

PERSPECTIVES

S o m e w h e r e o v e r t h e r a i n b o w

Title IV-E funding can help save Indian children

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A potential "pot of gold" sits at the end of a rainbow for tribal foster care programs. Under Title IV-E of the Social Security Act, tribes may be reimbursed for many of the costs that they currently spend on foster care and related services. The seldom-tapped revenue a tribe can access through Title IV-E could not only improve the lives of Indian children, but also generate income for much-needed tribal social service programs.

The 75 tribes currently participating in Title IV-E receive thousands of dollars in reimbursements annually. However, despite the fact that Title IV-E has been available since 1980, the overwhelming majority of tribes have not yet accessed the funding.

Title IV-E funds are not direct federal funding. Rather, funds are passed to tribes through states, which reimburse tribes for a percentage of the program costs associated with providing foster care services. Tribal reimbursement under Title IV-E is facilitated through a tribal/state intergovernmental agreement which, in some cases, has proven to be the most significant barrier tribes face in accessing such funds. In addition to discussing some of the political and legal issues tribes face relative to government-to-government agreements, this article will explain some of the technical aspects of Title IV-E.

HOW MANY INDIAN CHILDREN ARE IN FOSTER CARE AND ENTITLED TO TITLE IV-E FUNDING?

According to the U.S. Department of Health and

September 1998, American Indian children were disproportionately represented in the U.S. foster care system. The 2000 Census recorded only .09 percent of the U.S. population as American Indian, adults and children. In 2001, American Indian children represented 2 percent of all children in foster care. Caucasians, however, represent 66 percent of the U.S. population, and Caucasian children represent only 36 percent of all children in foster care. Of the approximately 6,500 Indian children placed in foster care annually, approximately 71 percent of them meet the eligibility criteria under Title IV-E.

So why such a glaring disparity of Indian children within the system? Studies suggest three dominant theories: (1) the disproportionate need found among minority families; (2) racial bias in child welfare decision-making; and (3) family risk and child welfare practice.

In a 2003 study, participants expressed overwhelming concern for the lack of resources and the implications for children and families. While the need for resources, training and other services to American Indian children in foster care increases annually, tribes underutilize the No. 1 funding source for children's services, Title IV-E, which accounts for 48 percent of all federal child welfare spending. While the government facilitates approximately 30 congressionally authorized federal funding programs directed at children, Title IV-E is the single largest source of funding. Still, the vast majority of tribes are not utilizing this valuable social and financial tool to provide services and generate revenue.

Title IV-E, which is a federal entitlement and not a grant, paid \$5.2 billion toward foster care

2004. Every state in the country participates in the program. Tribes and states are eligible to receive a federal reimbursement of anywhere from 50 percent to 83 percent of the money that they currently spend on Title IV-E eligible services. It is alarming that only 75 of the more than 560 federally recognized tribes currently access Title IV-E funds. Moreover, of the 75 tribes participating, few were reimbursed for administrative, training and data system funding.

HOW DOES A TRIBE OVERCOME TITLE IV-E TECHNICAL DIFFICULTIES?

Tribes may receive federal reimbursement for monthly maintenance payments for eligible children in foster care, monthly assistance payments for special needs children in adoptive placements, administration costs associated with placement of eligible children, and training costs for personnel administering the programs as well as foster and adoptive parents. While so many reimbursements are available, as of the year 2000, less than 20 tribes billed for administrative costs such as case management, case planning, case coordination and court-related activities; and fewer than five tribes have billed for the available training funds.

States, on the other hand, maximize their claiming rates by hiring Title IV-E consultants. Although hiring consultants may not be the right option for every tribe, doing so is an excellent way to start billing under Title IV-E, to receive immediate training and in turn generate revenue. An added feature is that fees associated with contracting with consultants are reimbursable as well.

Due to the technical nature

of reimbursement billing, many tribes experience difficulty in setting up a program. Title IV-E requires an adequate infrastructure to administer the program and meet fiscal requirements. Therefore, it may place a greater administrative burden on child welfare agencies and tribal courts. If, after conducting a needs assessment, a tribe believes it is appropriate to hire outside consultants, a negotiated contract between the tribe and consultants should recognize the sovereign power of the tribe and insulate it from any improprieties on the part of the contractor.

WHY SHOULD TRIBES ENTER INTO TITLE IV-E AGREEMENTS WITH STATES?

While the complexities of the Title IV-E process may affect some tribal decisions not to pursue the funding, dealing with states may also be an obstacle. In current systems, state agencies often take the position that once a tribe exerts jurisdiction over a child's case, the state maintains no responsibility, financial or otherwise. These attitudes are often reinforced by tribes eager to eliminate any state interference into tribal children's cases. In this situation, the tribes, and more importantly, tribal children, lose. The key to a successful Title IV-E tribal/state relationship is a well-thought-out and legally sound agreement, and it remains the only way that a tribe may access the Title IV-E funding to which it is entitled.

Some tribal leaders believe that by entering an agreement, the tribe allows state agencies to participate with or even dictate to tribal personnel, how case management will occur. However, Title IV-E agreements are contracts in which the tribe and state negotiate the extent of

Based on the interests of both parties, tribal and state agreements are very unique in scope and tenure. Everyone involved works together with respect for one another's needs, roles, and responsibilities.

Pursuant to a sound Title IV-E agreement, Indian children are arguably less likely to become victims of abuse and neglect, because of additional services and protections afforded them due to increased funding. For example, the foster parent training provided under Title IV-E is vital to the physical and emotional well-being of Indian children and should be negotiated into every agreement with the state. Title IV-E funds can be used to address domestic violence and child abuse by providing training for child welfare staff assigned to these types of cases.

In addition to federal funding for maintenance payments, adoption assistance funding, administration and staff training – including higher education – can be negotiated. Under such an agreement, tribes may receive reimbursement for the related college education of tribal employees. Under some tribal/state agreements, tribal agency employees receive scholarships for masters-level social work education. Some agreements allow tribes access to state computerized information systems. In order to maximize the benefits of a Title IV-E agreement, tribes must come to the table with full knowledge of the funding available for services under the statute and negotiate an agreement that takes advantage of such an important program.

HOW DOES A TRIBE BEGIN ACCESSING THE TITLE IV-E ENTITLEMENT?

or technical barriers to deprive Indian children of their entitlement under Title IV-E. While Title IV-E funding should, and may in the near future, pass directly from the federal government to the tribes, tribes have an immediate need to provide services to the many Native children in foster care.

The first step is to assess whether your tribe should retain consultants. A starting point would be to contact the National Indian Child Welfare Association or local Title IV-E consultant groups. Once the tribe selects a consultant group, tribal leaders and staff must negotiate a contract representative of the needs and expectations of the tribe. The tribe and consulting firm, with legal counsel, should then begin negotiating a Title IV-E agreement that maximizes the tribe's ability to provide and bill for all eligible services.

With an agreement in place, a legal and programmatic review of the existing system should occur to ensure Title IV-E compliance, and thus, the legal and financial eligibility process can begin. The programmatic and financial benefits of Title IV-E to tribal communities outweigh the technical difficulties presented by the statute or the issues presented by entering into an agreement with the state. Title IV-E is a viable option for any tribe interested in developing the infrastructure of programs that provide social services to their Indian children and communities.

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