

July 29, 2019

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 19-71

This All County Letter provides information and clarification regarding the approval, payment, and placement preservation of Tribally Approved Homes as a result of changes in state and federal law since All County Information Notice I-86-08.



KIM JOHNSON
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

July 29, 2019

ALL COUNTY LETTER NO. 19-71

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL COUNTY CHIEF PROBATION OFFICERS
ALL COUNTY CHILD WELFARE PROGRAM MANAGERS
ALL FOSTER CARE MANAGERS
ALL FOSTER CARE ELIGIBILITY SUPERVISORS
ALL TITLE IV-E AGREEMENT TRIBES
ALL FEDERALLY RECOGNIZED TRIBES
ALL JUDICIAL COUNCIL STAFF
ALL ADOPTION REGIONAL OFFICES

SUBJECT: **TRIBALLY APPROVED HOMES**

REFERENCE: [PUBLIC LAW \(PL\) 109-248; THE INDIAN CHILD WELFARE ACT \(ICWA\) 25 UNITED STATES CODE \(USC\) SECTION 1901 ET SEQ;](#)
[SENATE BILL \(SB\) 80 \(CHAPTER 27, STATUTES OF 2019\); SB 1460 \(CHAPTER 772, STATUTES OF 2014\); HEALTH AND SAFETY CODE \(H&SC\) SECTIONS 1522 AND 1522.1; PENAL CODE \(PC\) SECTION 11105.08; WELFARE AND INSTITUTIONS CODE \(W&IC\) SECTIONS 361.31, 10553.12, 16504.6 AND 16519.5\(e\); ALL COUNTY LETTERS \(ACLs\) 19-70, 19-26, 18-89, 18-48, 17-62, AND 16-84; ALL COUNTY INFORMATION NOTICE \(ACIN\) I-86-08](#)

The purpose of this All County Letter (ACL) is to provide information and clarification regarding the approval, payment, and placement preservation of Tribally Approved Homes (TAHs) resulting from changes in state and federal law since [All County Information Notice \(ACIN\) I-86-08](#). A TAH is a home licensed or approved by an Indian child's tribe/tribal agency, or a tribe or tribal organization designated by the Indian child's tribe, for foster or adoptive placement of an Indian child. It is important for county social workers and probation officers to be aware that TAHs are not subject to state approval standards. Tribes/[tribal agencies](#) have independent authority to approve homes using the tribe's/tribal agency's own socially and culturally appropriate standards and are not subject to California's Resource Family Approval (RFA) requirements.

To confirm that a tribe has approved a home, the county social worker or probation officer should request written confirmation from the tribe. Depending on tribal practice, this may include a tribal council resolution or letter from the tribe identifying the prospective foster or adoptive parents and confirming that the tribe has approved the home. A federally recognized Indian tribe/tribal agency is authorized, but not required, to approve a home for the purpose of foster or adoptive placement of an Indian child pursuant to the federal [Indian Child Welfare Act \(ICWA\)](#). Indian children placed in TAHs qualify for foster care funding provided the TAH meets the minimum federal standards prior to placement of an Indian child.

[Senate Bill \(SB\) 1460](#) added [Penal Code \(PC\) § 11105.08](#), giving federally recognized tribes/tribal agencies the ability to receive both state and federal summary criminal history and the authority to conduct their own background checks, including criminal and child abuse background checks of all affected individuals, for prospective TAHs. It also gave federally recognized tribes/tribal agencies the authority to evaluate and grant exemption requests. Once a tribe/tribal agency is approved access by the Department of Justice (DOJ), a tribe/tribal agency may request from DOJ state and federal level summary criminal history information for the purpose of approving a tribal home for the placement of an Indian child into foster or adoptive care. Refer to [ACL 17-62](#) for more information on provisions of [SB 1460](#).

Tribally Approved Homes (TAHs)

TAHs must meet the following federal requirements:

- A home health and safety assessment meeting the tribe's/tribal agency's socially and culturally appropriate standards.
- Criminal record background checks including the following components:
 - Fingerprint-based search of DOJ and FBI criminal history pursuant to [Health and Safety Code \(H&SC\) § 1522](#)
 - Criminal record exemptions pursuant to [H&SC § 1522\(g\)](#)
 - Serious-arrest investigations for crimes listed at [H&SC § 1522\(e\)](#)
 - Child Abuse Central Index (CACI) check pursuant to [H&SC § 1522.1](#)
 - Out-of-State child abuse and neglect registry check for individuals who have resided in a state other than California within the last five years pursuant to [H&SC § 1522.1](#)
 - A statement indicating whether the individual has ever been convicted of a crime other than a traffic infraction. (Tribes/tribal agencies have the option of using the [Out-of-State Disclosure & Criminal Record Statement \(LIC 508D\)](#) form but are not required to.)

A TAH is an authorized placement for an Indian child only when approved by that specific Indian child's tribe/tribal agency. If there is a sibling set which includes a child

that is not a member of the tribe approving the TAH, such as a non-Indian child, the home must be approved under RFA standards. The family would need to apply to be a resource family if interested in caring for a non-Indian child. A TAH can also be an RFA home. In a situation where a TAH home would also need to be an RFA home, the placing agency should be reminded that the RFA program allows for placements prior to approval pursuant to [Welfare and Institutions Code \(W&IC\) § 16519.5\(e\)](#). The RFA program also allows a county to approve an applicant to care for a specific child or nonminor dependent in circumstances when consideration of the familial or tribal relationship is [significant and may only be appropriate for the identified child](#).

Federally Recognized Tribe WITH Authority to Perform Background Checks

As discussed above, a federally recognized tribe/tribal agency that has been approved by DOJ to receive criminal and child abuse history information, for the purpose of approving a tribal home for foster or adoptive care, has the authority to conduct its own background checks. The authorities are pursuant to [H&SC § 1522](#) and [H&SC § 1522.1](#), including the authority to evaluate and grant criminal record exemption requests pursuant to [H&SC § 1522\(g\)](#). Tribes/tribal agencies have the option of utilizing the [RFA Background Assessment Guide \(BAG\)](#) as a reference to ensure the checks are being conducted in accordance with federal IV-E standards; however, tribes/tribal agencies are not required to use this guide.

A tribe/tribal agency approved by DOJ has the authority to conduct a criminal record and child abuse background check on the following individuals:

- Prospective foster or adoptive parents;
- Any adult who resides or is employed in the home of an applicant;
- Any adult who has a familial or intimate relationship with a person living in the home of the applicant or foster or adoptive parent; and
- An employee of the tribal agency who may have contact with children.

Federally Recognized Tribe WITHOUT Authority to Perform Background Checks

There are federally recognized tribes/tribal agencies that do not have DOJ authorization to receive summary criminal history information for the purpose of approving a tribal home for the placement of an Indian child into foster or adoptive care. In these situations, if the tribe/tribal agency has otherwise approved the TAH, the tribe/tribal agency shall request that either the county of jurisdiction or the California Department of Social Services (CDSS) Caregiver Background Check Bureau (CBCB) conducts a background check on behalf of the tribe/tribal agency. The tribe/tribal agency may not request both the county and CBCB to conduct the background check. The exemption decision may only be made by the entity designated by the tribe/tribal agency to complete the background check on its behalf pursuant to [W&IC § 16504.6](#).

See below for process when requesting a background check from one of the following entities:

The County – If the tribe/tribal agency has otherwise approved the TAH and has requested the county conduct the background check on its behalf, the county should obtain written documentation from the tribe/tribal agency as to the approval. Thereafter, the county shall perform the background check for the tribe/tribal agency.

The CBCB – If the tribe/tribal agency opts to have CBCB complete the background check, a written request in Portable Document Format shall be emailed to CBCB at: webmaster@dss.ca.gov with the subject line: TRIBAL BACKGROUND CHECK REQUEST. The request must include the tribe's/tribal agency's contact information so that CBCB can send fingerprinting instructions either electronically or via U.S. Mail.

It is important to remember that the Criminal Offender Record Information (CORI), i.e. rap sheet, itself is confidential and cannot be shared with anyone other than the subject of the CORI. The County or Department may share a summary of the criminal history, or any exemption decision documents relevant to the background check that was conducted, with the tribe/tribal agency approving the home. As requested, the CORI and relevant background check documents, may be reviewed by specific entities such as state or federal auditors.

Approval Documentation

A tribe or tribal agency must provide the county child welfare agency or probation department with written documentation, which includes a date and signature, stating that the home has been approved by the tribe/tribal agency. There is no required language which must be included on the tribal documentation. A tribe/tribal agency, at its discretion, will provide a tribal resolution or statement on tribal letterhead evidencing the tribe's/tribal agency's approval of the home. Effective the date of this ACL, the SOC 815, 817, 818 forms should not be used to approve a TAH.

Note: The CDSS has attached sample TAH-specific approval forms, e.g. TAH 1 and TAH 1.1. However, tribes/tribal agencies are not required to use these forms.

If a tribe/tribal agency conducts its own background check and approves the TAH, certification by the tribe/tribal agency must include the following pursuant to [W&IC § 10553.12](#):

- 1) The tribal agency has completed a criminal record background check in accordance with the standards set forth in [H&SC § 1522](#) and a CACI check pursuant to [H&SC § 1522.1](#) on all individuals described in [W&IC § 10553.12\(c\)](#).

- 2) The tribal agency has agreed to report to the county child welfare agency responsible for a child placed in the TAH, within 24 hours of notification to the tribal agency by the DOJ, of a subsequent state or federal arrest or disposition notification involving an individual associated with the TAH where an Indian child is placed.
- 3) If the tribal agency in its certification states that an individual was granted a criminal record exemption, the certification shall specify that the exemption was evaluated in accord with the standards and limitations set forth in [H&SC § 1522\(g\)\(1\)](#) and was not granted to an individual ineligible for an exemption under that provision.

Terminating Approval of a Tribal Home

Tribes/tribal agencies are encouraged to establish a complaint process. If there is a complaint filed against a TAH, the county and tribal agency must work collaboratively to address any concerns expressed by the tribe, county, court, child's attorney, and/or the child's parents. If there are concerns rising to the level of abuse or neglect where there is a potential risk to the health or safety of a child, a cross-report to Child Welfare Services (CWS) shall be made. The county child welfare and probation departments have no authority to terminate a tribe's approval of a home, but they must investigate issues of safety and well-being based on their responsibility as a placing agency of the child.

If a tribe/tribal agency terminates the approval of their home after a child has been placed in the home, the tribe/tribal agency must immediately, within 24-48 hours, notify the county placing agency of the termination of the tribal approval. The tribe/tribal agency shall provide the county placing agency with written notification of the termination of approval. The county placing agency would need to consider whether the previous TAH continues to be the most appropriate placement option for the Indian child. If the home is no longer approved as a TAH, the county would be required to assess whether there are any health and safety risks to the child and determine whether the home will be approved under RFA.

Placement Preservation

If a change in placement is being considered, a placement preservation strategy to preserve the child's placement is required prior to the issuance of a 14-day notice of the placement change pursuant to [Assembly Bill \(AB\) 2247](#). Please refer to [ACL 19-26](#) for more information on placement change requirements. Any placement changes must comply with the placement preferences specified in the [ICWA](#) and at [W&IC § 361.31](#). The county child placement agency is required to consult with the youth's child and family team (CFT) for the specified purpose of maintaining the current placement, and a CFT meeting should be convened to discuss any placement changes and service needs for the child or youth in out-of-home care. Please refer to [ACL 16-84](#) for more information on CFTs.

TAH's Pending Approval

Although there has been an increased effort in recruiting and building a pool of foster, adoptive, and kinship families, tribes/tribal agencies may not have a TAH available for immediate placement of an Indian child. The county placing agencies may place an Indian child in a home pending tribal approval upon completion of [W&IC § 361.4](#) by the placing agency, which includes an in-person health and safety inspection of the home, a state-level criminal records check via the California Law Enforcement Telecommunications System (CLETS), and a check of allegations of prior child abuse or neglect.

If the home in which the Indian child is placed is subsequently approved by the child's tribe/tribal agency, no further approval is required by the county.

Foster Care Payments

Children placed in a TAH, or a home pending TAH, are eligible for foster care payments.

- If a child has been placed on an emergency basis in a home that is pending tribal approval, the county should determine if the child is eligible for Emergency Caregiver (EC) funding pursuant to [Senate Bill \(SB 80\)](#). An ACL is forthcoming with instructions related to EC funding and pending TAHs.
- Once the county receives approval certification regarding a TAH, and a child has been placed in the TAH, the county will forward the necessary approval documents to the Eligibility Worker (EW).
- A TAH is entitled to the same foster care rates as county RFA homes.
 - For information on current foster care basic rates, please refer to [ACL 19-70](#).
 - If a county has opted to have a specialized care increment (SCI) plan, TAHs are eligible to receive a SCI payment according to the county plan. Please refer to [ACL 18-48](#) for information on Specialized Care Rate (SCR) programs.

The county social worker or probation officer is responsible for entering placement information, as well as information from the tribe's/tribal agency's home approval certification, into CWS/CMS unless the child's tribe/tribal agency has direct access to CWS/CMS. The [Foster Child's Data Record and AFDC-FC Certification \(SOC 158A\)](#) form will need to be sent to the EW to determine when a foster care payment can begin. Accurate and timely data entry and submission of documents will allow for expedient processing and issuance of foster care payments to the TAH. If a tribe/tribal agency terminates approval of a TAH, the county social worker or probation officer should communicate this information immediately to the EW, because the home is no longer eligible for a foster care payment unless the home is also RFA.

If you have any questions about this ACL, please contact the Foster Caregiver Policy & Support Unit at (916) 651-7465.

Questions related to TAHs should be directed to: TAH@dss.ca.gov.

Questions related to background checks should be directed to:
TribalBackgroundChecks@dss.ca.gov.

Sincerely,

Original Document Signed By

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

Attachments

TRIBE/TRIBAL AGENCY LETTERHEAD

**Approval of Tribally Approved Home (TAH);
Tribes/Tribal Agencies with Authority to Conduct Background Checks**

Pursuant to the provisions of Welfare and Institutions Code (W&IC) section 10553.12 and Penal Code (PC) section 11105.08, this certifies that the following home has been assessed and approved as a TAH:

Name

Address

1. Home Health and Safety Assessment

An on-site assessment of the home was completed on _____ by
(Date)

(Name/Tribe/Tribal Agency)

2. Criminal Record/Child Abuse Background Checks

A criminal record background check, including substantiated allegations of abuse and severe neglect, has been conducted for all prospective foster or adoptive parents, any adult who resides or is employed in the home of an applicant, any adult who has a familial or intimate relationship with a person living the home of the applicant or foster or adoptive parent, and any adult employee of the tribal agency who may have contact with a child, consistent with standards set forth in Health and Safety Code (H&SC) sections 1522 and 1522.1.

Conducted by Tribe/Tribal Agency: _____
(Name/Tribe/Tribal Agency)

We, the Tribe/Tribal Agency certify the following:

All Adults Granted a Clearance or Exemption.

Any criminal record exemption granted was evaluated in accord with the standards and limitations set forth subdivision (g) of Section 1522 of the H&SC and was not granted to an individual ineligible for an exemption under that provision.

Agree to report to the county child welfare agency or probation department responsible for a child placed in this TAH, within 24 hours of notification by the Department of Justice, of a subsequent arrest or disposition notification involving an individual associated with the TAH where a dependent Indian child is placed.

TRIBE/TRIBAL AGENCY LETTERHEAD

3. Certification of Approval

I certify that the home **meets** all standards for a Tribally Approved Home as of

_____.
(Date)

(Tribal Approval Worker)

(Date)

(Tribe/Tribal Agency)

(Date)

(Tribal Supervisor/Authorized Representative)

(Date)

Comments:

4. Terminating Approval of a TAH

We, the tribe/tribal agency, are terminating the approval of this tribal home, effective _____.
(Date)
We agree to notify the responsible placing agency of this decision within 24-48 hours of this effective date.

(Tribal Approval Worker)

(Date)

(Tribe/Tribal Agency)

(Date)

TRIBE/TRIBAL AGENCY LETTERHEAD

Criminal Record Background Checks

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

(Background Check Worker)

(Date)

TRIBE/TRIBAL AGENCY LETTERHEAD

**Approval of Tribally Approved Home (TAH):
County or Department Conducting Background Check**

Pursuant to the provisions of Welfare and Institutions Code (W&IC) sections 10553.12 and 16504.6, as applicable, this certifies that the following home has been assessed:

Name

Address

Tribe

1. Home Health and Safety Assessment

An on-site assessment of the home was completed on _____ by _____
(Date)
_____ and the tribe/tribal agency has
(Name/Tribe/Tribal Agency)

determined the home meets all approval standards.

Tribe/Tribal Agency has requested on _____ that _____
(Date) (County/Department)
complete the background check on our behalf.

2. Criminal Record/Child Abuse Background Checks

A criminal record background check, including substantiated allegations of abuse and severe neglect, has been conducted for all prospective foster or adoptive parents, any adult who resides or is employed in the home of an applicant, any adult who has a familial or intimate relationship with a person living the home of the applicant or foster or adoptive parent, and any adult employee of the tribal agency who may have contact with a child, consistent with standards set forth in Health and Safety Code (H&SC) sections 1522 and 1522.1.

a. Conducted by _____ with _____
(Worker Name) (County/Department)

All Adults Granted a Clearance or Exemption
Clearance or Exemption not Granted

Please see page 3.

TRIBE/TRIBAL AGENCY LETTERHEAD

3. Certification of Approval

I certify that the home **meets** all standards for a TAH as of _____.
(Date)

I certify that the home **does not meet** standards for a TAH as of _____.
(Date)

(Tribal Approval Worker)

(Date)

(Tribe/Tribal Agency)

(Date)

(Tribal Supervisor/Authorized Representative)

(Date)

Comments:

4. Terminating Approval of TAH

We, the tribe/tribal agency, are terminating the approval of this tribal home, effective _____. We agree to notify the responsible placing agency of this
(Date)
decision within 24-48 hours of this effective date.

(Tribal Approval Worker)

(Date)

(Tribe/Tribal Agency)

(Date)

TRIBE/TRIBAL AGENCY LETTERHEAD

Criminal Record Background Checks

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

NAME:	Association to TAH:		
EXEMPTION	Granted	Denied	N/A
CLEARANCE	Granted	Denied	N/A
Date of Decision/Comments:			

(Signature of Background Check Worker)

(Date)