

## Policy Toolkit – Part 1

# Policy Issues Overview: Kinship Services in Tribal Child Welfare

## Materials Developed by the National Indian Child Welfare Association

The National Indian Child Welfare Association (NICWA) works to support the safety, health, and spiritual strength of Native children along the broad continuum of their lives. NICWA promotes building tribal capacity to keep children safe in their families and communities. As an organization, we engage with tribal and state child welfare agencies to elevate the role of relatives and kin in caring for their relative children. For more information, visit [www.nicwa.org](http://www.nicwa.org).

The Grandfamilies & Kinship Support Network: A National Technical Assistance Center (Network) helps government agencies and nonprofits in states, tribes, and territories work across jurisdictional and systemic boundaries to improve supports and services for families in which grandparents, other relatives, or close family friends are raising children whose parents are unable to do so. For more information, please visit [www.GKSNetwork.org](http://www.GKSNetwork.org).

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## Glossary

**Note:** The definitions listed below are for clarifying purposes only. Terms may be crafted and revised to fit how your community views and experiences them.

**Concurrent Planning:** Concurrent planning is a practice technique used by social workers that takes place when the worker and the family simultaneously plan for reunification and an alternate permanent placement if reunification is not possible.

**Custodial Parent:** A custodial parent is a parent that lives with and cares for their minor child either all (sole physical custody) or most (primary physical custody) of the time.

**Customary Adoption:** Customary adoption gives a child a legally recognized permanent parent-child relationship with a person other than the child's biological parent without a requirement for termination of parental rights (a common practice used in conventional adoption). Customary adoption occurs through a practice, ceremony, or process conducted in a manner that is long-established, continued, reasonable, certain, and considered by the people of a tribe to be binding or found by the tribal court to be authentic.

**Early Intervention:** Early intervention engages families before adverse conditions turn into child abuse or neglect. Services may be directed at addressing behaviors or conditions before any allegations of abuse and neglect have been made and where screening indicates conditions exist that are known to contribute to safety concerns if not addressed.

**Family Preservation:** Family preservation often refers to a program that provides services specifically identified for families in crisis whose children are at risk of out-of-home placement. Family preservation actively seeks to obtain or directly provide the critical services needed to enable the family to remain together in a safe and stable environment.

**Guardianship / Guardian:** A guardianship is an out-of-home placement designated by a court between a child and caregiver (guardian) which, in most cases, is intended to be permanent. This is often a permanency approach that avoids completely cutting off ties between the child and their parents by not requiring that Termination of Parental Rights occur.

**Indian Custodian:** As defined in the Indian Child Welfare Act (25 U.S.C. § 1903(5)), an Indian custodian is "any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, or control has been transferred by the parent of such child."

**Kinship Care:** Kinship care is when a non-parent relative provides parental care and supervision to a child.

**Kinship Navigator Programs:** Federal law 42 U.S.C. 627(a)(1) defines kinship navigator programs as services to assist kin caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship families are served.

**Non-Custodial Parent:** A non-custodial parent is a parent who cares for their child on a limited basis or has scheduled visitation with their child.

**Permanency Planning:** In Indian child welfare practice, permanency planning is planning for the maintenance of a child's sense of belonging to their extended family, their tribe, and their caretakers in a permanent and stable home. This planning includes carrying out a set of goal-directed activities designed to help the child live in such a home, offering the child the opportunity to establish and maintain lifelong relationships with their caregivers, extended family, and tribe.

**Primary Prevention:** Activities directed at all members of a community to prevent child abuse or neglect are known as primary prevention. Primary prevention is usually directed at a population in general through the provision of information, education, and social marketing, rather than being designed for a specific family or situation. Primary prevention might include education about traditional tribal ways of knowing and being, traditional cultural values, and the role of the community in protecting and nurturing children and families.

## Notes on This Toolkit

This policy overview is part one of a two-part toolkit. Part one examines several issues that tribal child welfare programs might want to consider in drafting policies and procedures with regard to the engagement of extended families in services and the support of relatives/kin who step into parenting roles, whether inside or outside of the formal child welfare system. It summarizes the issues that might be considered in policy. Part two provides policy guidance and sample trauma-informed language to support the development of tribally specific child welfare policy to address the identified issues outlined in part one.

For the purpose of this policy overview, “relative caregivers” will be used to refer to the adults in families in which grandparents, other extended family and relatives, or close family friends are raising children whose parents, either temporarily or permanently, are unable to safely do so. The Grandfamilies & Kinship Support Network: A National Technical Assistance Center, our partner organization in the development of this overview, uses the terms “kinship/grandfamilies” and “kin/grandfamily caregiver” to refer

to these families and the caregivers. Tribal communities may use many different terms to describe this relationship. Here are a few other terms that might be used interchangeably to refer to these families: “kinship care,” “extended family,” “relatives,” “kinship caregivers,” and “kinship families.”

## Introduction

While kinship care is a relatively new and evolving area of practice in contemporary child welfare, family caring for family has historically been the foundation of child safety in Indigenous communities. Who is considered family varies by culture. Indigenous cultures are characterized by extended family structures, sometimes organized into clans. Across these kinship structures, shared parenting by many relatives is the norm. In many tribal languages the words for aunt and uncle are the same words as mom and dad. Thus, responsibility for the care of children is embraced well beyond the child’s birth parents to include the child’s extended family (e.g., grandparents, aunts, uncles, cousins, in-laws), close non-related caregivers, and community members, creating an interdependent nurturing network of caregivers. When children cannot be safely raised by their parents either temporarily or permanently, kinship care has been the custom in tribal communities since time immemorial. Relative caregivers remain the most important resource for child safety in Indian Country today, both as support to the child’s parents and as a placement resource for the child when safety becomes a concern. Despite relative caregivers being central to child safety and well-being, little attention has been paid to child welfare policies that honor and support the integrity of extended family systems.

## Beyond Kinship Care

Historically, the traditional system of childrearing created a natural system of child safety, family support, and community wellness. Today, tribal child welfare is reclaiming the strengths inherent in nurturing networks. For example, Family Group Conferencing or Family Group Decision-Making, a [model developed by Indigenous people](#) in Aotearoa, New Zealand, facilitates the natural and traditional processes of extended families’ involvement in making decisions about how best to ensure safety and care for children. However, when developing formal policies to engage kin as partners to achieve safe care for children, American Indian and Alaska Native (AI/AN) tribes may face challenges due to differences between their values around child protection and mainstream, Anglo-American values and practices. For example, AI/AN tribes typically have twin values of caring for children and healing families, while mainstream, Anglo-American child welfare practices often rely on child removal as the principal means for achieving safety. These differences are particularly stark regarding the Anglo-American cultural phenomena of child protection (based on children being rescued from harm) and parental compliance (based on values that hold parents individually responsible). From an Indigenous perspective, every family is important, and both parents and

children are worthy of help. Safety, capacity building, restoring nurturing networks, and healing are the fundamental goals of tribal child welfare. While child protection may become a key consideration in some cases, it is a service component, not the mission. The real mission of tribal child welfare is supporting or restoring healthy childrearing and the integrity and capacity of families in supporting nurturing networks.

### **Policy Challenge**

How can policy draw on and further the strengths of custom and tradition? The first policy challenge entails what to formalize in a tribal child welfare agency's policies and what to leave out. How will formalizing policies about serving relative caregivers impact children and families? Of utmost consideration is making policy decisions for tribal child welfare programs that in no way constrain, diminish, or harm traditional ways of caring for children and supporting families; rather, the goal is to enhance tribal customs and traditions around childrearing. To be of value, policy must support positive social and cultural norms around child safety and family healing, and it also must be reflected in program implementation.

This policy overview proposes that tribal child welfare program policy can and should reflect positive cultural norms of the relevant community. To bring focus and provide guidance on tribal child welfare policy related to kinship, the authors have identified several themes for consideration: prevention, family support, and [early intervention](#); supplemental services/voluntary in-home services; involuntary in-home services/family preservation; substitute care – voluntary and involuntary placement; relative/kinship searches; placement with siblings; foster care licensing; relative placement services; permanency services; family group meetings; customary adoption; guardianship; working with substance-affected families; safe contact/visitation; and funding sources for provision of services.

### **Prevention, Family Support, and Early Intervention**

Prevention, family support, and early intervention are essential elements of a holistic tribal child welfare system designed around safety for children. Prevention services are designed to reach vulnerable families with supports and services that all families need to be safe and to thrive in the face of adversity. Prevention services are used in situations where there are no known allegations of maltreatment or where allegations have been determined to be unfounded and families exhibit no current safety concerns. Tribal child welfare programs may consider providing a range of population-specific services such as early childhood home visiting, early childhood mental health care, support groups, cultural events, or services that aim to build upon natural support systems, including the roles of extended family members and other relatives in family safety and healing. Prevention services may be delivered by care coordination teams or committees that organize prevention activities. Some tribes have developed child

welfare practice models designed to increase the number of families receiving prevention services and decrease the number of children needing safety-oriented child welfare service interventions.

The policy issues to consider are whether these types of prevention services are prioritized, who provides them, who is eligible to receive them, and how they will be delivered. Are prevention services aimed at the whole extended family or just parents? What role can family group meetings play? How does the tribal child welfare department link with other services such as Head Start, housing, vocational rehabilitation, or Temporary Assistance for Needy Families (TANF)? What policies are needed to ensure collaboration and communication across departments/programs? How can extended family be partners in prevention?

Early intervention engages families before adverse conditions turn into child abuse or neglect. Anglo-American child welfare practice traditionally waits for bruises or abandonment before acting. Many tribal communities have discovered that compassionate concern works better for their families and builds trust with a system that historically caused trauma to families. This is typically accomplished through early identification of potential challenges. Early intervention is possible through identification of risk factors that are known to contribute to safety concerns, including difficulty meeting basic needs, substance use disorders, domestic violence, insufficient or overwhelmed parenting capacity, untreated mental health challenges, unresolved trauma, and lack of access to cultural supports.

Many policy questions might focus on the issue of how to engage extended family. Are they asked to participate in early intervention as a matter of policy? Are extended family members routinely involved in family meetings or recommending early intervention services? If so, who decides who gets to be involved? What role might relatives play, either informally or formally, in planning or providing support? What services might be provided to relatives if they are experiencing adverse conditions that are limiting their ability to be of support? For example, an aunt who lacks transportation or a grandparent who is experiencing food insecurity may be constrained in their ability to be part of a helping response from the extended family. How can such an aunt or grandparent be supported?

In supporting whole families, tribal child welfare programs may need to develop policies on how best to maintain partnership agreements with internal departments/programs and external agencies as well as relationships with knowledge holders, consultants, and contractors. A process to incorporate cultural knowledge into appropriate aspects of services or policymaking may also be considered. This may include defining kinship in tribal code and/or policy. Partnerships and agreements with other programs, departments, divisions, and agencies may be authorized in policy either as written agreements or informal arrangements with partners. [Primary prevention](#) activities, partnerships, and program development may require pursuing sponsorships, grants,

contracts, and primary prevention funds to ensure that all families have access to prevention and early intervention services. Tribal child welfare programs will also need to determine eligibility requirements for services, which may include Indian Child Welfare Act (ICWA) eligible families who need prevention, family support, parenting education, parenting capacity, and behavioral health support.

## **Supplemental Services/Voluntary In-Home Services**

Voluntary in-home services are services that may be provided to vulnerable children and families where the parent has legal and physical custody of their children. When parents are unable to provide safe care on their own, they may need services that supplement their parenting. For example, voluntary in-home services might include help with budgeting, homemaking, childcare, life skills, counseling, respite care, or a variety of services that supplement what the parent can do on their own. To further build on natural support systems, it may be helpful for tribal child welfare programs to consider assisting families in accessing and utilizing tribal cultural programs, such as community-based language and youth programs and activities that promote positive peer relationships with other tribal children, families, and community members.

Voluntary in-home services are based on the belief that the family is responsible for the safety of their children and that, with help, families can build on their strengths for safe care. Voluntary in-home services engage parents in relationship-based assistance to reduce threats of harm and increase protective factors. Voluntary services can help reduce the number of families that need court involvement.

Voluntary in-home services are typically provided in response to safety concerns from the family or system partners. These services may be directed at early intervention before any allegations of abuse or neglect have been made and where screening indicates conditions exist that are known to contribute to safety concerns if not addressed. Voluntary in-home services may also be in response to situations where allegations have been investigated but are unfounded or where safety concerns are mitigated by protective factors, but safety concerns remain. In these cases, the child is usually still living in the parent's home but may be in an informal relative or [Indian custodian](#) placement. The actual services may take place in the home or at another location.

A policy issue might be eligibility. Can an extended family member receive supplemental services if they are an informal caregiver or being considered for a placement? Policy could specifically include supplemental services for relatives as current or potential caregivers.

If a child is placed in a voluntary relative placement, the placement home may require additional services. While enhancing the social and cultural strengths of the parents to safely care for their children, the tribal child welfare program may provide care



coordination to support caregiver capacity to sustain the placement, to meet the unique needs of children in their care, and to provide the child's parents positive reinforcement.

## **Family Preservation/Involuntary In-Home Services**

Involuntary in-home services are provided to children and families where a court has substantiated abuse or neglect and assumed legal custody of the child. Involuntary in-home services may be ordered by a court of competent jurisdiction as an alternative to placement or as a transitional step to reunification. Involuntary in-home services utilized as an alternative to placement are often called family preservation or alternative response. When used in reunification, involuntary in-home services are sometimes called a trial home visit or provisional reunification. The intent is to enhance the family's capacity to keep their children safe by developing skills, strengthening relationships, improving living conditions, addressing behaviors, and mitigating threats of harm to vulnerable children under the protection of the court and tribal child welfare agency.

Involuntary in-home services are based on the belief that removal is traumatic for a child and, when safety can be secured by close monitoring and intensive services, keeping the family together is the best option for the child. When involuntary in-home services are provided, physical custody remains with the parent under a safety plan. The child is usually living in the parent's home but may be in an informal placement with relatives or an Indian custodian. The actual services take place in the home where the tribal child welfare worker can personally affirm the safety of the child through in-person contact, often every day, and intensive services. Involuntary in-home services are usually implemented with a team approach across multiple partner programs closely coordinating and monitoring safety. Close monitoring may be accomplished by a team of representatives who may be service providers or informal helpers, such as Alcoholics Anonymous and Narcotics Anonymous sponsors, clergy, cultural knowledge keepers, teachers, counselors, home visitors, home healthcare providers, or others who agree to join the monitoring team, participate in team meetings, and sign a confidentiality agreement.

A tribal child welfare program may recommend to the court an involuntary service agreement with the family to reduce safety threats. Involuntary safety plans for vulnerable children are approved and ordered by the court. The child, their parents, and their relatives should have input in the plan recommendation to the court and should be made fully aware that unrestricted access to their home and their child by agency staff and partners on the safety team is mandatory and failure to allow access to monitoring the safety of the child will result in immediate removal and placement. Involuntary service agreements and safety plans should indicate the role of relatives in providing supplemental care.

From a policy standpoint, a tribal child welfare agency might want to clarify that relative placements outside the child welfare system might become subject to involuntary services when warranted by substantiated allegations of abuse or neglect. Policy might also address the role that relatives might play in mitigating threats of harm as part of a team monitoring safety or by participating in family group meetings.

## **Substitute Care—Voluntary and Involuntary Placement**

When parents are unable to safely care for their own children, relative caregivers may step in to provide a safe and loving home for those children, either temporarily or permanently. Relative caregivers may include extended family members identified by the parents and the child if the child is of sufficient age and capacity to have input into that decision. Tribes have the opportunity to define in code or policy who can be considered a relative caregiver, the roles of relative caregivers in supporting child safety and family healing, and the age or other criteria at which a child reaches developmental capacity to participate in important decisions that impact their safety and well-being. Placing children with relatives can benefit children in a variety of ways, including but not limited to minimizing trauma and loss associated with family separation, preserving cultural identity and sense of belonging by maintaining connections to community and culture, and increasing the likelihood that siblings will live together or remain connected, all positively influencing placement stability and behavioral outcomes among children placed in out-of-home care. At the same time, relative placements are not without challenges. Relative caregivers are accepting responsibility for children that they had not expected to raise, and they often need guidance and coaching to avoid some of the common challenges of caring for a relative. Relative caregivers face barriers to accessing services for the children in their care and often need assistance in navigating complicated systems while at the same time caring for children that are experiencing trauma and loss. As a matter of policy, tribal child welfare can assume that these challenges need to be assessed and can implement such practices as placement agreements or placement support services.

### **Voluntary Placements**

Relative placements can be utilized in a few different ways. The parents of a child may choose to voluntarily place their child in an informal arrangement according to tribal custom with relatives or another Indian custodian. Relative placement might also be defined in tribal code or policy. Informal placements with relative caregivers are typically the family's own attempt to ensure the safe care of their children in times of stress or difficulty or where a child's condition or conduct is beyond the parenting capacity of the parents. Written policies that recognize these arrangements can clarify and facilitate the relative's rights and responsibilities, such as their authority to approve medical care for

the child, their ability to register the child for education services, and/or their role in managing the child's financial resources.

Voluntary relative placements can also be utilized as formal arrangements. Such voluntary placements often require a placement agreement between the child's parents (custodial and non-custodial) and the tribal child welfare agency to lay out the conditions and terms of the placement, which may include the level of involvement by the child welfare agency, roles and responsibilities of the parents, and the process for ending the voluntary agreement and having the children returned home. This would be dependent on the extent to which the tribe chooses, through a policy decision, to formalize voluntary placement arrangements. This determination is important, in part, because even voluntary placements, when approved by the tribal child welfare agency, require background checks. (Note: criminal and/or character background checks are required under Title IV-E of the Social Security Act (42 U.S.C. § 671(a)(20)(A)) as well as the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. § 3207; <https://www.ecfr.gov/current/title-25/chapter-I/subchapter-F/part-63>) Policy regarding when a placement becomes a plan of the agency and not just the family's own arrangement can help guide decision making for both the agency and the caregiver.

Voluntary out-of-home placement may be used as an early intervention strategy when respite care or temporary care may reduce potential threats of harm. For example, a parent who is ill or seeking treatment may seek a temporary placement to have time to heal. Voluntary placement may be used as a diversion from court-ordered services (sometimes referred to as "differential response") when safety threats exist but where the parents agree to a voluntary safety plan that includes placement. Differential response is intended to allow the child welfare agency to respond to a specific situation with flexibility that fits the circumstance, providing for safety with the least amount of intervention. A voluntary placement may also be utilized in an emergency when the parent is incapacitated or suspected of maltreatment and under investigation and agrees to a voluntary placement.

When a tribal child welfare agency is supporting a voluntary relative placement, policy should clarify that the placement home retains the authority to negotiate the terms and schedule of agency home visits, parent-child visitation, and agency contact with the child. In informal voluntary relative placements, the tribal child welfare agency is typically playing a supportive role unless the agency determines that there is a safety threat that requires a child abuse and neglect response.

Voluntary relative placement homes may be licensed by the tribal child welfare agency, based on its established foster care licensing standards, or they may be unlicensed but approved by the agency. When licensed, a relative placement is subject to care provider policies associated with licensing and treated as a foster home. The home receives foster care maintenance payments and caregiver training, among other supports, and is subject to other standards. Policy should clarify whether unlicensed voluntary care is

eligible for any tribal financial assistance or benefits, especially since such placements are not eligible for foster care maintenance payments under Title IV-E. Voluntary relative placement homes may be eligible for other financial resources through the tribe, state or county, or federal sources, including TANF (child only) grants and Supplemental Nutrition Assistance Program benefits. From a policy point of view, when not licensed, relative caregivers are voluntary partners and have either invited the tribal child welfare agency into their lives to help meet the needs of the child or they have been asked by the agency to voluntarily care for their relative. In either case, it is the obligation of the tribal child welfare agency to support the caregiver's capacity to safely care for the children. Such support should be provided in accordance with tribal code, policy, and customs.

## **Involuntary Placements and Placement Preferences**

When safety threats are present or imminent and removal from parental physical custody is necessary to ensure the child's safety, the child is involuntarily placed. Tribal child welfare policy then governs the placement. Tribal policy may designate that placement with relative caregivers is preferred. If the placement is done under state or county jurisdiction, involuntary placements should follow ICWA placement preferences or the tribe's own order of preference as designated in tribal code, policy, or by tribal resolution. Tribal policy would also need to consider how to handle exceptions or variances to established preferences if needed.

Policy will determine how an emergency involuntary placement can be initiated. Policy might designate law enforcement as having the authority to remove the child or empower social workers to remove a child by the order of a court of competent jurisdiction based on a petition of alleged maltreatment.

Court-ordered placement of a child delegates authority to the tribal child welfare agency to ensure the care and safety of the child. Therefore, involuntary placements are subject to the authority of the agency, as stated in its policies, to negotiate terms and schedule home visits, parent-child visitation, and the agency's contact with the child. Policy would determine if the terms need to be outlined in a formal agreement between the parents, relative caregiver or placement home, and agency regarding items that may include visitations plans, decision making regarding the child's spiritual or cultural needs, contact with non-placement relatives and friends, and roles in permanency planning.

## **Relative/Kinship Searches**

Policy may be necessary to support tribal preferences for placing children with relatives. For example, when involuntary placement is necessary and initiated under tribal code, the tribal child welfare agency might, under its own policy, be required to conduct a diligent search for relatives who are able and willing to provide care. When placement is state- or county-initiated, tribal child welfare agency staff may advocate for relative

placements in accordance with ICWA or a tribal resolution and provide home-finding assistance to the state or county initiating the placement. Whether tribal child welfare assists the state or county with its relative search efforts under ICWA is a matter that can be clearly defined in policy.

Relative/kinship search is a service that is provided to help reduce placements of children with families outside of the child's extended family, as defined by tribal custom, code, or policy. For child welfare agencies receiving Title IV-E, the relative/kinship search process is determined by federal requirements under the Fostering Connections to Success and Increasing Adoptions Act, 42 U.S.C. §671(a)(29), and it must be incorporated into tribal code or policy. This includes but is not limited to

- ▶ Exercising due diligence to identify and provide Notice of Right to Request Placement to all grandparents and other adult relatives and extended family members of the child. Such notice should specify that the child has been or is being removed from the home; explain the options the relative and extended family member has under federal, state, and tribal law to be considered as a placement option and participant in the care of the child; describe the requirements to become a licensed foster home; and address the additional services and supports that are available for children placed in licensed homes.
- ▶ Verbally communicating with relatives and extended family, family friends, and tribal members about the child and the reason for the search and informing them of their right to request placement.
- ▶ Discussing all placement options, licensing and safety standards (e.g., home studies, background checks on all household members over age 13, training requirements), the responsibilities of being a placement resource for the child, and what resources are available to the potential relative/kin caregiver to support the child's needs. Placement options may include:
  - Immediate placement within the next 30 days;
  - Immediate and permanent placement for purposes of legal guardianship or adoption (both customary and conventional adoption);
  - Placement anytime there is a disruption;
  - Placement anytime the permanency goal changes or when reunification is no longer possible; or
  - Individual does not wish to be considered for placement but is interested in providing the child and their parents support in other ways (e.g., respite care, transportation to appointments, housekeeping, cooking, financial support, emotional support, joining family meetings, and other forms of advocacy).

## Placement With Siblings

When taking a holistic approach to maintaining family ties, it's important to recognize the sibling relationship. Prioritizing the placement of siblings together when they are removed from their home is a way to attempt to minimize the trauma, loss, and disruption associated with the placement of siblings apart from one another.

Nevertheless, if a joint placement is contrary to the safety or well-being of any of the siblings, the tribal child welfare agency may need to identify other ongoing opportunities for interaction between siblings that ensure safety while nurturing long-term bonds between the children, such as frequent visitation.

The placement of children with a sibling as a caregiver is another form of relative placement. In some instances, an older sibling is capable of providing safe care. As a matter of policy, the tribal child welfare agency can clarify that siblings as caregivers are included in the tribe's placement preferences and clarify what services are available to a sibling caregiver to support their capacity to provide care.

## Foster Care Licensing

Relative caregivers may get foster licenses whether the placement is voluntary or involuntary. They may choose to become licensed in order to receive foster care payments that help cover the costs of caring for their relative. They may also choose to become licensed to receive a higher level of service from the agency, to take advantage of training, for expense reimbursement, or to increase the likelihood of having the agency regulate the relationship with the child's parents. Policies regarding services available to licensed versus unlicensed relative caregivers should be clear and, as a matter of policy, caregivers should be provided with information about both options and the differences between them so that they can make informed decisions.

Licensed relative caregivers have a more structured relationship with the tribal child welfare agency. Licensed relative caregivers are required to follow the foster care licensing standards and requirements as established by the agency, such as criminal and child abuse background checks, home conditions, and mandatory training. Under the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630), background check requirements apply to all potential placements of AI/AN children in a tribally licensed or approved foster home regardless of any link to federal programs or funding the tribe is receiving. When AI/AN children are eligible for services under the Title IV-E Federal Payments for Foster Care, Prevention, and Permanency program (42 U.S.C. § 470), background check requirements under the Adoption and Safe Families Act (P.L. 105-89) and Adam Walsh Child Protection and Safety Act (P.L. 109-248) apply. A tribal child welfare program may consider utilizing their own criminal background check procedures and standards developed in accordance with these federal laws and tribal standards. Other state laws may apply when a tribe receives

assistance from state agencies when conducting background checks. When relatives choose to become licensed caregivers, tribes have the option to waive non-safety foster care licensing standards (42 U.S.C. § 671(a)(10)(D)), which gives relative caregivers some flexibility in meeting licensure requirements. It can be helpful to list the non-safety standards to be waived for relative caregivers in policy. Tribes have the flexibility under federal law to define “non-safety” as they see fit. The only non-waivable safety standards under federal law are felony convictions listed in the Adam Walsh law. What should be waived will be influenced by the safety concerns for the child in placement. Foster care maintenance payments, as provided under section 472 of the Social Security Act, must be available to relative caregivers in formal kinship care arrangements if they become fully licensed foster care providers.

## **Relative Placement Services**

Relative caregivers need specific services that may not be the same as those that are routinely offered to licensed foster parents. Relative caregivers often need these services whether they are licensed or not and whether the placement is informal or formal, voluntary or involuntary. As a matter of policy, tribal child welfare agencies should determine if and when they would provide these services. A policy can authorize a service contingent on having a funding source. Policy can also authorize interdepartmental agreements or collaborative approaches to address the unique needs of relative caregivers. The following are some areas that might be addressed in policy.

### **Legal Assistance**

Relatives caring for children who are not in the legal custody of the child welfare agency frequently need legal assistance to address a variety of care issues, including education, medical care and information, youth employment, youth driver’s license, travel, and Social Security, among other needs. As part of the care coordination process, tribal child welfare staff may assist informal, voluntary caregivers with finding legal assistance. If the agency requests a relative caregiver to provide care, the agency might need to assist the caregiver in securing delegated parental authority and would want to authorize providing legal assistance in policy. Relatives who are caring for children in the legal custody of the agency may need legal assistance to represent them in court, like the legal assistance provided to children and parents.

### **Housing Assistance**

Relative caregivers who need to add space in their home to accommodate the placement of a child may receive care coordination services that help them identify housing resources and navigate applications or provide advocacy to obtain the service. Tribal child welfare staff may coordinate with tribal housing programs and advocate for caregiving families that need housing in order to provide care. Staff capacity and agency resources may influence how this assistance is provided. Therefore, having

policy that supports the development of a coordinated plan is essential for mitigating housing-related barriers that impact relative placements.

## **Support and Training**

While unlicensed relative caregivers and voluntary relative caregivers are typically not required to complete mandatory training, they may still appreciate and benefit from relative caregiver-tailored training, peer support groups, and virtual discussion groups with other caregivers.

## **Respite Care**

Relative caregivers may also have access to respite care resources as authorized by tribal policy and customs. In this context, respite care typically means temporary care of a child by someone other than the relative caregiver with whom the child was placed. Respite care is an effort to relieve a relative caregiver and provide temporary care for the child. Respite care providers offer the level of supervision and care that is necessary to ensure the health and safety of the child. Respite caregivers follow the standards for providing respite care as outlined in tribal policy.

## **Permanency Plans and Services**

Every child welfare service should protect a child's sense of permanency from the time they initiate involvement in the child's life. Children should be assured that their relationship with people they care about and who care about them will be respected and nurtured. Conversations about permanency should begin even before a child is placed outside of their home. Policy can help guide practice so that parents are engaged in decisions about who will raise their child if they cannot. A policy to consider is a concurrent permanency plan, which can help the agency, the court, and the child know who will raise them if their parents are unable to do so. A concurrent permanency plan is a plan that has a primary plan, usually reunification, and a contingency plan, such as customary adoption or guardianship by a relative.

Another form of concurrent plan might involve multiple relatives in the context of a nurturing network of relatives. Grandparents or another relative might be a primary resource while an additional relative agrees to co-parent or to be named as a successor guardian. In these situations, policy can allow for future placements in which a relative caregiver is designated should something happen to the primary placement. Such arrangements can be handled in placement agreements or decided in family group meetings.

Depending on policy, a relative caregiver who becomes a permanent placement may be provided post-permanency support, including care coordination, to maintain the continuity of the placement. A tribal child welfare agency may create a permanency



team to review and provide guidance on concurrent plans and permanency actions focused on the child's sense of safety and belonging as well as the relative caregiver's capacity and need for ongoing support in their caregiving role. A permanency team may be comprised of the child, their parents and relatives, agency staff, other program or department leads, service providers, other agency partners, community advisors, and any other invested partners.

Additional services may be available to relative guardians and families that adopt, whether by customary or conventional means, through tribal, state/county, and federally funded programs, including Title IV-E adoption and guardianship assistance payments.

Every family caring for a child with special needs should have access to information and supports. The tribal child welfare agency should facilitate families' access to tribal, state, or federal resources to ensure children with special needs and their caregivers receive adequate supports, such as Supplemental Security Income.

## **Family Group Meetings**

Successful safety outcomes depend on families taking responsibility for the safety of their children. Historically, in tribal cultures, this responsibility belonged to the whole family, including extended family. Today, this principle remains valid and can be prioritized in policy. It is important to place responsibility for a child's safety in the hands of the family whenever possible, at the earliest point possible. To achieve this, families whose children are at risk of being placed in care, or actually placed, whether voluntarily or involuntarily, may be engaged in family meetings. Family meetings may be convened and facilitated by specialized tribal child welfare staff through a variety of techniques, including Family Group Conferencing or Family Group Decision-Making. These techniques can be adapted to the traditional values and culture of the tribal community. With support from professionals working directly with the family, these meetings aim to bring the child's parents (custodial and non-custodial), relatives, and other support people together to make important decisions about the child's safety, permanency, and service planning. Family meetings can help build family capacity to make informed decisions, assist families in recognizing abilities and strengths, increase protective factors, and identify placement resources and other support people who can contribute to the child's safety needs and the family's case plan goals. These meetings create opportunities for families to establish a plan for who will raise the child should the parent be unable to do so. This includes determining the role of extended family in providing supplemental support, substitute care, and maintenance of the parent-child relationship; the child's connection to their community and culture; and other relationships deemed valuable to the child's development and well-being. If the court decides that a child will not return to their parents, family group meetings might turn into permanency team meetings. In this case, the family might be joined by child welfare staff and/or staff from other service agencies that address the specific needs of the child.

## Customary Adoption

Indigenous peoples worldwide have long practiced customs around adoption without termination of parental rights. This practice is known as customary adoption. In most tribes, an adoption is achieved through a customary process or ceremony that creates a parent-child relationship.

Customary adoption prioritizes cultural recognition of permanency when children cannot return to their parents. A customary adoption, achieved through a customary action, can be recognized as a legal relationship by a tribal court when included in tribal code. This arrangement can be crafted in policy consistent with tribal culture and teachings about adoption. Customary adoption may be voluntary on the part of the parent or involuntarily imposed by a tribal court through modification or suspension of parental rights. Modification of parental rights spells out the specific rights of the parties and is accomplished by a court-approved plan that is similar to a custody order in a divorce proceeding. Suspension of parental rights simply puts parental rights on hold until the child reaches the age of majority. All inheritance rights and familial relationships are restored once the suspension is lifted.

Policy questions may include who is eligible to become a customary adoptive placement; what services will be available to relatives/kin who fulfill this role (e.g., Title IV-E adoption assistance payments, TANF, programs funded by the tribe); how parental rights may be modified or suspended; who will have visitation or contact; and how visitation or contact will be arranged between the child and their parents, siblings, and extended family after the child has been placed through customary adoption.

## Guardianship

Guardianship is another permanency option often considered when children cannot return home to their parents. This arrangement is consistent with tribal teachings and values that emphasize the interdependence of the family and collective responsibility for the care of children. Guardianship is accomplished through court action and may be voluntary on the part of the child's parents or imposed by the court.

Relative caregivers who have been awarded guardianship may receive relative guardianship assistance payments for the child and other community-based services that support the child and caregiver. In the event of the death or incapacity of the relative guardian, the eligibility of a child for guardianship assistance payments will not be affected by the replacement of the guardian with a successor. A successor guardian may be named in a guardianship agreement in which other plans are outlined, including ongoing service agreements, safety plans, visitation agreements, and post-permanency support conditions.

Relative caregivers may also be eligible for the TANF Non-Needy Relative grants that provide cash assistance to relatives caring for nieces, nephews, grandchildren, siblings, or cousins. Tribes that operate TANF may use these funds to support relative placements.

## **Working With Substance-Affected Families**

Parental substance misuse can disrupt family stability and cohesion and jeopardize the safety, well-being, and healthy development of children. Policy can outline how the tribal child welfare program addresses substance use disorders in its services for parents and relative caregivers.

Supporting children of parents with substance use disorders (SUDs) may include providing developmentally appropriate information, safe visitation, peer support, and emotional support. Care coordination is another practice that can help engage the child in counseling services appropriate to their situation and ensure that the child can participate in any family counseling provided by a SUD treatment or mental health resource. Engaging the child, as is appropriate to their age and capacity, in the case plan and keeping the child informed of their parent's treatment plan and progress is another way to help the child and maintain the family. This is also a critical time to engage extended family and relatives. A participating relative may become a caregiver for the child, or they may provide other types of supports to the child and parents, such as childcare, transportation, or emotional support.

When parents are identified as experiencing symptoms of SUDs, behavioral health services or other identified agency or program partners can provide a collaborative team approach to coordinating services that align with the tribe's cultural practices and values. A tribal child welfare agency may provide a range of collaborative services internally and with the help of local or state agencies through agreements or partnerships.

When considering how best to support whole families from a policy perspective, part of the healing process may include providing treatment services or resources to extended family members so they too can enhance their capacity to provide support to the parents or care for a child.

## **Safe Contact/Visitation**

Visitation between children who are in placement and their parents and extended family is directly related to the rate of reunification. Visitation is based on the right of children to have a lifelong relationship with their parents, siblings, and extended family. Policy that supports regular and routine safe visitation for children in care can help mitigate psychological loss and trauma associated with family separation. Visitation may occur

through an agreement established by the tribal child welfare agency, engaging the child's parents (custodial and non-custodial), the relative caregiver or placement home, and the agency in a common understanding of visitation. Visitation agreements may be prioritized in policy that may also suggest areas that might be covered in an agreement or plan, such as contact with non-placement relatives, family friends, and siblings (if not placed together). When reunification is not possible, continuation of active efforts to determine safe contact options can help support and maintain the child's connection to their parents, siblings, extended family, tribe, and culture.

## **Funding—Title IV-E of the Social Security Act**

If administering or planning to administer Title IV-E directly or through a tribal-state agreement, tribal child welfare agency programs should consider the following requirements that create flexibility for relative placements.

- ▶ Exercise due diligence to identify and notify all adult relatives and all parents of the child's siblings specifying the relative's options to participate in the care and placement of the child, options that may be lost by not responding to the notice, requirements for becoming a foster family home, and the services and supports available for children in foster family homes. 42 U.S.C. § 671(a)29).
- ▶ Consider giving preference to adult relatives over a non-related caregiver when determining placement for a child, provided that the relative caregiver meets all relevant tribal or state child protection standards. 42 U.S.C. § 671(a)(19).
- ▶ Waive any non-safety related licensing standards for relative foster family homes for specific children in care on a case-by-case basis. 42 U.S.C. § 671(a)(10)(D).

Administering Title IV-E directly may enhance agency flexibility to recruit and license more Native foster homes, including relative/kin foster homes. As permitted under Title IV-E, the tribal child welfare agency may develop policy that explicitly names non-safety standards that it will consider for waiver, outlines the level of flexibility it will permit, and describes how the agency might work collaboratively to develop solutions to address any non-safety concerns that may be present in the caregiver's home. Tribes that directly operate a Title IV-E program are also eligible to apply for kinship navigator funding under section 42 U.S.C. 427(a)(1) of the Social Security Act to develop [kinship navigator programs](#) that assist relative caregivers in learning about, finding, and using programs and services to meet the needs of the children in their care.

## **Summary**

Policy provides the rules to be followed by an agency. Procedures lay out the steps or process to implement the policy. Practice is the implementation of both policy and procedures within a philosophy guided by values, principles, and the best knowledge

available. The intersection of all of these is sometimes call “praxis.” Best practice is associated with known positive outcomes produced at this intersection, and it changes over time as new knowledge is developed or discovered. Non-Native child welfare is primarily based on the newest knowledge, as enacted and carried out in federal and state policy, procedures, and practice. Tribal child welfare is more heavily dependent on values, principles, and culture. As a result, tribal child welfare is less subject to trends and more likely to depend on what is culturally supported. Policy must be culturally based and support cultural integrity or it risks becoming damaging to the Native community.

The preceding discussion of issues is meant to inform policymaking in tribal child welfare so that services and practice can be guided toward supporting the strengths of the culture. This policy overview is part one of a two-part toolkit. Part two will provide sample policy language addressing each of the issues discussed in part one.