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S. 1956 and H.R. 4688: Amendments to Provide Direct Title IV-E Funding to Tribes for Foster Care and Adoption Assistance Services

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The Issue:

Tribal governments and the children under their jurisdiction do not have the same access to the Title IV-E Foster Care and Adoption Assistance Act (Title IV-E of the Social Security Act) as do state governments and the children under their jurisdiction. Title IV-E is an entitlement program that provides services to children who have been abused and neglected and removed from their homes. However, the Act provides funding only to states and to agencies with which states have agreements.

Tribes can access the program only through tribal-state IV-E agreements; these agreements are very difficult to reach and often do not provide tribes and tribal children the full range of resources that states provide under the program. Most tribes do not receive IV-E funds.

Tribal governments provide child welfare services with a patchwork of discretionary funding. In most cases tribal governments are the only governmental entity that has the jurisdiction to provide child welfare services to their children.

Indian children are not receiving the full range of services and protections they would receive if they had full and direct access to the Title IV-E program; in some instances Indian children have to be placed in un-subsidized foster homes and without adequate training for foster and adoptive families.

Pending legislation would authorize tribes to directly administer the Title IV-E program.

- S. 1956, the Tribal Foster Care and Adoption Access Act of 2007 introduced by Senate Finance Committee Chairman Baucus (D-MT), along with Senators Domenici (R-N.M.), Bingaman (D-N.M.), Smith (R-OR), Stabenow (D-MI), McCain (R-AZ), Cantwell (D-WA), and Levin (D-MI).
- H.R. 4688, the Tribal Foster Care and Adoption Access Act of 2007 introduced by Representative Pomeroy (D-ND), along with Reps. Blumenauer (D-OR), Weller (R-IL) and Camp (R-MI).
- Chairman McDermott (D-WA) of the Ways and Means Subcommittee on Income Security and Family Support included a similar provision in his Invest in Kids Act bill (H.R. 5466).

Goals of the Tribal Title IV-E Amendments

1. Allow tribes to directly apply to DHHS to administer the IV-E program.
2. Provide tribes with much-needed funding for their child welfare systems.
3. Improve tribes' ability to recruit and retain Indian foster and adoptive homes.
4. Provide improved and greater permanency services for tribal children.

5. Provide better support to tribal foster care and adoptive families.
6. Increase tribal ability to provide support to states who ask for help in finding permanency for Indian children in state child welfare systems.

Key Provisions of S. 1956 and H.R. 4688

- Authorize tribes and tribal consortia to apply to the Department of Health and Human Services (DHHS) to receive direct funds for the administration of the IV-E program that support foster care payments, case management, training, and data collection activities.
- Provide reimbursement for Title IV-E services to income-eligible Indian children in tribal foster and adoptive homes placed by tribal agencies/courts.
- Allow a tribe to determine its service population.
- Recognize and allow the use of tribal standards for foster home licensing.
- Allow the Secretary of DHHS flexibility to modify the requirements of the Title IV-E program for tribes as long as it would enhance the best interest of Indian children and provide for their continued safety.
- Require the Secretary to promulgate regulations to establish the federal/tribal match rates for the training, administration, and data collection portions under the Foster Care and Adoption Assistance Act.
- In determining the federal match for foster care maintenance payments made under IV-E, tribes are allowed to use their own federal medical assistance rate, with the highest federal share being 83 percent (same as for states).
- Allow tribes to use federal, state, private or in-kind funds to meet non-federal match requirements under the Title IV-E program as is consistent with other federal law and policy.
- Continue to recognize existing tribal/state agreements and the development of new agreements.
- Allow tribes to use the background check standards for prospective foster and adoptive family approval under the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630, Title IV) as an alternative, which are comparable to IV-E background check standards.
- Allow a tribal child who is currently under tribal jurisdiction and in foster care before a tribal IV-E program is initiated to have their tribal court order revisited to help the child qualify for IV-E.
- Allow tribal children who are currently eligible for and receiving IV-E maintenance payments under a IV-E agreement with a state to continue to receive these payments even if the state chooses to terminate the agreement.
- Allow tribes to receive a direct allocation of Chafee Independent Living funds.

For more information please contact National Indian Child Welfare Association Government Affairs Director, David Simmons, at desimmons@nicwa.org or Karen Funk at kfunk@hswdc.com.