STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[X] Federal Law or Regulation Change
[ ] Court Order
[ ] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

February 14, 2014

ALL COUNTY LETTER (ACL) NO. 14-15

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL ELIGIBILITY WORKERS

SUBJECT: FEDERAL REQUIREMENTS FOR THE TRANSFER OF INDIAN CHILDREN TO A TRIBAL TITLE IV–E AGENCY OR AN INDIAN TRIBE WITH A TITLE IV–E AGREEMENT

REFERENCES: THE FEDERAL FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, (PUBLIC LAW [PL] 110-351); INDIAN CHILD WELFARE ACT (ICWA), 25 U.S.C. SECTION 1901 ET SEQ.; 45 CODE OF FEDERAL REGULATIONS (CFR) SECTION 1356.67; WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 305.5 AND 10553.1

This ACL contains information regarding federal requirements applicable to the transfer of cases from state/county jurisdiction to a tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement. The purpose of this ACL is to provide policies and procedures and identify the **minimum** federal requirements, set forth in above cited federal regulations, for transferring an Indian child from the county child welfare system and court jurisdiction, to the Title IV-E Agreement Tribe or tribal agency. These federal regulations do not affect or otherwise preclude the ICWA specified right of a tribe to seek the transfer of an Indian child's case from state court jurisdiction to tribal jurisdiction. Regardless of whether or not a tribe is a Title IV-E tribe, it continues to have the right to seek and, absent good cause to the contrary, obtain the transfer of jurisdiction of an Indian child's case to the tribe.

BACKGROUND

Tribes are entitled to take their own children into their care and custody. The ICWA further provides that the child's parent, tribe or Indian custodian has the right to petition for the transfer of an Indian child that is under state court jurisdiction to the tribe.

The Social Security Act (The Act) and ICWA provide that states and Indian tribes (or tribal consortiums or tribal organizations), may enter into agreements regarding care and custody of Indian children and jurisdiction over child custody proceedings and draw down federal Title IV-E funding. California state authority for entering a Tribal-State Title IV-E agreement is found in W&IC section 10553.1. The PL 110-351 further expanded tribal options for the establishment of such programs by providing the option for tribes, tribal consortiums or tribal organizations to enter into Title IV-E agreements directly with the federal government.

The Interim Final Rule was issued in the Federal Registry on January 6, 2012. It made changes to 45 CFR 1356.67, which requires that there be "[p]rocedures for the transfer of placement and care responsibility of a child from a state to a Tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement". **Currently, these federal regulations do not apply to transfer of children to non-Title IV-E tribes.** Tribes that have entered into a Title IV-E agreement with the California Department of Social Services (CDSS) are the Karuk and Yurok Tribes. In addition, there are tribes in other states that have entered into Title IV-E agreements with their states. Although some California tribes are actively working with the federal government to seek direct approval to operate their own Title IV-E program, none currently exist in California.

Federal Regulations 45 CFR Section 1356.67

The regulations require, at a minimum, the following:

1. Each state shall establish and maintain procedures for the transfer of responsibility for the placement and care of a child under a state Title IV-E plan to a Tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement in a way that does not affect a child's eligibility for, or payment of, Title IV-E and the child's eligibility for Medicaid or other federal benefits.
2. The procedures require that the state must:

    a. Determine, if not already completed, the child's Title IV-E eligibility under section 472 or 473 of The Act at the time of the transfer of placement and care responsibility of a child to a Tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement.

    b. Provide essential documents and information necessary to continue a child's eligibility under Title IV-E and Medicaid programs under Title XIX to the Tribal Title IV-E agency or tribe with a Title IV-E agreement, including, but not limited to, providing:

i. All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of The Act have been made;
ii. Other documentation the state has that relates to the child's Title IV-E eligibility under sections 472 and 473 of The Act;
iii. Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other federal benefits;
iv. The case plan developed pursuant to section 475(1) of The Act, including health and education records of the child pursuant to section 475(1)(C) of The Act; and
v. Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

INSTRUCTIONS

Counties are required to take the following steps when transferring an Indian child to a Tribal Title IV-E agency, in accordance with the aforementioned federal requirements.

1. Title IV-E Eligibility Determinations and Redeterminations

If the Title IV-E eligibility determination has not already been completed, the county agency must complete the determination and provide official copies of all pertinent documentation regarding the determination.

The eligibility determination cannot be completed until after the initial detention hearing has occurred. This is because a prerequisite to Title IV-E eligibility is the entry of judicial determinations that it is contrary to the welfare of the child to remain in the home (W&IC section 319 [b]) and that reasonable efforts to prevent removal were made (W&IC section 361[d]).

The eligibility determinations are reflected on the following forms:

a. Foster Care Form 3 (FC3) "Determination of Federal Aid to Families with Dependent Children (AFDC) Foster Care Eligibility"
b. Adoption Assistance Form 4 "Eligibility Certification Adoption Assistance Program" (AAP4) or,
c. Kinship Guardianship "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance payment," (KG2) as applicable.

Depending on the stage of the child's case, any or all of the referenced eligibility determination forms will need to be completed and provided to the tribal program.

Counties are expected to expediously complete eligibility determinations so as not to unduly delay the transfer of the child.

2. Documentation Requirements

In order to comply with the requirements of 45 CFR section 1356.67, **a copy of the entire case file** for the current foster care episode is to be provided to the Tribal Title IV-E agency or the Indian tribe with a Title IV-E agreement upon the transfer of the child. This would include the eligibility, case services and licensing information for the child's most recent placement, in the county's possession. The documents in the court file should also be provided to the tribal agency. This is equivalent to the procedures currently utilized when transferring a child from county to county.

Confidentiality is not violated because the provision of documentation is required by the federal regulations (45 CFR section 1356.67 [b][2]). The tribe or tribal agency in entering a Title IV-E agreement has agreed to comply with the same federal requirements on confidentiality to which the state is required to adhere. Moreover, providing the entire file recognizes the need for the receiving agency to have essential documentation and information to maintain the seamless care and provision of services for the well-being of the child.

In order to facilitate consistency in the structure of the file transfer and for purposes of the continuity of eligibility and services to the child, counties must make certain the records are organized to include the following:

a. Placement and Care Responsibility

An official copy of all judicial orders and court reports for the foster care episode, especially those that include judicial determinations supporting continued Title IV-E eligibility.

b. Placement History

Official copy of the child's placement history for the foster care episode are to include:

- A copy of the caregiver's license or approval for the child's most recent placement, including background check documentation verifying clearances for all adults in the caregiver's household and complaint information.
- If a child is currently placed out-of-state by the county pursuant to the Interstate Compact on Placement of Children (ICPC), the approved ICPC 100A Form and ICPC 100B Form, including copies of reports by the supervising agency, must also be provided to the tribe.

c. Case Plans and Services

Official copies of all case plans including case plan goals for the foster care episode and documentation of services provided to the child and family.

A current up-to-date official copy of the child's health and education passport.

d. Other Federal Benefit Documentation

The child is to be transferred in a manner that does not affect his/her eligibility for, or payment of other federal benefits including Medicaid programs under Title XIX. Therefore, the county agency must provide the tribal agency any essential information and documentation necessary for the seamless continuation of any federal benefits, which the county agency has in its possession.

This includes, but is not limited to, information about the child's eligibility for Child Support, Railroad Retirement, Supplemental Security Income/State Supplementary Payment (SSI/SSP), Veteran's Wages or other benefits, which are known to the county and/or in pending status.

Children Placed under the ICPC

Transferring a child currently in an out-of-state placement to a tribal agency could jeopardize the continued flow of federal benefits if the placement becomes ineligible due to the termination of the ICPC placement.

The county should therefore, upon receipt of the petition to transfer, notify the receiving state that the jurisdiction over the child may be transferred to a Title IV-E tribe or tribal agency. Counties are encouraged to initiate and foster communication between the tribe or tribal agency and the receiving state in order to avoid disruption of the placement and/or federal eligibility for foster care maintenance payments to the child's caregivers.

If you have any questions regarding this letter, please contact the Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division