

July 26, 2024

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 24-39

This All County Letter provides policies and procedures and identifies the state and federal requirements for transferring an Indian child from the county child welfare system and court jurisdiction to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement with a state, as well as requirements and best practices for transfer to any federally recognized tribe. Guidance in this ACL updates legal references and links to forms where necessary. This All County Letter supersedes ACL 14-15.



KIM JOHNSON
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

July 26, 2024

ALL COUNTY LETTER NO. 24-39

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL CHIEF PROBATION OFFICERS
ALL FOSTER CARE ELIGIBILITY MANAGERS
TITLE IV-E TRIBES
ALL FEDERALLY RECOGNIZED TRIBES

SUBJECT: **REQUIREMENTS FOR THE TRANSFER OF INDIAN CHILDREN TO A FEDERALLY RECOGNIZED TRIBE, INCLUDING TO A TRIBAL TITLE IV-E AGENCY OR AN INDIAN TRIBE WITH A TITLE IV-E AGREEMENT WITH A STATE, AND SUPERSEDING ALL COUNTY LETTER 14-15**

REFERENCE: [42 UNITED STATES CODE \(USC\) SECTION 671](#)
[USC SECTION 679c](#), AND [25 USC SECTION 1901 ET SEQ](#); [THE FEDERAL FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008](#)
[\(PUBLIC LAW \(PL\) 110-351\)](#); [45 CODE OF FEDERAL REGULATIONS \(CFR\) SECTION 1356.67](#); [WELFARE AND INSTITUTIONS CODE \(WIC\) SECTION 305.5](#), [WIC SECTION 319](#), [WIC SECTION 361](#), [WIC SECTION 827.15](#), AND [WIC SECTION 10553.1](#); [ALL COUNTY LETTER \(ACL\) 14-15](#) AND [ACL 18-140](#);
[ALL COUNTY WELFARE DIRECTOR'S LETTER \(ACWDL\) 23-02](#)

The purpose of this ACL is to disseminate information regarding legal requirements applicable to the transfer of cases from state/county jurisdiction to a tribal title IV-E agency or an Indian Tribe with a title IV-E agreement with a state, as well as requirements and best practices for case transfers to any federally recognized tribe. Guidance in this ACL updates legal references and links to forms, and where necessary, supersedes the prior instructions on transfers provided in [ACL 14-15](#). The ACL also provides policies and procedures and identifies the minimum federal requirements, set forth in the cited federal regulations, for transferring an Indian child's

case from the county child welfare system and court jurisdiction to a tribal title IV-E agency or an Indian Tribe with a title IV-E agreement with a state. The federal regulations and this letter do not affect or otherwise preclude the Indian Child Welfare Act (ICWA) specified right of a tribe to seek the transfer of an Indian child's case from state court jurisdiction to tribal jurisdiction, including those in family maintenance. As a reminder, the guidance described in [ACL 18-140](#) regarding "Tribal Access to Child Welfare Case Records" is applicable in all relevant cases, including those that do not involve a transfer of a IV-E eligible case to a tribal title IV-E agency or an Indian Tribe with a title IV-E agreement with a state.

BACKGROUND

Federal law ([42 United States Code \(USC\) section 671\(a\)\(32\)](#)) provides that states and federally recognized Tribes, tribal organizations, and/or consortia may enter into agreements regarding the care and custody of Indian children and jurisdiction over child custody proceedings and draw down federal title IV-E funding. California state authority for entering a Tribal-State title IV-E agreement is found in [WIC section 10553.1](#). The [PL 110-351](#) further expanded options for the establishment of such programs by providing the option for tribes, tribal organizations or consortia to enter into title IV-E agreements directly with the federal government ([42 USC section 679c](#)).

The federal regulations were amended effective February 6, 2012, to add [45 CFR 1356.67](#), which requires there be procedures "for the transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement in a way that does not affect a child's eligibility for, or payment of, title IV-E and the child's eligibility for..." Medicaid (Medi-Cal is California's Medicaid program.).

The 2012 federal regulations require, at a minimum, procedures for completing the title IV-E eligibility determination prior to transfer and providing essential documents and information necessary to continue an Indian child's eligibility under title IV-E and Medicaid programs. Those essential documents are to include: all judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts have been made and other documentation the state has that relates to the child's title IV-E eligibility; information and documentation available to the agency regarding the child's eligibility or potential eligibility for other federal benefits; the case plan developed, including health and education records of the child; and information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval. These federal regulations do not apply to the transfer of an Indian child to Tribes that are not a tribal title IV-E agency or do not have a title IV-E agreement with a state.

REQUIREMENTS FOR ALL TRIBAL TRANSFERS

Under federal and state law, jurisdiction over a child welfare case may be transferred to a federally recognized tribe. Consistent with the right to transfer jurisdiction, tribal parties have a right to examine or receive the child's case file (25 USC section 1912(c) and 1915(e); [WIC section 305.5](#) and [WIC section 827.15](#).) To comply with [WIC section 827.15](#), for all tribal transfers pursuant to [WIC section 305.5](#), a copy of the child's entire case file shall include the records retained by the juvenile court, as well as the entire child welfare agency files or records retained by the county. The child welfare eligibility file and placement records for the current foster care episode must be provided to all federally recognized tribes once the motion to transfer is granted by the juvenile court. The juvenile court will order the release of the file to all federally recognized tribes when the tribe agrees to maintain the documentation confidential consistent with state and federal law. In addition to the mandatory legal requirements for complete records transfer upon court-ordered transfer of responsibility for the placement and care of a child to a federally recognized tribe, including transfer of jurisdiction in family maintenance cases, certain representatives of federal recognized tribes are eligible to either review or receive case records prior to transfer, consistent with the law and guidance described in [ACL 18-140](#) regarding "Tribal Access to Child Welfare Case Records."

In addition, Medi-Cal shall continue to follow the child to ensure there is no break in coverage for the child when the case is transferred to the tribe. The child should be maintained in Medi-Cal on the same aid code under the county's responsibility even after the transfer is complete. For more detailed information, please review [ACWDL 23-02](#) from the Department of Health Care Services (DHCS), which states: "county agencies must ensure that Tribal foster care beneficiaries maintain their Medi-Cal coverage through this transfer process. Counties should process initial enrollment and continuing coverage based on guidance provided by DHCS in [ACWDL 17-03](#) and [ACWDL 18-16](#)."

The county should contact DHCS at DHCSFosterCareProgram@dhcs.ca.gov for information on how to access Medicaid for a child if their case is being transferred to a Tribe that resides outside of California.

INSTRUCTIONS FOR TITLE IV-E TRIBAL TRANSFERS

Counties are required to take the following steps when a request is made for transferring an Indian child's case to a tribal title IV-E agency or to an Indian Tribe with a title IV-E agreement with a state in accordance with the federal requirements.

As stated in the preceding section, a copy of the child's entire case file must be transmitted to the tribe once the transfer motion is granted. However, for a tribal title IV-E agency or an Indian Tribe with a title IV-E agreement with a state, in order to best support the child, transmitting relevant case documents to the requesting tribe

should not wait for the filing of the tribal transfer petition pursuant to WIC section 305.5, subdivision (d) or court orders under [California Rules of Court section 5.483](#), subdivision (f). Finalizing title IV-E eligibility determinations and the initial provision of case file documents from the county to the tribe should be completed **promptly** from the time a prospective transfer request is made known to the county, or **within 30 calendar days from the initial request**, consistent with the comparable inter-county transfer process. This may be considered a “pre-transfer” process. Any remaining case file documents described below that were not provided during pre-transfer must be promptly provided upon the court-ordered transfer of the child to a tribal title IV-E agency or to an Indian Tribe with a title IV-E agreement with the state.

Confidentiality is not violated when the case file is provided in a pre-transfer process because the provision of documentation is required by the federal regulations (45 CFR section 1356.67, subdivision (b)(2)), and the tribe or tribal agency, in entering a title IV-E agreement, has agreed to comply with the same federal requirements on confidentiality to which the state is required to adhere. Moreover, providing the entire file recognizes the need for the tribe to have essential documentation and information to maintain the seamless care and provision of services for the well-being of the child. The case file documents include, but are not limited to, the documents outlined below, and the tribe may request additional documents to which they are entitled pursuant to [WIC section 827.15](#). As used in [WIC section 827.15](#) and for purposes of transfer to a tribal title IV-E agency or to an Indian Tribe with a title IV-E agreement with a state, “a “child case file” means information including the juvenile case file retained by the juvenile court and the child welfare agency files or records retained by the county,” as well as the essential documentation described in [Title 45 CFR 1356.67](#).

1. Eligibility Determinations

If the title IV-E eligibility determination has not already been completed, the county agency must complete the determination before the transfer of the case can be completed and provide official copies of all pertinent documentation regarding the determination. The eligibility determination cannot be completed until after the initial detention hearing has occurred. This is because a prerequisite to title IV-E eligibility is the entry of judicial determinations that it is contrary to the welfare of the child to remain in the home (WIC section 319, subdivision (b)) and that reasonable efforts to prevent removal were made (WIC section 361, subdivision (d).)

The eligibility determinations are reflected on the following forms:

MANDATORY documents to be provided for all transfer requests:

- [FC 2 Statement of Facts Supporting Eligibility for AFDC Foster Care](#)
- [FC 3 “Determination of Federal Aid to Families with Dependent Children \(AFDC\) Foster Care Eligibility”](#)
- [FC 3A / 3.5 AFDC-FG/U Worksheet / AFDC Linkage Determination POEM](#)

- [SOC 158 A Foster Child's Data Record and AFDC-FC Certification \(most current\)](#)

Provide as applicable in an individual case:

- [AAP4 Adoption Assistance Form 4 "Eligibility Certification Adoption Assistance Program"](#)
- [KG2 Kinship Guardianship "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance payment."](#)
- [SOC 161- "Six-Month Certification of Extended Foster Care Participation"](#)
- [SOC 162- "Mutual Agreement for Extended Foster Care"](#)

Counties are expected to expeditiously complete eligibility determinations so as not to unduly delay the transfer of the child's case.

2. Documentation Requirements

To comply with the requirements of [Title 45 CFR section 1356.67](#), in addition to the title IV-E eligibility documents described above, a copy of the **entire case file** for the current foster care episode is to be provided to a tribal title IV-E agency or to an Indian Tribe with a title IV-E agreement with a state upon the transfer of the child's case. As described above, the transfer of case documents should not wait until the transfer petition and judicial order are made but should proceed promptly upon initial notice of the request to transfer the case. The documents provided from the county for the current placement episode must include the eligibility and case services information, the licensing information for the child's most recent placement, and should also include the documents in the court file. This is equivalent to the procedures currently utilized when transferring a child from county to county.

To facilitate consistency in the structure of the file transfer and for purposes of the continuity of eligibility and services to the child, counties must make certain the records are organized to include, but are not limited to, the following, including the eligibility determination documents listed, above:

a. Placement and Care Responsibility

A copy of **ALL** petitions, supporting documents, judicial orders (including detention, jurisdictional, dispositional, and review hearings) and court reports for the foster care episode, paying special attention to ensure that the complete file includes all documentation that has the judicial determinations supporting continued title IV-E eligibility.

b. Placement History

A copy of the child's entire placement history for the current foster care episode. Documents related to the current foster care placement should include, but are not limited to:

- A copy of the placement agreement for the current foster care placement
- Level of Care documentation as required by [ACL 21-17](#) , or equivalent.

For Resource Family Homes (County or FFA):

- A copy of the Resource Family Approval (RFA) certificate ([RFA 05A](#) or [LIC 05A](#)) equivalent.
- Dates of background check clearances, including any exemptions if applicable, for all adults residing in the resource family home (For county resource family homes this would be a copy of the [RFA 02](#), Resource Family Background Checklist.) As a reminder, the California Penal Code and the California Department of Justice regulations strictly prohibit the sharing of the criminal offender record information unless specifically authorized by law ([Penal Code section 11075 et seq](#) and [11 California Code of Regulations 703 \(b\).](#))
- If the child is placed with a Resource Family, the county may share a copy of the [RFA 05](#) Written Report or equivalent and the [RFA 06](#) Update to a Written Report or equivalent (if an update to the approval has been completed), as allowed by [WIC section 16519.555](#).
- The results of any complaint investigations that were substantiated against the Resource Family (See [Written Directives 9-06C.](#))

Additional Placement Documents, As Applicable:

- A copy of the Tribally Approved Home (TAH) approval, summary of criminal history, and exemption documents held by the county shall be provided, as applicable (e.g. [TAH 1.1](#); [TAH 2.1](#); and [TAH 3.1](#).)
- If a child is currently placed out-of-state by the county pursuant to the Interstate Compact on Placement of Children (ICPC), the approved [ICPC 100A](#) Form and [ICPC 100B](#) Form, including copies of reports by the supervising agency
- Short-Term Residential Therapeutic Program Qualified Individual Assessment Report
- Documentation of Dual Agency status

c. Payment history

This should include a payment history of all services and placements in the current foster care episode.

d. Case Plans and Services

- Copies of all current and prior case plans, including case plan goals for the foster care episode and documentation of services provided to the child and family, developed pursuant to [WIC section 11404, subdivision \(b\)\(3\)](#).
- An up-to-date copy of the child's health and education passport, pursuant to [WIC section 16010](#); and any additional school verification documents on file.
- Specialized Care Increment (SCI): Include available documentation supporting the need for SCI payments, if applicable.
- Any child age and identity documents, including birth certificate copies, such as the type of documents listed in [Manual of Policies and Procedures 42-111.1](#).

e. Other Federal Benefit Documentation

The case is to be transferred in a manner that does not affect the child's eligibility for, or payment of, other federal benefits, including Medicaid programs under title XIX. Therefore, the county agency must provide the tribal title IV-E agency or a Tribe with a title IV-E agreement with a state any essential information and documentation necessary for the seamless continuation of any federal benefits that the county agency has in its possession. This includes, but is not limited to, information about the child's eligibility for Child Support, Railroad Retirement, Supplemental Security Income/State Supplementary Payment, Veteran's Wages or other benefits, that are known to the county and/or in pending status. Relevant documents may also include the [SAWS 1](#) (Initial Application for Cash Aid, Food Stamps, and/or Medi-Cal/Health Care Programs.) As noted below, the county will maintain Medi-Cal benefits for the child.

f. Other Case Documents

There may be additional documents not described above that will assist the tribal title IV-E agency or to an Indian Tribe with a title IV-E agreement with a state in providing services and maintaining future benefits for the child. Some examples include the [EA 1 Emergency Assistance for Child Welfare Services for current episode](#); [CW 2.1\(Q\) – Support Questionnaire](#); [CW 371 – Referral to Local Child Support Agency](#); and [CW 51 Good Cause Claim for Noncooperation](#). (See [FC 18 Notification of AFDC-Foster Care Transfer](#).) It is recommended that all file documents relevant to a child's history be provided as part of the case transfer, even if they are not named above.

PRACTICE CONSIDERATIONS FOR ALL TRIBAL TRANSFERS

For all tribal transfers, communication between the county and the Tribe, including tribal representatives, is important to ensure there is no disruption in services or benefits to the child as part of the transfer process. This communication should include the goals and services identified in the case plan and any concerns regarding the child's health, behaviors, and/or other identified needs or concerns. This should include consulting with the Tribe to complete joint visits with the county and with the child and caregiver pending the completion of the transfer. The county should also work with the Tribe to ensure the services identified in the case plan shall continue to be provided to the child, when possible, to ensure continuity on behalf of the child.

CHILDREN PLACED UNDER THE ICPC

Counties should be aware that tribes are exempt from ICPC agreements. If a child under the county's jurisdiction is placed out of state through the ICPC process, the county should facilitate communication with the Tribe and with the receiving state to ensure that all parties are aware of the pending transfer to the Tribe. The county will also need to complete [ICPC 100B](#) to terminate the ICPC agreement once the transfer to the Tribe has been completed.

If you have any questions or need additional guidance regarding the information in this letter, contact the Funding and Eligibility Unit at FC-KGEligibility@dss.ca.gov.

Sincerely,

Original Document Signed By

ANGIE SCHWARTZ
Deputy Director
Children and Family Services