



NICWA

National Indian Child Welfare Association

Child and Family Policy Update

October 2024

An electronic copy of this update can be found on the National Indian Child Welfare Association's (NICWA) website at <https://www.nicwa.org/policy-update/>.

Hot Topics

House Passes Bill to Provide Funding and Improvements for Tribal Child Welfare Programs

On September 18, 2024, the House of Representatives voted to approve [Supporting America's Children and Families Act](#) (H.R. 9076). In a strong, bipartisan vote the bill was approved 405 to 10 with 16 non-votes. The legislation contains increased funding for tribes under Title IV-B of the Social Security Act, reduces administrative burdens, and requires the Department of Health and Human Services (HHS) to collect data and provide technical assistance to states and tribes regarding implementation of the Indian Child Welfare Act (ICWA). **The legislation is now before the Senate with a vote expected in November after the election. NICWA has been a supporter of this legislation and is strongly encouraging every tribe, tribal organization, and ICWA ally to contact your Senators by October 24, 2024, and ask for their support to get a floor vote on H.R. 9076 in November.** You can find contact information for your Senators [here](#) and a sample letter to use in your communication with your Senators [here](#).

Below is a list of key provisions in H.R. 9076 that address tribal child welfare programs and ICWA.

- Increase in mandatory funding under the Title IV-B, Subpart 2 Program (Promoting Safe and Stable Families) and expand in the number of tribes that will qualify to receive the funding.
- Change the current funding mechanism under Title IV-B, Subpart 1 Program from the outdated regulatory formula to a 3% set-aside from the overall appropriation.
- Increase funding for the Tribal Court Improvement Program from \$1 million to \$2 million per year.
- Allow the Secretary of HHS to modify Title IV-B reporting requirements for tribes with smaller Title IV-B grants to reduce administrative burden.
- Require HHS to collect data related to Indian Child Welfare Act (ICWA) requirements from states regarding cases where Native children are involved.
- Require HHS to provide technical assistance to states and tribes for the purpose of supporting effective implementation of ICWA.
- Require HHS to consult with tribes on the development of guidelines to maximize the engagement of tribes in state court proceedings involving ICWA.
- Allow tribes the option of using their federally negotiated indirect rate in the operation of Title IV-B programs.
- Clarify tribes as eligible to apply for and receive competitive grant funding to evaluate programs or services that meet one of the evidence-based criteria under the Title IV-E Prevention Services Program.

Biden Administration Expands Flexibility for Tribes to Provide Cultural Services in Federal Child Welfare Programs

On July 30, 2024, the Children's Bureau published [new policies](#) in their Child Welfare Policy Manual that expand flexibility to tribes that are operating the Title IV-E program under an agreement with a state Title IV-E agency. The new policies clarify that a tribe in an agreement with a state may provide prevention programs and services adapted to the culture and context of the tribal community served. This allows eligible tribes to use cultural programs and services beyond those approved under the [Title IV-E Prevention Services Clearinghouse](#). States can only use prevention programs and services that are approved under the Clearinghouse.

The new policy will allow tribes in agreements with states to utilize cultural programs and services that are not approved by the Clearinghouse. A tribe must still document the cultural program and services they are using, such as providing information on the program and service, how it meets the specific needs of the eligible children or caregivers, and previous outcomes that have been achieved when using the program and service. Title IV-E tribes may still use Clearinghouse-approved programs and services and culturally adapt them, but they are not limited to these. Previous guidance for tribes operating Title IV-E directly from the federal government under the statutory language (ACYF-CB-PI-18-10) is also the basis for these new policy changes. The current guidance will likely need to be updated in the future to include tribes in agreements with states and how they can utilize this new flexibility.

In 2018, Congress passed the Family First Prevention Services Program (P.L. 115-123) that established a new program component within the Title IV-E Foster Care and Adoption Assistance Program. The new component allowed states and tribes with approved Title IV-E plans to seek reimbursement for eligible prevention services provided to children who were at imminent risk of placement in foster care and their parents or relative caregivers. Like other parts of Title IV-E, the funding provides reimbursement for services already provided as opposed to grant-style funding. The prevention services component of Title IV-E is optional, so not every state may opt for the funding, which determines whether a tribe in an agreement with a state will be able to operate the prevention services component. Currently, there are about 130 tribes operating Title IV-E through an agreement with a state.

If your tribe is operating the Title IV-E program in an agreement with a state and is interested in learning how to use this new policy guidance, please contact your [regional Administration for Children and Families office](#) and your state Title IV-E agency for more information.

AFCARS Final Rule on ICWA Data Elements in the Final Rule Stage

In February of 2024, the Biden Administration published a Notice of Proposed Rulemaking (NPRM) to restore many of the ICWA data elements that were previously eliminated in 2020. The ICWA data elements were first approved in 2016 during the Obama Administration, and then in 2020, 85% of the previously approved data elements were eliminated during the Trump Administration. These data elements are critical to helping the Administration for Children and Families (ACF), states, and tribes better understand how ICWA is being implemented across the country and effectively target resources to improve implementation where needed. The proposed data elements would be added to the Adoption and Foster Care Analysis Reporting System (AFCARS), which collects data from state child welfare agencies. After a review of public comments, which were strongly in favor of the proposed ICWA data elements, ACF began development of a final rule that is now in the final stages of review with publication expected sometime in November of 2024. It has been almost eight years since the first set of ICWA data elements were approved in 2016, so ICWA advocates are anxiously waiting for the final rule to be published and the collection of this very important data to begin.

House and Senate Committees Approve Indian Boarding Schools Legislation (H.R. 7227 and S. 1723)

On June 13, 2024, the House Committee on Education and the Workforce approved the Truth and Healing Commission on Indian Boarding Schools Policies Act, [H.R. 7227](#), in a vote to move the bill closer to consideration by the House of Representatives. The bill has also been referred to two other House committees, House Natural Resources and House Energy and Commerce, which need to release their jurisdiction or mark up the provisions of the bill that fall under their jurisdiction. The Senate companion

An electronic copy of this update can be found on the National Indian Child Welfare Association's (NICWA) website under Latest News at www.nicwa.org. 2

bill, [S. 1723](#), was reported out of the Senate Committee on Indian Affairs on June 20, 2024. The Senate and House Committees approved their legislation with some generally clarifying amendments without making substantive changes to the key purposes of the legislation. The Senate bill is now ready for full Senate consideration and after the two remaining House Committees signal their intent, the House bill could be ready for full House consideration.

NICWA submitted [written testimony](#) for a May 2022 hearing on the legislation, focusing on the intersection of the Indian boarding schools and the experience of Native children and families in state and private child welfare systems. NICWA is supporting the legislation alongside the [National Native American Boarding School Healing Coalition](#), the leading advocacy organization behind efforts to pass this legislation.

The legislation establishes a commission to formally document and investigate Indian boarding school policies and practices in the United States. The commission members are appointed by Senate and House of Representatives leadership and the President. The legislation also establishes an advisory committee to provide advice and recommendations to the commission comprised of representatives that include, but are not limited to

- National Indian organizations with expertise in child welfare, education, and boarding school issues.
- Federal agencies, such as Bureau of Indian Education, Office of Indian Education in the Department of Education, and commissioner of the Administration for Native Americans.
- Members of federally recognized tribes and Native Hawaiian organizations.
- Mental health, healthcare, or Native healing practitioners that have experience working with descendants of board school students.
- Family members of students that attended boarding schools, current teachers, and students that have attended a boarding school in the past or currently are attending one.

The commission will be holding public hearings to gather evidence and will be making recommendations on how to address and heal the historical and intergenerational trauma caused by the Indian boarding school policies and practices. The commission will also collaborate and exchange information with the Department of Interior during its investigation. Tribes and advocates for Native children and families are encouraged to contact your Congressional representatives and urge them to sign on as co-sponsors to the legislation and support its passage. You can find contact information for your congressional representatives [here](#).

Legislation

Native American Child Protection Act Passes House and Senate Committees

The Native American Child Protection Act, [H.R. 663](#), was reintroduced by original co-sponsor Representative Ruben Gallego (D-AZ) on January 31, 2023, and Senator Lujan introduced a companion bill in the Senate, [S. 2273](#). The legislation reauthorizes the two grant programs and the National Resource Center for Tribes, clarifies that cultural programs and services may be used in the grant programs, and increases the funding authority Congress has to appropriate funding for the tribal grants authorized in the legislation. This is some of the only dedicated tribal funding regarding access for child abuse prevention and child abuse victim treatment. The legislation was introduced in the last Congress and was approved by the House of Representatives and the Senate Committee on Indian Affairs.

The House Natural Resources Committee reported out H.R.663 on May 17, 2023, with amendments that removed the amount of funding authorized for the two grant programs, the Resource Center, and the years the funding was authorized. The revised bill was then passed by the full House. The language that remained in the bill reported out of committee contained amendments that clarified eligible activities that could be carried out under the grant program but stopped short of reauthorizing the grant programs. The Senate Committee on Indian Affairs reported out a companion bill that is identical to the one reported out by the House.

The impact of deleting the funding authorization levels and years authorized continues over two decades of not having a current authorization for these critical grant programs. While Congress will sometimes appropriate funding for federal grant programs that are not authorized, it sends a message that these grant programs are not a priority and creates barriers to getting sufficient appropriations funding in the future.

NICWA is working with tribes and Indian organizations to contact their Senate members to support S. 2273. Your role in this advocacy is crucial. This legislation is one of NICWA's top policy priorities and we need your help to get the legislation authorized this year. You can find contact information for your congressional representatives at [congress.gov](https://www.congress.gov).

Administrative

ACF Publishes Final Rule on Safe and Appropriate Placements for LGBTQI+ Youth

The Administration for Children and Families published a [final rule](#) on April 30, 2024, that contains new requirements for states and tribes that receive Title IV-B and Title IV-E funding to place LGBTQI+ youth in safe and appropriate placements. The final rule discusses the challenges these youth face in foster care systems and how critical it is that they have appropriate care and a home that understands and supports their identity as LGBTQI+ youth. This means homes that are free from harassment, mistreatment, and abuse. To meet this goal, the state or tribe would need to designate homes that can provide appropriate care for this population, provide specific training for care providers on how to support these youth, and provide a process for youth to report any conditions in the home that do not meet the requirements of the final rule. The final rule goes into effect on July 1, 2024.

ACF Announces Final Rule on Foster Care Legal Representation

On May 10, 2024, the Administration for Children and Families published a [final rule](#) allowing Title IV-E agencies to claim certain costs for legal representation in foster care or other civil legal proceedings. An [Information Memorandum](#) was also published for state, tribal, and territorial agencies administering or supervising the administration of Title IV-E of the Social Security Act. The final rule allows Title IV-E agencies to claim federal financial participation for administrative costs of legal representation provided by an attorney or non-attorney of an Indian child's tribe when that tribe participates or intervenes in any state child custody proceeding for foster care placement or termination of parental rights of a Title IV-E eligible Indian child. This is an important step to improving ICWA implementation as it recognizes tribal nation's sovereign right to intervene in state child custody proceedings involving their children. Intervention by the child's tribe can help minimize unnecessary separation of American Indian and Alaska Native (AI/AN) children from their families and communities and maximize placement of AI/AN children with extended and tribal families. The final rule goes into effect on July 9, 2024.

Budget

FY 2025 appropriations, with a national election looming, shifted to a Continuing Resolution (CR) process as opposed to full consideration of House and Senate funding bills to keep the government operating. The CR process delays Congress having to make appropriation decisions until a later date and provides challenges to increasing funding for individual programs and the timely allocation of those funds to tribes and states. The House and Senate leadership agreed to a CR that would extend funding for the federal government until December 20, 2024, to give Congress time to come back after the elections and finish the appropriations process before the holidays. What happens after the elections in terms of whether another CR will be required or whether Congress can finish its appropriations process by the December date remains to be seen and will likely be influenced by the outcome of the elections.

President Biden released his FY 2025 budget recommendations for Congress on March 11, 2024, with a number of increases in his recommendations for child and family service programs that tribal nations utilize. In addition, the President's budget also contains recommended legislative changes to improve access to and operation of federal programs. The President's budget request articulates his priorities in the budget process that Congress undertakes each year. Some of the President's key FY 2025

recommendations include.¹

Budget Recommendations

- Increase HHS Promoting Safe and Stable Families (Title IV-B, Subpart 2) mandatory funding \$180 million over FY 2024 levels and increased funding for the tribal court improvement program.²
- Increase BIA Tiwahe Initiative funding \$26.8 million over FY 2024 levels.³
- Increase BIA Indian Child Welfare Act funding \$7.9 million over FY 2024 levels.⁴
- Increase BIA Social Services by \$24.3 million over FY 2024 levels.⁵

Legislative Recommendations

- Increase the set-aside for tribal and migrant populations under the Child Abuse and Prevention Treatment Act, Community Based Child Abuse Prevention grants to \$5 million from the current 1% set-aside from the overall funding under this program (typically produces less than \$1 million per year to be shared by tribal and migrant population grantees).
- Establish a new Comprehensive Tribal Child Welfare Funding Grant that provides base funding and a child population amount for every tribal nation. The funding would be flexible and support any child welfare related needs and have a reduced burden set of administrative requirements and streamlined application. The funding would be mandatory and uncapped, meaning appropriations would not require congressional approval each year like discretionary grant programs do and could grow as more tribes participate and tribal child populations grow.⁶
- Provide a consolidated grant opportunity for tribes under the Title IV-B, Subparts 1 and 2, and the Chafee and discretionary Education and Training Voucher programs so tribes can use these program funds more flexibly to meet a variety of child welfare needs.⁷
- Allow tribes that participate in the Title IV-B, Subpart 1 Child Welfare Services program, but do not currently participate in the Title IV-E Foster Care and Adoption Assistance programs to submit a plan to operate the Title IV-E Prevention Services program.⁸

For more information relating to this update, please contact NICWA Government Affairs Director David Simmons at desimmons@nicwa.org.

¹ The President's budget request includes funding increases that would be shared by states and tribes in some programs. Specific data on how much of the proposed increase would accrue to tribal nations is not always specified.

² Tribes receive a 3% set-aside from the overall mandatory funding levels. The President's request, if approved by Congress, would raise the amount of funding allocated to tribes from \$9.75 million to \$15.15 million and increase the overall number of tribes eligible to apply for the funding under the statutory formula. The tribal court improvement program is currently funded at \$1 million per year and the President's budget includes a legislative change to raise the amount of funding for tribal court improvement programs (level of increase is not specified).

³ The Tiwahe Initiative uses an integrated model of service delivery for child and family programs under the BIA, which supports integration of existing programs to improve well-being and promote development of culturally specific program and service systems. The FY 2025 funding increase is spread across several different programs that contribute program support to tribal Tiwahe grantees.

⁴ Includes funding for both tribal and off-reservation programs (specific amounts not specified for each).

⁵ The increase would also be used to expand implementation of the Indian Child Protection and Family Violence Prevention Act programs (P.L. 101-630) that funds child abuse and neglect and family violence prevention and treatment of victims (specific amount not specified).

⁶ See the FY 2025 Administration for Children and Families Budget Justification on page 298.

⁷ See the FY 2025 Administration for Children and Families Budget Justification on page 298. The specifics regarding how consolidation of these programs would work, some of which not all tribes are eligible to administer, are not available in the President's request.

⁸ Currently, tribal nations must operate all of the mandatory sections of the Title IV-E program to be eligible to operate the Prevention Services Program under Title IV-E. The Prevention Services program provides reimbursement for a portion of eligible prevention services costs to help children who are at risk of being placed in foster care or other out-of-home placement.