



NICWA

National Indian Child Welfare Association

Child and Family Policy Update

February 2025

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

President Signs Child Welfare Legislation Into Law With Tribal Support

On January 4, 2025, President Biden signed into law the [Supporting America's Children and Families Act](#) (P.L. 118-258). The legislation reauthorizes two child welfare programs under Title IV-B of the Social Security Act that provide some of the most flexible federal funding for tribes and states to help children at risk of removal into foster care stay at home safely. The legislation contains several provisions that benefit tribal nations and Native children and families.

Key child welfare provisions in the new law include:

- Increase in mandatory funding under the Title IV-B, Subpart 2 Program (Promoting Safe and Stable Families) that will increase funding for existing tribal grantees and allow a number of new tribes to qualify to receive the funding (Section 107 and increase to overall appropriation).
- Change the current funding mechanism under Title IV-B, Subpart 1 Program (Child Welfare Services) from the outdated regulatory formula to a 3% set-aside from the overall appropriation. This will provide a small increase in tribal funding under the program (Section 107).
- Increase funding for the Tribal Court Improvement Program from \$1 million to \$2 million per year allowing more tribes to apply for and receive grant funding (Section 107).
- Allow the Secretary of the Department of Health and Human Services (HHS) to modify Title IV-B reporting requirements for tribes and states to reduce administrative burden (Sections 106 and 107).
- Require states to collect and report data related to Indian Child Welfare Act (ICWA) requirements in state child welfare cases involving Native children and families (Section 107).
- Require HHS to provide technical assistance to states and tribes for the purpose of supporting effective implementation of ICWA (Section 107).
- Require HHS to consult with tribes on the development of guidelines to maximize the engagement of tribes in state court proceedings involving ICWA (Section 104).
- Allow tribes the option of using their federally negotiated indirect rate in the operation of Title IV-B programs (Section 107).
- 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 (Section 108).
- Allow the Secretary of HHS to waive or modify an application requirement or matching requirement for tribal grants addressing the needs of foster children who have parents that are incarcerated (Section 113).

- Require the Secretary of HHS to use tribally relevant data in carrying out evaluation activities under a grant program addressing the needs of foster children who have parents that are incarcerated (Section 113).

In addition, the law also authorizes tribal nations to access the Treasury Offset Program (TOP) that allows states and tribes to access tax returns of parents that are behind in child support payments (Section 202). The funds are then distributed to the custodial parent. Previously, only states were allowed to utilize this program. The National Tribal Child Support Association and National Association of Tribal Child Support Directors were key supporters of this legislation.

NICWA worked on the legislation for over two years with tribal advocates to develop tribal provisions and secure passage of the legislation before the end of the congressional session last December. Reauthorizations of major child welfare laws only happen every 10 years, so it was critical that tribal voices were heard in the process. Tribal nations who want to learn more about the benefits provided under the law should consult their regional [Administration for Children and Families](#) office to learn more about how to take advantage of these benefits.

AFCARS Final Rule on ICWA Data Elements Published

On December 5, 2024, the Biden Administration published a Final Rule restoring many of the ICWA data elements that were previously eliminated in 2020. The ICWA data elements were first approved in 2016, and then in mid-2020, 85% of the previously approved data elements were eliminated. A review of comments filed by states, tribes, child welfare organizations, and individuals during the public comment period revealed there was strong support for restoring the proposed ICWA data elements. 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. The Final Rule goes into effect on February 5, 2025, with the first data collection period to start on October 1, 2028 (first data due to ACF on May 15, 2029). This caps over thirty years of NICWA advocacy to close the gap in data collection on Native children and families that can inform improved implementation of ICWA.

President Biden Signs Native American Child Protection Act into Law

On December 23, 2024, President Biden signed into law the Native American Child Protection Act (P.L. 118-160). The legislation was first introduced in the House by Representative Ruben Gallego (D-AZ) and its companion bill, S. 2273, was introduced in the Senate by Senators Ben Ray Lujan (D-NM) and Susan Collins (R-ME). It amends the Indian Child Protection and Family Violence Prevention Act of 1990 (P.L. 101-630) to reauthorize and reform programs for Native communities to treat and prevent child abuse, neglect, and family violence. The House passed H.R. 663 in September 2023 with significant bipartisan support, and the Senate passed it without amendment on December 17, 2024.

The grant programs outlined in the legislation are intended to fill funding gaps for tribal services, by providing dedicated funding for prevention and treatment for victims of child abuse, neglect, and family violence. The Act amends the law to clarify activities that can be supported with grant funding. This includes child abuse prevention and treatment, including technical assistance and training, establishing child protection teams or multidisciplinary teams, and developing intergovernmental agreements between tribes and states to prevent, investigate, prosecute, and treat child abuse, neglect, and family violence. The Act includes language to make urban Indian organizations eligible for the grant programs when partnering with a tribe or tribal organization. Language in the Act also encourages the use of culturally appropriate programs and services and authorizes the establishment of a National Indian Child Resource and Family Services Center to assist Native communities through technical assistance and training.

The authorizing language in the law that provides authority to appropriate funding for the grant programs has not been reauthorized by Congress since the original passage of the legislation in 1990. NICWA has been working to reauthorize the grant programs for many years and will continue to work with the new

Congress to accomplish this goal. Reauthorization is critical to increasing appropriations for the grant programs and signaling to Congress that this is a priority program for tribal nations.

Legislative

Boarding School Legislation Fails to Pass at the End of the 118th Congress (H.R. 7227 and S. 1723)

Despite valiant efforts to gain passage of the legislation before the end of the 118th Congress, the legislation failed to pass the House of Representatives before Congress adjourned for the session. This means co-sponsors of the legislation will need to reintroduce the legislation in the new Congress starting in January 2025. The Senate approved bill, [S. 1723](#), was a companion to the House of Representatives introduced bill, [H.R. 7227](#), and was before the House just days before the Congress adjourned.

NICWA has been a supporter of the legislation since it was first introduced in 2022 and 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 who attended boarding schools, current teachers, and students who 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 support reintroduction of the legislation in the 119th Congress and sign on as co-sponsors. You can find contact information for your congressional representatives [here](#).

Administrative

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.

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

Congress Kicks the Can Down the Road Again in Last Minute FY 2025 Budget Negotiations

FY 2025 appropriations, with a national election and other priority legislation needing attention, shifted to

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a Continuing Resolution (CR) process as opposed to full consideration of House and Senate appropriation 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 first agreed to a CR that would extend funding for the federal government until December 20, 2024, but after the results of the election were clear and new leadership for the Congress was imminent, the Congress moved to adopt another CR pushing final decisions on FY 2025 appropriations until March 14, 2025. This pushes decisions about final appropriations halfway into the fiscal year at the same time Congress would normally be working on the FY 2026 budget and appropriations. This has the effect of postponing the ability of federal agencies to distribute grant funding well into the fiscal year, creating hardships for tribes that are dependent upon the funding to support critical programs and services. Likely, there will be few, if any, increases in many federal child welfare programs for tribes or states for FY 2025, and the outlook for FY 2026 may not be any better with President-Elect Trump and Republican leadership outlining deep cuts to domestic programs to pay for tax cuts they have prioritized.

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