foster care placement is made in a tribally approved foster home, referral is made to the OKDHS Child Welfare (CW) tribal liaison using the Indian Child Welfare Program Referral DCFS 57. The Tribal Liaison makes immediate referral to the Custody Specialist for determination of eligibility for AFDC foster care on the CWS-KIDS 4, attaching a copy of the Court Order and Case Plan. The top of the CWS-KIDS-4 form is marked "Tribal Custody". The Custody Specialist makes a determination whether the Tribal custody child either meets Title IV-E requirements. If the Tribal custody child does not meet Title IV-E requirements, the Tribe makes application for Title XIX medical services.

When the child is determined eligible for IV-E foster care, the Custody Specialist will conduct redeterminations of eligibility in the same manner as they are for OKDHS custody children. It is the Tribal worker's responsibility to immediately notify the Tribal Liaison on the DCFS 57-A of any changes in the child's circumstances which might affect continued eligibility for IV-E foster care services. The effective date of the foster care payment is the date of placement of the Tribal custody child in an approved Tribal foster home. The CW Tribal Liaison notifies the CFSD Tribal Coordinator of any problems with timely referrals from the Tribe. The CFSD Tribal Coordinator will address problems of timely referrals with the Tribe if there are repeated instances of late referrals. Children who have not been removed from their home in accordance with federal guidelines are not eligible for foster care payment. Information included on the DCFS-57 will be used by the CW worker to advise the Custody Specialist of current data necessary to determine the child's continuing eligibility at annual intervals or as changes are reported by the Tribal worker between reviews. The Tribal worker submits all court orders concerning the Tribal custody child to the CW Tribal Liaison, as well as updated case plans. The CW Tribal Liaison updates the KIDS case to reflect the most recent court hearing and the most current case plan goal. Changes in Tribal foster home placement are reported by the Tribal worker (the CW Tribal Liaison on the DCFS-57-A with the service case appropriately dated by the CW Tribal Liaison. Changes of placement to a resource other than a Tribal foster home are immediately reported by the Tribal worker on the DCFS-57 also, with information as to the date of the placement, with whom the

child is residing, their relationship to the child, if any, and the name of the child's legal custodian included in "Closing Summary". A copy of the court Order changing custody is attached. Upon receipt of this information the CW worker will submit a K-13 to the Custody Specialist requesting the child's removal from the C case, close the service case and discontinue payment to the foster home effective the last day of placement in the Tribal foster home.

Medical cards for children in Tribal custody certified for IV-E foster care will be sent to the Tribal worker at the Tribal office or directly to the foster parents. The medical card will follow the child while in a tribally approved foster home. Should the child be placed in another placement resource, the tribal worker will give the current medical card to the child's new foster parent. Following removal from Tribal foster care, it is returned by the Tribal worker to the CW worker.

III. TRIBAL FOSTER HOME APPROVALS AND RE-EVALUATIONS

The Tribe approves foster homes according to Tribal standards. Foster home standards, approved by the Tribe are submitted to the CFSD Tribal Coordinator, as well as any revisions or changes in standards.

When the Tribe approves a home as a tribal foster home, the completed study is submitted to the CFSD Tribal Coordinator. Studies include identifying information about the family, the level of family functioning, a description of their parenting abilities, a description of all family members, and a recommendation that addresses the number of children to be placed in the home. Copies of the OSBI name search and national records checks are submitted with the foster home study. Payment will not be made to any tribal foster home for which an OSBI name search has not been completed.

The Tribe submits an annual re-evaluation on foster homes to the CFSD Tribal Coordinator. The re-evaluation addresses the current status and situation of the foster family. Any issues or concerns that have occurred during the year are addressed in the re-evaluation. The re-evaluation contains a recommendation regarding the number of children to be placed in the foster home.

ATTACHMENT II

Specific Tribal Placement preferences for _____ Tribal children:

A preference for foster care placement, in the following order, shall be given to:

1. A member of the Indian child's extended family;
2. A foster home 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.
4. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable for to meet the Indian child's needs.

ATTACHMENT III

TRIBAL FOSTER HOME STANDARDS

ADDENDUM # 2 TO
TRIBAL – STATE FOSTER CARE AGREEMENT
BETWEEN THE
THREE AFFILIATED TRIBES TRIBAL COUNCIL
AND THE
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

WHEREAS, the Three Affiliated Tribes Tribal Council, the Three Affiliated Tribes Tribal Court and the North Dakota Department of Human Services entered into a Title IV-E Foster Care Agreement on October 25, 1983 which is still in effect; and

WHEREAS, the Agreement recognized the sovereignty of the Three Affiliated Tribes to make placement and care decisions concerning children in foster care under its jurisdiction; and

WHEREAS, an agreement is necessary specifying that the Tribe will follow Federal Title IV-E law and regulations in order for the Tribe to access federal reimbursement for Title IV-E related expenditures; and

WHEREAS, federal law and regulations as specified in the current Agreement have changed since the Agreement was signed and there is a need to reflect these changes in the Agreement in order to maximize federal reimbursement to the Tribe and the Department

THEREFORE, the Council, and Department agree to the following addendum to the current Agreement:

FEDERAL LAW, REGULATIONS AND POLICY

The Tribe shall follow all Title IV-E laws, regulations and policies when utilizing IV-E funding. The Department shall make Title IV-E federal reimbursement funds available to the Tribe for allowable administration and training expenditures incurred by the Tribe. These dollars shall go directly to tribal Social Services for child welfare programming.

MAINTENANCE PAYMENTS

The Department shall be responsible for providing the non-federal share of the foster care and subsidized adoption maintenance payments for all Title IV-E eligible children.

TITLE IV-E ELIGIBILITY DETERMINATION

The Department, through a County Social Service Board shall be responsible for determining eligibility for Title IV-E. The Tribe shall provide eligibility related information to the County to assist the County in determining Title IV-E eligibility.

TRIBAL COURT ORDERS

The Tribal Court shall include all necessary language in Tribal Court orders that are required for Title IV-E eligibility purposes.

REIMBURSEMENT FOR TRIBE INCURRED ADMINISTRATION COSTS

The Department shall pass through Title IV-E reimbursement for Tribal incurred administration costs in accordance with federal regulations, and Department policies and procedures.

The following are examples of allowable administration costs as specified in 45 CFR 1356.60 (c):

- (i) Referral to services;
- (ii) Preparation for and participation in judicial determinations;
- (iii) Placement of the child;
- (iv) Development of the case plan;
- (v) Case reviews;
- (vi) Case management and supervision;
- (vii) Recruitment and licensing studies of foster homes;
- (viii) Rate setting;
- (ix) A proportionate share of related agency overhead; and
- (x) Costs related to data collection and reporting

The Tribe's administration costs shall be cost allocated based on a Tribal Social Service Time Study in accordance with the federally approved Department Cost Allocation Plan.

The allowable administration costs will be further cost allocated based on:

- The percentage (%) Native American children in foster care or subsidized adoption in Tribal custody on the reservation that are Title IV-E eligible times (X) 50% (Federal Financial Participation for administration) or
- The percentage (%) of all children statewide who are in the Departments foster care or subsidized adoption universe that are Title IV-E eligible times (X) 50% (Federal Financial Participation for administration).

REIMBURSEMENT FOR TRIBE INCURRED TRAINING COSTS

The Department shall pass through Title IV-E reimbursement for Tribal incurred training costs in accordance with 45 CFR 1356.60 (b). These dollars shall be used for the delivery of child welfare training.

Title IV-E reimbursement is available for the costs of long and short term training of child welfare personnel employed by or preparing for employment by Three Affiliated Tribes Social Services. In

addition, current or prospective foster or adoptive parents shall be eligible for short-term training (including travel and per diem expenses).

All training activities and costs reimbursed under Title IV-E shall be included in the Department's and Tribe's Title IV-B, "Child Welfare Services Plan" and have prior assurance from the Department's Children and Family Services Division that the training is IV-E reimbursable.

The allowable training costs incurred by the Tribe will be cost allocated based on:

- The percentage of Native American children in foster care or subsidized adoption in Tribal custody on the reservation that are Title IV-E eligible times (X) 75% (Federal Financial Participation for training) or
- The percentage of all children statewide in the Department's foster care or subsidized adoption universe that are Title IV-E eligible times (X) 75% (Federal Financial Participation for training).

PROCESS FOR CLAIMING REIMBURSEMENT

Reimbursement for administration and training expenses shall be made on a quarterly basis and is limited to those expenses that are made with funds that are eligible to be matched with Title IV-E.

To receive the administration and training reimbursement on a timely basis, the Tribe shall certify its itemized expenses to the Department's Children and Family Services Division on a form provided by the Division by the 15th day of the month following the quarter for which the claim is being made. The Department shall apply the appropriate federal reimbursement formula, claim the federal reimbursement and pass it through to the Tribe.

MEDICAID COVERAGE FOR CHILDREN IN FOSTER CARE OR SUBSIDIZED ADOPTION

All children who are Title IV-E eligible for foster care and all children (including IV-E and 638) receiving subsidized adoption are categorically eligible for Medicaid (Title XIX). The Tribe is responsible for assuring that application is made with the appropriate County Social Service Office.

Children who are in foster care under a Tribal Court Order who are not eligible for Title IV-E may be eligible for Medicaid based on the child’s legal status, income and resources. The Tribe is responsible for assuring that application is made with the appropriate County Social Service Office.

LICENSING FOSTER CARE HOMES AND FACILITIES

Title IV-E reimbursed maintenance payments may only be made to licensed or approved foster homes or facilities. The Department does not have the jurisdiction to license such homes or facilities on the reservation.

The Department shall recognize the licensure by the Tribe of any foster home or facility on the reservation. The Tribe may establish its own licensing standards by Tribal Resolution for foster homes and/or facilities. If the Tribe does not have its own licensing standards, they must follow the standards adopted by the Department in order for Title IV-E maintenance payments to be made.

DATED: _____

North Dakota Department
Of Human Services

Three Affiliated Tribes

Carol K. Olson
Executive Director

Tribal Chairman

Brenda Weisz
Chief Financial Officer