
General Memorandum 07-111

Senator Baucus Introduces Tribal Foster Care and Adoption Access Act of 2007

On August 2, 2007, Senator Baucus (D-MT) introduced S 1956, the Tribal Foster Care and Adoption Access Act of 2007. Original co-sponsors are Senators Domenici (R-NM), Bingaman (D-NM), Smith (R-OR), Stabenow (D-MI), McCain (R-AZ), Cantwell (D-WA) and Levin (D-MI). The legislation is similar to bills introduced in previous Congresses by Senators Daschle (D-SD) and Smith (R-OR) and Representative Camp (R-MI). The bill was referred to the Finance Committee, which is chaired by Senator Baucus.

The legislation would correct the glaring inequity in the Foster Care and Adoption Assistance Act (codified in Title IV-E of the Social Security Act) that leaves tribal governments and the children under their jurisdiction out of this program. That Act reimburses states -- on an entitlement basis -- for services provided to income-eligible children who are placed in foster care or adoptive homes through state agencies. Services provided by tribes, however, for income-eligible children placed by tribal agencies are not eligible for reimbursement unless there is a tribal-state agreement. Over half of federally recognized tribes in the United States do not have IV-E agreements with states. Indian children have been left behind.

The bill would allow tribes and tribal consortia to administer the program on a government-to-government basis and also authorizes tribal-state agreements. If the Tribal Foster Care and Adoption Access Act of 2007 were enacted into law, it would help tribes provide better services and more permanency for their children, assist in recruiting foster homes, provide better support for foster care and adoptive families, and strengthen tribal social service capacity. In addition, children who receive Title IV-E services are automatically deemed eligible for Medicaid.

Senator Baucus has a long history of promoting the effort to provide direct tribal government access to the Title IV-E Foster Care and Adoption Assistance program. He was a co-sponsor of Senators Daschle and Smith's bills on this topic, and he twice successfully included tribal IV-E provisions in Finance Committee-approved welfare reform bills. Those bills were not enacted into law.

Current Law. Under current law, the Foster Care and Adoption Assistance Act provides reimbursement to states for training, administration and data collection related to foster care and adoption programs, foster care maintenance payments and adoption assistance. Maintenance payments help pay for things such as food, shelter, clothing, daily supervision, school supplies, general incidentals, liability insurance for the child, and reasonable travel to the child's home for visits. Administrative monies fund case management and other related functions that support placement of the child.

Training assistance is focused on agency people who provide services, as well as foster care parents and adoptive families. States provide varying matching amounts for the various programs under the Act. Federal funding under this Act is approximately \$7 billion per year. Nearly half of the funding is used for state's administrative, case management, training, and

data collection responsibilities under the Act. Other funding is paid directly to foster care homes. A number of states have received waivers from DHHS to use IV-E funds for subsidized guardianships - an option we expect would be of interest to tribes.

Regulations for the Act allow states and tribes to enter into agreements in order to provide services to Indian children under tribal jurisdiction. Such agreements, however, have been difficult to reach and, in many cases, provide tribes with only some of the services that states receive under the Act. There are approximately 70 tribal-state Title IV-E agreements. Many of those agreements do not include a pass-through of funds for one or more components to tribes (foster care maintenance, training, administration, data collection) One impediment to tribal-state agreements is that states, as the grantee, retain accountability for the expenditure of the funds.

Summary of S 1956, Tribal Foster Care and Adoption Access Act of 2007

S 1956 would bring a government-to-government relationship to the Title IV-E Foster Care and Adoption Assistance Act. Under this legislation, tribal governments could apply to the Department of Health and Human Services (DHHS) to directly administer the program. Tribal governments would also retain the option to enter into tribal-state agreements. *Importantly, the Secretary would be authorized to modify the Act's provisions for tribes if it would serve the best interests of children.* Key features of the bill are:

Direct Tribal Administration of the Title IV-E Foster Care and Adoption Assistance Program.

- ?? Tribes and tribal consortia could apply to DHHS to directly administer the program.
- ?? Tribes could utilize their foster care standards in the operation of the program.
- ?? Tribes could determine their service area and population to be served by the Title IV-E program. The Temporary Assistance for Needy Families program also allows tribes this option.
- ?? Foster care maintenance payments would be made according to the tribe's federal medical assistance rate, with the highest federal share being 83 percent.
- ?? DHHS would establish regulations setting the federal/tribal shares for the training, administration, and data collections programs under the Foster Care and Adoption Assistance Act. The tribe's federal share cannot be lower than the state's federal share.
- ?? Tribes could use other federal funds to provide any match that may be required for programs under the Foster Care and Adoption Assistance Act. Tribes could also use tribal, state or private funds and in-kind contributions toward any required match.
- ?? The bill provides that any residency requirement imposed under a state Title IV-E plan does not apply to an Indian child being served in a tribal IV-E plan.

Tribal-State Title IV-E Agreements.

- ?? Tribal-state agreements in effect at the time of enactment may continue and tribes and states could enter into future agreements as well.
- ?? In an effort to make tribal-state agreements more attractive, S 1956 would allow a state, as part of a tribal-state agreement, to utilize the tribe's federal medical assistance rate (that would be higher than the state's rate in most cases) in providing the match for foster care and adoption payments for children under tribal jurisdiction. Under current tribal-state agreements, states pay the required foster care/adoption match at its own federal medical assistance rate.
- ?? Program and fiscal provisions that allow for additional discretion or modification of requirements could also apply to tribes and states entering into agreements.

Transition Provisions.

- ?? Provision is made for tribes which assume administration of the program to ensure that otherwise eligible children will not be excluded from Title IV-E services because of existing court orders that do not meet all the Title IV-E court order requirements. It is understandable that a tribe just assuming administration of the Title IV-E program would not have previously issued its court orders in compliance with that program.
- ?? In an effort to address issues that might arise during the transition from a tribe having a Title IV-E agreement with the state to a tribe assuming direct administration of the program, the bill would prevent the state from cutting off maintenance payments for an Indian child under tribal jurisdiction during this transition period.

Other Provisions.

- ?? In order to eliminate the requirement that tribes undertake duplicate background checks, the bill would allow the background checks already required under the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. §3207) to meet background check requirements in other laws. In some cases the standards for background checks under the Indian Child Protection and Family Violence Prevention Act are higher than those contained under Title IV-E.
- ?? The bill would allow tribes, who either directly or through a tribal-state agreement participate in the IV-E Foster Care and Adoption Assistance program, to apply for an allocation under the Title IV-E Chafee Foster Care Independence Program. This program assists youth who are "aging out" of foster care. Under current law states are required to serve Indian youth. Unlike the Foster Care and Adoption Assistance program, the Foster Care Independence Program is not an entitlement program and there is a cap on funding. Congress has traditionally appropriated \$140 million annually for this program which is distributed to states via a formula. Some states pass through funds to tribes. Under S 1956 a tribe could apply to DHHS for its own formula-based allocation. This provision is similar to how tribes access Title IV-B, Subpart 1 (Child Welfare Services) funding and was not in previous tribal IV-E bills.

?? At the request of a tribe, the Secretary may modify the requirements of the Act if he determines it is in the best interests of the children being served by the tribe.

Support for Direct Tribal Administration of the Title IV-E Program. Our firm has worked with the National Indian Child Welfare Association for a number of years in support of the enactment of legislation such as S 1956. Among those endorsing legislation to amend the Foster Care and Adoption Assistance Act to allow direct tribal administration of the program are the National Congress of American Indians; Association on American Indian Affairs; Native American Rights Fund; American Public Human Services Association (the association of state social service agencies); Child Welfare League of America; Children's Defense Fund; American Bar Association; Catholic Charities USA; Centers on Law and Social Policy; National Child Abuse Coalition; and Voices for America's Children. In 2004, the bi-partisan Pew Commission on Children in Foster Care recommended that the Title IV-E law be amended to provide direct tribal administration of this program.

If we may be of further assistance regarding the Tribal Foster Care and Adoption Access Act of 2007, please contact us at the information below.

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