

**INTERGOVERNMENTAL TITLE IV-E AGREEMENT  
BETWEEN THE STANDING ROCK SIOUX TRIBE, ACTING  
THROUGH ITS TRIBAL COUNCIL, AND THE STATE OF  
NORTH DAKOTA, ACTING THROUGH ITS DEPARTMENT OF  
HUMAN SERVICES**

**WHEREAS**, The State of North Dakota, acting through the Department of Human Services (hereinafter "Department"), and the Standing Rock Sioux Tribe (hereinafter "Tribe"), acting through the Tribal Council, continue to be concerned that proper supervision be exercised over children placed in foster care in which the Department and Tribe have an interest and that appropriate periodic services and services on an as needed basis be provided to such children; and

**WHEREAS**, in the past, the parties to this Agreement have agreed on the development of an appropriate service plan for children in foster care, the Department, through its county administrative units; the Council, through its social services component; and the Court, through its judicial orders, to assure that the requirements of relevant federal regulations were met and to assure that such services were not duplicated when placement and care responsibilities for such children were given by the Court to Tribal Social Services; and

**WHEREAS**, the parties to the Agreement wish to continue the formalizing of such arrangements so as to assure that such legally mandated services and other necessary services are provided to such children pursuant to a childcare plan in each instance, which assures that the best interests of such children remain of paramount importance; and

**WHEREAS**, this Agreement recognizes the sovereignty of the Tribe to make placement and care decisions concerning children in foster care under its jurisdiction; and

**WHEREAS**, an agreement is necessary specifying that the Department and Tribe will follow Federal Title IV-E law and regulations in order for the Tribe to access federal reimbursements for Title IV-E related expenditures; and

**WHEREAS**, this Agreement has incorporated all relevant provisions from prior agreements and addenda, expands upon and updates those provisions, and supersedes all prior agreements.

**THEREFORE**, the Tribe and Department agree that this new comprehensive agreement should be signed and substituted for previous agreements and addenda.

**Section 1: Parties**

This Agreement is entered into between the State of North Dakota, by and through Department of Human Services, Child and Family Services Division, 600 East Boulevard, Dept. 325, Bismarck, ND, 58505; and Standing Rock Sioux Tribe, P.O. Box D, Building #1, North Standing Rock Ave., Fort Yates, ND, 58538.

As used herein, "Parties" refers to Tribe and Department.

**Section 2: Purpose**

The purpose of this Agreement is to set the terms, definitions and conditions by which the Parties intend to perform their respective duties and responsibilities, in good faith and with a genuine spirit of cooperation in providing Title IV-E payments to all Title IV-E eligible Tribal children as set forth herein.

**Section 3: Term of Agreement**

- A. This Agreement shall continue in force for a period of two years. Upon expiration, this Agreement shall automatically continue in force until either Party notifies the other Party in writing as specified in this Agreement of its intent to terminate this Agreement as enumerated in Section 17: Agreement Termination.
- B. The completion date of performance for purposes of issuance of final pass-through payment for services is the date upon which Tribe submits to Department reports under this Agreement that have been determined by Department to be satisfactory in form and content for case closure activities as defined in Exhibit 4.
- C. Each Party, for a period of three full federal fiscal years from the completion of the foster care episode, or seven full calendar years after termination of this Agreement, shall retain all records relating to transactions taking place pursuant to this Agreement.
- D. This Agreement shall be reviewed every two years at a mutually agreed upon time and location of all the parties who have signed an Inter-Governmental Title IV-E Agreement. This Agreement may also be reviewed at any time at the written request of either Party.
- E. Monthly calls between the State and all Tribes that have signed an Inter-Governmental Title IV-E Agreement shall be held at mutually agreed upon times, to be determined at least 30 days in advance.

**Section 4: Services and Documents to be Provided**

- A. Department agrees as follows:
  - 1. Department shall provide Title IV-E funding to Tribally licensed/approved eligible providers in accordance with this Agreement and applicable federal and state laws.
  - 2. Department shall pass through Title IV-E federal reimbursement funds available to Tribe for allowable expenditures incurred by Tribe in accordance with applicable federal and state regulations and this Agreement.

3. Upon request by Tribe, Department shall provide Tribe with training, technical assistance and support in order to ensure appropriate claiming of all Title IV-E eligible reimbursements.
4. Department or the authorized agent shall make determinations of Title IV-E eligibility for foster care and subsidized adoption, and eligibility for state subsidized guardianship for children under Tribal Court jurisdiction in a timely manner upon receipt of all required information necessary to make a determination.
5. Department shall notify Tribe of all relevant available training to enhance Title IV-E compliance with federal regulations to the extent such information is not otherwise independently available to Tribe.
6. Department shall provide to Tribe any federal guidance, policy interpretations, information memorandums, and program instructions related to Title IV-E received by Department from the Administration of Children and Families (ACF) Children's Bureau, and other information affecting or impacting this Agreement to the extent such information is not otherwise independently available to Tribe (such as notices of Title IV-E Foster Care Reviews and requests for information).
7. Department shall process fingerprint background checks for tribal foster care providers, prospective subsidized adoptive parents, and subsidized guardianship providers upon receipt of required documents.

B. Tribe agrees as follows:

1. Tribe shall comply with all applicable federal requirements and Attachments 1 through 7, which are incorporated by reference into this Agreement.
2. Tribe shall provide Department all eligibility documentation as required in Attachment 1 for Title IV-E application.
3. Tribe agrees to follow the case plan and case review requirements as required in Attachment 2.
4. All children who are Title IV-E eligible for foster care and all children (including IV-E and 638) receiving subsidized adoption may be eligible for Medicaid (Title XIX). The Tribe may submit an application for Medicaid with the appropriate County Social Service Office

Children who are in foster care under a Tribal Court Order who are not eligible for Title IV-E may be eligible for Medicaid based on the child's legal status, income and resources. The Tribe shall submit an application for Medicaid with the appropriate County Social Services Office.

Medicaid eligibility determinations are administered by the North Dakota Department of Human Services Medical Services Division. Medicaid eligibility determinations follow Medicaid state and federal law. The Department, as defined in this Agreement, has no authority to determine eligibility for Medicaid for any services provided for by this Agreement.

5. Tribe shall provide all documentation required in Attachment 3 to Department for each child whom Tribe refers for a Title IV-E adoption subsidy.
6. Tribe shall provide all documentation required in Attachment 4 to Department for each child whom Tribe refers for a state guardianship subsidy.
7. Tribe shall provide Department all required Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements as outlined in Attachment 5.
8. Tribe shall provide Department with current Tribal Foster Care Licensing Standards (Policies and Procedures), attached as Exhibit 2.
9. Tribe shall provide to Department and the Administration of Children and Families (ACF) the case files, provider files, financial and eligibility documentation, and foster care payment information on children receiving Title IV-E support as necessary for periodic reviews and to ensure Title IV-E compliance. Such reviews are for Title IV-E purposes only and not to measure quality or substance related to case practice. The files shall at all times remain the property of the Tribe and be returned to Tribe immediately upon completion of the review.
10. Tribe shall create and maintain records of the services covered by this Agreement, including financial records, supporting documents and such other records required by law or this Agreement.
11. Tribe shall provide to Department and the Administration for Children and Families (ACF) the financial records to satisfy audit or program evaluation between financial assistance paid by Department under this Agreement and the amounts expended by Tribe, to ensure reportable expenses are allowable costs.

**Section 5: Jurisdiction**

- A. Tribal Court will continue to exercise its jurisdiction over all children as provided for by the Tribal Code and will designate the Tribal Social Service agency as having placement and care responsibility for or custody of those children.
- B. Department agrees that it will provide services to eligible children who are subject to Tribal Court proceedings and give full faith and credit to Tribal Court orders

regarding services to be provided to children under Tribal Court jurisdiction to the same extent and on the same basis that it provides services to other children and families in North Dakota. This shall include access to independent living services under the Chafee Foster Care Independence Program. The exercise of Tribal Court jurisdiction does not mean the withdrawal, decrease, or denial of state or county social services as long as the child remains eligible for services.

- C. Once the Department has begun to provide services to a tribal child under its care and supervision, it shall continue to provide such services after the transfer of the case to the Tribal Court pursuant to the Indian Child Welfare Act, unless and until the Tribe determines that such services are no longer necessary or as long as the child remains eligible for services. Department and Tribe will work together to develop a transfer protocol checklist as outlined in Exhibit 3 to ensure that Tribe has all necessary information pertaining to the case and the family when it exercises its jurisdiction or assumes placement and care responsibility for the child.

#### **Section 6: Tribal Court Orders**

Tribal Court shall include all necessary language in Tribal Court orders that are required for Title IV-E eligibility. In addition, Tribal Court shall order parents whose child has been removed to cooperate with all Tribal, Department and County agencies in providing requested medical and financial information.

#### **Section 7: Service Area**

- A. Tribal Service Area, for the purpose of this Agreement, includes all areas within the Standing Rock Sioux Tribe Reservation and 'near' reservation as defined by the Tribe in Attachment 6. Tribe must submit a service area plan to Department that establishes the service area for the Tribe.
- B. Tribe must submit a support plan as defined by the Tribe in Attachment 7 to Department that outlines how Tribe will provide licensing oversight of tribally licensed foster care providers for any off-reservation homes within the service area as defined by the Tribe in Attachment 6. Tribe will provide case management of all children in tribal custody placed with tribally licensed foster care providers within the service area. Nothing in this section would prohibit the Tribe and County from entering into supplemental agreements to provide for case management oversight of children placed in tribally licensed homes.
- C. Tribe may request, in writing, a change to the service area at any time during the term of this Agreement.
- D. Any changes to the service area or support plan must be submitted in writing within 30 days to Department for inclusion in this Agreement.

**Section 8: Licensing Foster Care Homes and Facilities**

- A. Title IV-E reimbursed maintenance payments may only be made to licensed or approved foster care providers. Department does not have the jurisdiction to license tribal homes or facilities on the reservation.
- B. Department shall recognize the licensure of any foster home or facility on the reservation in accordance with the Adoption and Safe Families Act (ASFA) and the Indian Child Welfare Act (ICWA). Tribe may establish its own licensing standards by Tribal Resolution for foster homes and/or facilities. If Tribe does not have its own licensing standards, Tribe must follow the standards adopted by Department in order for Title IV-E maintenance payments to be made.
- C. Department and Tribe recognize that federal law permits Title IV-E reimbursement for tribally-licensed homes near the reservation as defined by the Tribe (45 C.F.R.1355.20(a); 25 U.S.C. 1931(b)). Tribe agrees and acknowledges that any homes licensed near the reservation may not currently be eligible for any associated state funding for foster care until N.D.C.C. § 50-11-00.1(1) is updated to include 'near' reservation for approved tribal foster care providers and Department agrees to work with Tribe to seek an appropriate amendment to this provision to achieve this goal.

**Section 9: Foster Care, Adoption and Guardianship Reimbursement and Maintenance/Assistance Payments**

- A. Department shall be responsible for paying foster care maintenance payments and subsidized adoption assistance [both the federal and non-federal share] for all Title IV-E eligible children within the jurisdiction and custody of the Tribe as specified by the Tribal Code after the submission of the required paperwork by the Tribe to the County Social Service Office.
- B. Department shall be responsible for paying subsidized guardian assistance for all eligible children within the jurisdiction and custody of the Tribe as specified by the Tribal Code after the submission of the required paperwork by the Tribe to Department and subject to the availability of funding.
- C. Minor improvements to enable a family foster home to meet licensing standards are Title IV-E reimbursable expenses.
- D. Tribe shall be entitled to submit for federal reimbursement through Title IV-E for eligible children placed in a group home or residential facility licensed by Tribe pursuant to its own standards, provided that the facility meets all federal requirements applicable to such facilities and the standards have been adopted by Tribal resolution.

- E. Tribe may choose to exercise the option to continue Title IV-E foster care benefits until the age of 21, pursuant to the 18+ Continued Care Program, provided that the youth meets federal requirements.
- F. If Tribal law allows for adoption without Termination of Parental Rights (TPR), such adoption shall be eligible for adoption assistance payments to the same extent as any other adoption, as provided for in ACYF-CB-PA-01-01 (2001). Tribe agrees to provide a copy of the Tribal Code providing for this type of adoption to the Department and recognizes the child will need to be determined to have “special needs” within the Title IV-E definition in order to qualify for such payments.
- G. In any case where the Tribe makes a maintenance payment directly to a family and the family is subsequently found to be eligible for Title IV-E payments retroactive to a date prior to the time that the tribal payment was made, special arrangements will be made to work with the Tribe directly. For example: Upon notice from the Tribe, Department may mail the authorized payment directly to the Tribal office and not to the foster family in efforts for the Tribe to recoup funds specific to the period of time.
- H. If Department determines that an overpayment or another erroneous or improper payment has been made, Department shall notify the Tribe verbally and send an e-mail follow-up as soon as possible upon discovery. Unless Tribe disagrees, in which case the parties shall negotiate and attempt to resolve the issue, Tribe shall have 90 days from receipt of written notice as contained in the email notification to directly recoup the money from the provider when an overpayment occurs before Department charges Tribe.
- I. If a child is initially found to be IV-E eligible and this determination is later determined to be incorrect or is reversed, the entity responsible for the error making the initial eligibility determination shall be responsible for any repayments that are required. An initial review of the error shall be made by the Department IV-E Eligibility Specialist. A secondary review will be conducted by another Department designee. Every effort will be made between Department and Tribe to reach consensus on the cause of the error. If consensus cannot be reached, the final decision regarding the error rests with the DHS Executive Director or designee.
- J. Department will provide written eligibility determinations within 45 days of receipt of all required eligibility documentation from Tribe.
  - 1. Eligibility claims will not be disallowed based upon the time that it takes to complete submission of required paperwork by Tribe.
  - 2. Tribe acknowledges and accepts that retroactive payments may not be made beyond 90 days on incomplete eligibility applications.

3. Denials will be documented by Department in writing within 45 days of receipt of all required eligibility documentation from Tribe and shall specifically state the reason(s) for denial when that is the determination and provide any documentation relevant to that decision.
4. Until the single point of contact is established, the Tribe may request a review of any denial of eligibility by a county to the Department CFS IV-E Eligibility Specialist within 45 days of receipt of a denial. Department shall issue a decision within 45 days of the request, stating with specificity the reasons for the decision. The determination by the Department shall be binding upon the counties.

**Section 10: Creation of a Tribal-State Work Group**

- A. The State agrees to work with all Tribes that have signed an Inter-Governmental Title IV-E Agreement to create a Tribal-State Work Group to develop plans to implement parts of this Agreement that require further planning.
- B. The terms and activities of the Tribal-State Work Group will be determined by the Parties in a separate agreement: Intergovernmental Title IV-E Work Group Agreement.

**Section 11: Administration Reimbursement**

- A. Department shall pass through Title IV-E reimbursement for Tribal incurred administration costs in accordance with federal regulations and Department policies and procedures.
- B. Examples of allowable administration costs as specified in 45 CFR 1356.60(c):
  1. Referral to services;
  2. Preparation for participation in judicial determinations;
  3. Placement of the child;
  4. Development of the case plan;
  5. Case reviews;
  6. Case management and supervision;
  7. Recruitment and licensing studies of foster homes;
  8. Rate setting;
  9. A proportionate share related agency overhead; and
  10. Costs related to data collection and reporting.
- C. Tribe's administration costs shall be cost allocated based on a Tribal Social Service Agency Time Study. The Time Study definitions and activities shall be revised when enhanced federal reimbursement for new activities are made available.
- D. The allowable administration costs will be further cost allocated based on:



1. The percentage (%) of Native American children in foster care or subsidized adoption, in Tribal custody, that are Title IV-E eligible times (X) (Federal Financial Participation for administration), or
2. The percentage (%) of all children statewide who are in the Departments foster care or subsidized adoption universe that are Title IV-E eligible times (X) (Federal Financial Participation for administration).

**Section 12: Title IV-E Training**

**A. Reimbursement for Tribe Incurred Training Costs**

1. Department shall make Title IV-E federal reimbursement funds available to Tribe for allowable training expenditures incurred by Tribe. These dollars shall be used for the delivery of child welfare training.
2. Title IV-E reimbursement is available for the costs of long- and short-term training of child welfare personnel employed by or preparing for employment by Tribal Social Services. In addition, current or prospective foster or adoptive parents and professional partners (court personnel, tribal, child or parent attorney's, guardian ad litem, approved agencies that provide services to children who are IV-E eligible and court appointed special advocates) shall be eligible for short-term training (including travel and per diem expenses).
3. All training activities and costs reimbursed under Title IV-E shall be included in Department's and Tribe's Title IV-B, "Child and Family Services Plan" and have prior approval of the Department's Children and Family Services Division that the training is reimbursable.
4. The allowable training cost incurred by Tribe will be cost allocated based on:
  - a. The percentage of Native American children in foster care or subsidized adoption in Tribal custody that are Title IV-E eligible times (X) (Federal Financial Participation for training), or
  - b. The percentage of all children statewide in the Department's foster care subsidized adoption universe that are Title IV-E eligible times (X) (Federal Financial Participation for training).
5. Foster parents who provide care for IV-E eligible children shall be given the option of attending either the PRIDE training, the UNITY training, or other foster parent preparation training to which Department and Tribe mutually agree.

**B. Training and Technical Assistance provided by the Department**

1. Upon request by Tribe, Department will assist with training, technical assistance and support in order to ensure appropriate claiming of Title IV-E reimbursements. Training and technical assistance will be provided on-site at a facility designated by Tribe to the extent feasible at times agreeable to Parties.
2. The Department agrees to provide the Tribe on a regular and ongoing basis with information concerning available state child welfare training courses and schedules.
3. Department and Tribe agree to collaborate to develop and provide cultural sensitivity training for child welfare staff that work with Tribe or with Indian children and families coordinated through the Native American Training Institute (NATI) pursuant to a contract with the Department. At least one such training shall be provided each year and every effort will be made to also include this type of training in other trainings being provided by Department based on available funding.
4. Department shall provide to Tribe, federal guidance, policy interpretations, information, memoranda, and program instructions related to Title IV-E received by Department from the Administration of Children and Families, Children's Bureau, and other information affecting or impacting this Agreement to the extent that such information is not independently made available to Tribe.

**Section 13: Reimbursement Process**

- A. Reimbursement for administration and training expenses shall be made on a quarterly basis and is limited to those expenses that are made with funds that are eligible to be matched with Title IV-E.
- B. To receive the administration and training reimbursement on a timely basis, Tribe shall certify its itemized expenses to Department on a form provided by Department by the 15<sup>th</sup> day of the month following the quarter for which the claim is being made. Department shall apply the appropriate federal reimbursement formula, claim the federal reimbursement and pass it through to Tribe.
- C. In any case where any tribal submission for reimbursement is being denied in whole or in part, Department will provide an accounting of what was denied and the reasons for the denial.
- D. In any case where a tribal submission for reimbursement has been approved, but reimbursement will not be sent to Tribe within 30 days of receipt of Tribe's submission to Department, Department will notify Tribe, indicate the reason for the

delay, and provide Tribe with a tentative date by which the reimbursement will be processed.

**Section 14: Access to Child Abuse Registry**

- A. Department agrees to collaborate with Tribe to allow for information from the state child abuse registry to be provided to Tribe. Tribe shall submit SFN 433 (Child Abuse and Neglect Background Inquiry) to request this information.
- B. Tribe acknowledges that the state child abuse registry will not contain information on individuals that have child abuse or neglect findings from tribal entities.

**Section 15: Access to State Funding and Services**

- A. Department agrees to seek funding from the Legislature on par with the Counties that will allow Department to continue to provide funding to Tribe and other tribes that have signed an Inter-Governmental IV-E agreement, with a waiver of the tribal match, from Family Preservation allocated funds.
- B. Department and Tribe agree that after reimbursement of reasonable administrative expenses, a minimum 50% of the enhanced federal reimbursement that is received based upon the use of the Tribal FMAP shall be used to improve the delivery of services to Indian children and families as determined by the Intergovernmental Work Group.
- C. As provided for in the Tribal Work Group Agreement, the Department and Tribe agree to establishing a single point of contact for eligibility determinations and distribution of a minimum 50% of the enhanced federal reimbursements, after allowable deductions as established in this Agreement, as grants to the tribes.

**Section 16: Confidentiality Requirements**

- A. Tribe and Department each acknowledge that, during and after the term of this Agreement, they share an obligation and responsibility to protect confidential consumer and recipient information obtained and used in the performance of this Agreement.
- B. The Parties further agree that the federal Health Insurance Portability and Accountability Act (HIPAA) sets forth the legal authority and standards which guide the process of sharing HIPAA protected, individually identifiable health information.

**Section 17: Agreement Termination**

- A. Either Party may terminate this Agreement only for good cause after complying with Section 19(B).

- B. Party terminating this Agreement shall give written notice of termination to other Party at least 180 days prior to the effective date of termination.
- C. Notice of termination must be given in writing to the individuals listed in Section 18: Service of Notice.
- D. Neither Party may revoke a notice of termination once given, without the express consent of the other Party.
- E. Notwithstanding termination of this Agreement under this section, the Parties shall complete performance per Section 3: Term of Agreement.

**Section 18: Service of Notice**

- A. Standing Rock Sioux Tribe  
Standing Rock Child Protection Services  
Attn: Director/Dawn Bruce, LMSW  
PO Box 740  
Fort Yates, ND 58538-0740  
  
Phone: 701-854-3431  
Fax:  
Email: [aeagle@standinrock.org](mailto:aeagle@standinrock.org)
- B. Department of Human Services  
Child and Family Services Division  
Attn: Lauren Sauer  
600 East Boulevard  
Bismarck, ND 58505  
  
Phone: 701-328-1709  
Fax: 701-328-0358  
Email: [lsauer@nd.gov](mailto:lsauer@nd.gov)
- C. The above-listed persons serve as the primary contacts between the Parties for written notices, consultation, cooperation, dispute resolution, modification and termination.
- D. Parties agree to provide written notice within 10 days of any changes to the above-listed persons. Parties consent that email notice will be considered written notice only for changes to above-listed persons.

**Section 19: Choice of Law, Remedies and Venue**

- A. This Agreement shall be governed and interpreted according to applicable federal laws and regulation, and applicable State of North Dakota laws except as otherwise provided for in this Agreement.

- B. Parties shall first meet and confer in good faith as required by federal law, 42 U.S.C. § 671(a)(32), for the purpose of resolving any disputes that may arise under this Agreement prior to notification of any termination.
  - 1. Parties agree to request a consultation when considering an action with implications for this Agreement. Every effort will be made to give notice at least 30 days prior to scheduling a consultation. Request must contain a description of the topic(s) to be discussed, approximate time needed for consultation, and any potential preferred outcomes.
  - 2. Parties agree when an adverse decision or a dispute arises under this Agreement, an aggrieved Party has the right to request a special meeting to resolve the issue that will include at a minimum the Directors of the Department and a designee from the Tribal Social Services Agency.
- C. Venue shall be in North Dakota State Court.
- D. Any remedies provided by this Agreement are not exclusive and are in addition to any other remedies provided by law.

**Section 20: Scope, Amendment and Interpretation of Agreement**

This Agreement consists of 48 pages, including Attachments 1 through 7 and Exhibits 1 through 4, as incorporated by reference. This is the entire agreement between the Parties.

- A. No statements, promises, or inducements made by either Party or their agents are valid or binding if not contained herein.
- B. This Agreement may not be modified or altered except by written amendment signed by Parties.
- C. If any provision of this Agreement is determined by a court of law to be invalid legally, all other provisions of this Agreement remain in effect and are valid and binding on Parties.
- D. If there is a conflict among documents, pages 1 through 15 of this Agreement shall govern the resolution of the conflict.
- E. To the extent this Agreement or any attachment is based on or contains references to federal regulations, current federal regulations control.
- F. **The Parties agree that this Agreement is not valid or enforceable. This Agreement, without the required Tribal Council Resolution authorization, is not binding upon the Parties. The Parties agree that this Agreement, and the signatories on this Agreement are for the sole purposes of meeting the intent of the State-Tribal Title IV-E Signing Ceremony scheduled Friday, September 6, 2019.**

**Section 21: Insurance**

Tribe agrees to maintain a Commercial General Liability Insurance Policy with a minimum of combined single limits of \$1,000,000 per occurrence. The Tribe's insurance policy shall acknowledge in writing that it will not assert the Tribe's defense of sovereign immunity up to the limits of the policy. However, such endorsement and acknowledgment shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for the amount of any claim above the Policy limits, or for those claims not covered by the Policy, or for any other purpose other than specified above. The Tribe shall provide certificates of insurance to the Department which include written assurance from the insurance carrier that it includes E&O coverage. The Tribe is also required to maintain current certificates on file with the Department and to provide updated certificates upon request. Failure to provide the required certificates of insurance shall constitute a default under this Agreement and upon such failure the Department may, subject to Sections 17 and 19 of this Agreement, terminate the Agreement.

**Section 22: Recoupment:**

- A. Tribe may be responsible for payment of federal sanctions assessed against Department due to Tribe violations of federal requirements under Title IV-E or Title IV-B.
- B. Once Department charges Tribe and following any review process that takes place pursuant to this Agreement, the Tribe shall have 90 days to provide payment to the Department. If after 90 days, the Department has not received reimbursement, the amount owed will be recovered by Department from that portion of the federal funds that would otherwise be distributed to the Tribe to satisfy the repayment obligation.
- C. Department shall recoup sanctions from monies of Title IV-E administrative claims.


**Section 23: Definitions**

- 1. "Consultation" means a deliberative process that aims to create effective collaboration and informed State and Tribe decision-making. Consultation is built upon government-to-government exchanges of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility.
- 2. "Foster Care Payment" is defined as Department base rate foster care payment and payments in excess of the State's basic rate for children placed in out-of-home care under Tribal Court jurisdiction, provided that the special needs of those children require an enhanced level of service, Tribe has determined that the foster home has the skill and training needed to provide an enhanced level of care, and Department has determined foster child is eligible for enhanced foster care payment.

3. "Improper or erroneous payments" means payments made in error that result in an underpayment or overpayment.
4. "Special needs" within the meaning of Title IV-E to qualify for adoption assistance is a child who is available for adoption as defined by Tribe, that cannot or should not be returned to the home of their parents.
5. "Title IV-E eligible tribal child/ren" means child/ren placed within the tribally designated service area who are under the jurisdiction of the tribe.


This Agreement is effective upon the last date of execution of this Agreement by all Parties through their authorized agents on the dates set out below:

STANDING ROCK SIOUX TRIBE

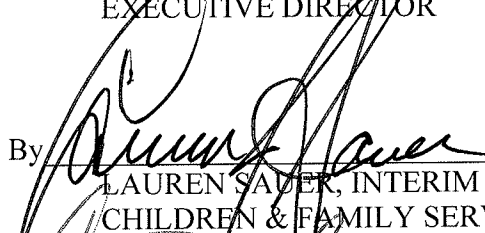
By   
 MIKE FAITH  
 STANDING ROCK TRIBAL CHAIRMAN

9-6-19  
 DATE


STATE OF NORTH DAKOTA  
 NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By   
 CHRISTOPHER D. JONES  
 EXECUTIVE DIRECTOR

9-6-19  
 DATE

By   
 LAUREN SAUER, INTERIM DIRECTOR  
 CHILDREN & FAMILY SERVICES (CFS)

9-6-19  
 DATE

  
 Director - CFS DHS 2/27/20  
 DATE

*All Documents received & agreement in full effect as of 2/27/20* CF

**Attachment 1** - This process shall be utilized until the single point of contact for eligibility is implemented pursuant to the Agreement.

<b>Tribal Title IV-E Foster Care Eligibility &amp; Ongoing Paperwork Requirements</b>	
<b>Event</b>	<b>Process &amp; Procedure</b>
<p><b>Child placed in Tribal Custody and removed from the custodial home</b></p>	<p>Tribal Case Manager Must Provide:</p> <ol style="list-style-type: none"> <li>1. Copy of the removal court order, incorporated petitions/affidavits and subsequent orders issue up until the submission of the below paperwork.</li> <li>2. Completed the SFN 630 – Placement Notification.</li> <li>3. Completed SFN 641 –Foster Care Application. Completed by parent/legal guardian of removal home or case manager if no cooperation from family.</li> <li>4. Copy of Foster Home License or Tribal Affidavit Approval:               <ol style="list-style-type: none"> <li>a. SFN 890 Affidavit licensing form</li> <li>b. SFN 400 Foster Care applicant information</li> <li>c. Initial BCI and FBI Background Checks (2 forms).</li> </ol> </li> </ol> <p><i>Tribe must provide a complete packet of paperwork to the County to determine eligibility of the child <b>within 45 days of entry into foster care</b>. The county has 45 days to review and determine the information.</i></p>
<p><b>ELIGIBILITY DETERMINATION:</b></p> <p><b>NDDHS/County worker will determine eligibility for each tribal case provided. The worker determining eligibility will respond to Tribe within 45 days with:</b></p> <ol style="list-style-type: none"> <li>1. Final Determination with a copy of:           <ol style="list-style-type: none"> <li>a. Letter indicating the determination.</li> <li>b. SFN 869 – Title IV-E Initial Eligibility Worksheet.</li> <li>c. If case is IV-E, the Tribe will receive a copy of SFN 870 – Title IV-E Reimbursability form.</li> </ol> </li> <li>2. If documents are missing to determine eligibility, the state/county will notify Tribal Case Manager in writing to request missing documents needed to determine eligibility.</li> </ol>	
<p><b>Cases that are IV-E - Maintaining Foster Care</b></p> <p><i>Note: The foster care program will be closed if the child moves to a non-reimbursable placement and the court order expires. The ND FRAME case will still require an updated care plan and face to face case activity notes covering the months the case remained open.</i></p>	<p>Tribal Case Manager Must Provide:</p> <ol style="list-style-type: none"> <li>1. Ongoing subsequent court orders and incorporated petitions/affidavits in a timely manner.</li> <li>2. Ongoing updated SFN 45 – Notice of Change for all placement changes and foster care program closings. An SFN 45 is also required when a child remains in tribal custody but is moved to a non-reimbursable foster care placement resulting in the county will no longer being responsible for payment and maintenance of the FRAME case.</li> <li>3. Ongoing written approvals for irregular payments.</li> <li>4. Ongoing itemized receipts from foster care providers for approved irregular payments.</li> <li>5. Monthly bill/invoice from PATH and group home providers.</li> <li>6. Monthly Face to Face visit dates.</li> <li>7. Quarterly care plan/Child and family team meeting notes.</li> </ol>



Event	Process & Procedure
<p><b>IV-E Case Closing</b> <i>due to non-foster care placement or discharge from foster care</i></p>	<p>Tribal Case Manager Must:</p> <ol style="list-style-type: none"> <li>1. Notify county agency of case closing/child's move to a non-paid placement with a completed SFN 45.</li> <li>2. Provide county agency with final care plan for entry and approval in FRAME.</li> <li>3. Provide regional office with dates of face to face visits through closing month.</li> </ol>
<p><b>Tribal Custody – Child originally in a non-reimbursable home (relative), later the child enters a reimbursable placement (licensed home) under the same foster care episode:</b></p> <ul style="list-style-type: none"> <li>• <i>Tribe has maintained Care, Custody and Placement authority since initial removal.</i></li> <li>• <i>Eligibility was determined upon entry into care.</i></li> </ul>	<p>Tribal Case Manager Must:</p> <ol style="list-style-type: none"> <li>1. Notify county of case reopening/child's placement into a paid foster care placement with a completed SFN 45.</li> <li>2. Provide county with a timeline of placements since removal for eligibility worker foster care file.</li> <li>3. Provide county with court orders from the time case was closed in FRAME until placement into a payable foster care setting.</li> <li>4. Provide county with the most current care plan/child and family team meeting notes.</li> <li>5. Provide county with an Irregular Payment Approval Sheet for the new provider if applicable.</li> </ol>
<p><b>Gap in Agency Custody:</b></p> <p><i>A review of the reason and circumstances surrounding a gap in custody/between orders is required on a case by case basis to determine if the foster care placement requires a new removal and new foster care episode or placement can still be considered part of the original foster care episode.</i></p>	<p>Tribal Case Manager Must:</p> <ol style="list-style-type: none"> <li>1. Notify the regional office off the court order gap.</li> <li>2. Depending on the decision if case will continue in the same foster care episode or if a new removal is required, case manager will provide a copy of the court order reestablishing custody or obtain a new removal and eligibility paperwork for a new determination.</li> </ol> <p><i>NOTE: If the lapse in custody results in non-compliance with case management requirements or court requirements, a new court order removal, new eligibility paperwork and a new determination is required. *** In the case of a new determination, the case cannot be determined IV-E eligible if the length of time when the child last lived with the specified relative exceeds six months.</i></p>

**Title IV-E Care Plan & Case Review**

**1. Title IV-E Case Plan Requirements**

The following must be met for each child:

- A. Be a written document which is a discrete part of the case record, in a format determined by the Tribe, which is developed jointly with the parent(s) or guardian of the child in foster care (*45 CFR 1356.21(g)(1)*); and
- B. Be developed within a reasonable period, to be established by the Tribe, but in no event later than 60 days from the child's removal from the home (*45 CFR 1356.21(g)(2)*); and
- C. Include a plan for assuring the child receives safe and proper care and services are provided to the parents, child, and foster parents in order to improve the conditions in the parent(s) home, facilitate the child's return to their own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan (*42 U.S.C. 675(1)(B)*); and
- D. Include plan for assuring that 95% of all children in foster care will have (at a minimum) monthly face-to-face visits to address safety, permanency, and well-being concerns, at least 50% of which will be at the child's primary residence, and that the Tribe will provide reports to the Department documenting the visits which include at a minimum the name of the child, foster care start date, date of the visit, location of the visit and the name of the staff member who visited the child; and
- E. Include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child (*45 CFR 1356.21(g)(3)*); and
- F. Include a description of the type of home or institution in which the child is to be placed (*42 U.S.C. 675(1)(A)*); and
- G. Include a discussion of the appropriateness of the placement and how the responsible agency plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with (*672(a)(1) of the Act 42 U.S.C. 675(1)(A)*); and
- H. Be designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home consistent with the best interest and special needs of the child (*42 U.S.C. 675(5)(A)*); and
- I. Include reasons for why the placement is in the best interests of the child if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a state different from the state in which the home is located (*42 U.S.C. 675(5)(A)(i)*); and
- J. Include a requirement that periodically, but not less frequently than every 3 months (quarterly), a caseworker in the state where the parents live visit the child in the home or institution and submit a report on the visit to the agency of the state where the parents reside if the child has been placed in foster care outside the state in which the home of the parents of the child are located; and
- K. Include, the health and education records of the child, including the most recent information available regarding:
  1. The names and addresses of the child's health and educational providers;

2. The child's grade level performance;
  3. The child's school record;
  4. Assurances that the child's placement in foster care considers proximity to the school in which the child is enrolled at the time of placement;
  5. A record of the child's immunizations;
  6. The child's known medical problems;
  7. The child's medications; and
  8. Any other relevant health and education information concerning the child determined to be appropriate by the Tribe (*42 U.S.C. 675(1)(C) &(G)(i)*); and
- L. Include a plan for ensuring the educational stability of the child while in foster care, including assurances that each placement of the child in foster care considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement: and
1. An assurance that the Tribe has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure the child remains in the school in which the child is enrolled at the time of each placement; or
  2. If remaining in such school is not in the best interests of the child, assurances by the Tribe and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all the educational records of the child provided to the school (*42 U.S.C. 675(1)(G)*); and
- M. Where appropriate, for a child 14 or over, include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living (*42 U.S.C. 675(1)(D)*); and
- N. Youth age 14 and older will be able to have two approved members of their choosing (not the youth's foster parent or case worker), to participate as a member of the case planning team. The Tribe has the right to reject an individual selected by the youth if the Tribe has good cause to believe that the individual would not act in the best interests of the youth; and
- O. The case plan for any child in foster care under the responsibility of the Tribe who has attained 14 years of age shall include (*42 U.S.C. 675a (b)*):
1. A document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents specified in section (*42 U.S.C. 675(5)(I)*) in accordance with that section, and the right to stay safe and avoid exploitation; and
  2. A signed acknowledgment by the child that the child has been provided with a copy of the document and that the rights contained in the document have been explained to the child in an age-appropriate way; and
- P. Include documentation regarding the steps the Tribe is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship for child whom the permanency plan is adoption or placement in another permanent home. When the case plan goal is adoption, at a minimum, such documentation shall include child specific recruitment efforts such as the use of state, regional,

and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state and interstate placements (42 U.S.C. 675(1)(E)); and

- Q. If the Tribe has determined that there is a compelling reason not to file a petition for termination of parental rights for a child who has been placed out-of-home for 15 out of the last 22 months, the compelling reason must be available for court review (42 U.S.C. 675(5)(E)(ii)); and
- R. The Tribal agency applies procedural safeguards with the respect to each child in foster care under supervision of the state which assures that (42 U.S.C. 675(5):
  - 1. A dispositional hearing is held in a tribal court of competent jurisdiction or by an administrative body appointed or approved by the Court, no later than 12 months after the original placement (and periodically thereafter during the continuation of foster care); and
  - 2. The dispositional hearing determines the future status of the child including whether and, if so, when the child should be returned to the parent (s), be placed for adoption, referred for legal guardianship, placed with a relative, or because of the child's special needs or circumstances, be continued in another planned permanent living arrangement; and
  - 3. Procedural safeguards are applied with respect to parental rights pertaining to a removal of child from his or her parents' home, a change in the child's placement, and any termination effecting visiting privileges of the parents.

S. Additional Case Plan Requirements for IV-E eligible Children Turning 18:

Child turning 18: During the 90-day period immediately prior to the date on which the child will attain 18 years of age, whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under section 42 U.S.C. 677, a caseworker on the staff of the Tribe, and as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that:

- 1. Is personalized at the direction of the child;
- 2. Includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services;
- 3. Includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State/Tribal law to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under State/Tribal law; and
- 4. Is as detailed as the child may elect (42 U.S.C 675(5)(H)).

**2. Title IV-E Case Review Requirements**

The following must be met for each child:

- A. A review of each child's status must be made no less frequently than once every three months either by a court or by an administrative review to:
  - 1. Determine the safety of the child, the continuing need for and appropriateness of the placement including proximity to the parent's home, consistent with the best interest and special needs of the child; and
  - 2. Determine the extent of compliance with the case plan; and

3. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and
  4. Determine whether the child has had the opportunity to engage in “age or developmentally-appropriate activities”; and
  5. Project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship (*42 U.S.C. 675(5)(B)*).
- B. If an administrative review is conducted:
1. The review must be open to the participation of the parents of the child; and
  2. The review must be conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of, or delivery of services to either the child or the parents who are the subject of the review (*42 U.S.C. 675(6)*); and
  3. One of the members of the panel shall be a representative of Department.
- C. The Tribe must hold permanency hearings for all children under the responsibility for placement and care of the Tribal Title IV-E/IV-B agency, including children for whom the Tribe claims federal reimbursement for the costs of voluntary foster care maintenance payments (*45 CFR 1356.21(h)* & *42 U.S.C. 675(5)(C)*).
- D. The permanency hearing must take place within 12 months of the date the child is considered to have entered foster care (as defined within the meaning of *675(5)(F)*) and not less frequently than every 12 months thereafter during the continuation of foster care (*45 CFR 1356.21(h)* & *42 U.S.C. 675(5)(C)*).
- The federal definition of the date a child is considered to have entered foster care on the earlier of:
1. The date of the first judicial finding that the child has been subjected to child abuse or neglect; or
  2. The date that is 60 days after the date on which the child is removed from the home (*45 CFR 1355.20(a)* & *42 U.S.C. 675(5)(F)*).
- E. When a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required (*45 CFR 1356.21(h)(2)* & *42 U.S.C. 671(a)(15)(E)(i)*).
- F. A permanency hearing shall determine:
1. The permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, or
    - Placed for adoption and the Tribe will file a petition for termination of parental rights, or
    - Referred to legal guardianship, or
    - In cases where the Tribe has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or
    - Be placed for adoption, with a fit and willing relative, or with a legal guardian placed in another planned permanent living arrangement.
  2. In the case of a child who will not be returned to the parent, the hearing shall consider in-state and out-of-state placement options.

3. In the case of a child placed out of the state in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.
  4. In the case of a child who has attained age 14, the services needed to assist the child to make the transition from foster care to successful living (*45 CFR 1356.21(b)(3)*; *42 U.S.C. 675(5)(C)*; & *42 U.S.C. 671(a)(15)(E)(i)*).
- G. In any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to successful living, procedural safeguards shall be applied to assure the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child (*45 CFR 1356.21(b)(3)*; *42 U.S.C. 675(5)(C)(iii)*; & *42 U.S.C. 671(a)(15)(E)(i)*).
  - H. Procedural safeguards are also to be applied with respect to parental rights pertaining to the removal of the child from the home of his/her parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents (*42 U.S.C. 675(5)(C)(ii)*).
  - I. If the Tribe concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the Tribe will document to the court the compelling reason for the alternate plan (*45 CFR 1356.21(h)(3)*).
  - J. In the case of any child for whom another planned permanent living arrangement is the permanency plan determined for the child under section (*42 U.S.C. 675(5)(C)*), the following requirements shall apply for purposes of approving the case plan for the child and the case system review procedure for the child (*42 U.S.C. 675a (a)*):
    1. Documentation of intensive, on-going, unsuccessful efforts for family placements. At each permanency hearing held with respect to the child, the Tribe documents the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the Tribe to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the children.
    2. Redetermination of appropriateness of placement at each permanency hearing. The Tribe shall implement procedures to ensure that, at each permanency hearing held with respect to the child, the court or administrative body appointed or approved by the court conducting the hearing on the permanency plan for the child does the following:
      - a. Ask the child about the desired permanency outcome for the child.
      - b. Make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to:
        - (i) Return home;
        - (ii) Be placed for adoption;
        - (iii) Be placed with a legal guardian; or
        - (iv) Be placed with a fit and willing relative.

3. Demonstration of support for engaging in age or developmentally appropriate activities and social events. At each permanency hearing held with respect to the child, the Tribe shall document the steps the Tribe is taking to ensure that:
    - a. The child's foster family home or childcare institution is following the reasonable and prudent parent standard; and
    - b. The child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities).
- K. The Tribe will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s) (*45 CFR 1356.21(i)(1)* & *42 U.S.C. 675(5)(E)*):
1. For a child who has been in foster care under the responsibility of the Tribe for 15 of the most recent 22 months, the petition must be filed by the end of the child's 15th month in foster care. In calculating when to file a petition for termination of parental rights, the Tribe (*45 CFR 1356.21(i)(1)(i)*):
    - Will calculate the 15 out of the most recent 22-month period from the date the child entered foster care as defined at section *675(5)(F)* of the Act;
    - Will use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22-month period;
    - Will not include trial home visits or runaway episodes in calculating 15 months in foster care.
  2. For a child who has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under Tribal law), the petition to terminate parental rights is filed within 60 days of the judicial determination that the child is an abandoned infant (*45 CFR 1356.21(i)(1)(ii)*).
  3. For a child whose parent has been convicted by a court of competent jurisdiction of one of the following felonies, the petition must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required:
    - Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
    - Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
    - Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or
    - A felony assault that results in serious bodily injury to the child or another child of the parent (*45 CFR 1356.21(i)(1)(iii)*).
- L. The Tribe may elect not to file or join a petition to terminate the parental rights of a parent if (*675(5)(E)* and *45 CFR 1356.21(i)(1)(i)*):
1. At the option of the Tribe, the child is being cared for by a relative;

2. The Tribe has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child; or
  3. The Tribe has not provided to the family, consistent with the time period in the case plan, services that the Tribe deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required (*45 CFR 1356.21(i)(2)*).
- M. When the Tribe files or joins a petition to terminate parental rights, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child (*45 CFR 1356.21(i)(3)*).
- N. When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of permanency hearing will be extended by the administrative body (*45 CFR 1356.21(h)(4)*).
- O. A child's health and education records are:
1. Reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care; and
  2. Supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority (*42 U.S.C. 675(5)(D)*).
- P. Each child in foster care under the responsibility of the Tribe who has attained 14 years of age receives without cost a copy of any consumer report of the Fair Credit Reporting Act pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report. (*42 U.S.C. 675(5)(I)*).
- Q. Each child who exits foster care by reason of having attained 18 years of age or determined by the Tribe, unless the child has been in foster care for less than 6 months, will be provided (if the child is eligible to receive such document) an official or certified copy of the United States birth certificate of the child, a social security card issued by the Commissioner of Social Security, and a driver's license or identification card issued by a State of Alaska. (*42 U.S.C. 675(5)(I)*).
- R. The Tribe must provide the foster parent(s) of a child and any pre-adoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case (*45 CFR 1356.21(o) & 42 U.S.C. 675(5)(G)*).



**Attachment 3**

**Title IV-E Subsidized Adoption**

*In order to receive a Title IV-E subsidized adoption, all children must meet the eligibility requirements outlined below.*

The Title IV-E subsidized adoption encourages and promotes the adoption of children with special needs out of the Tribal foster care system. Subsidized adoption provides medical and financial assistance to adoptive families when such assistance is necessary to ensure the health and welfare of children with special needs who meet the eligibility requirements.

The federal adoption subsidy benefits may include:

- A monthly payment to the adoptive parents on either a short or long-term basis, to assist the adoptive family with meeting the ordinary special needs costs for the child;
- Medicaid coverage for the adoptive child; and
- Reimbursement for non-recurring costs for the finalization of the adoption.

1. **General Adoption Requirements:** In order for a child to qualify for a federal adoption subsidy the child must have:

- A. A determination of special needs; and
- B. A determination of eligibility for Title IV-E adoption subsidy; and
- C. The adoptive parent(s) must have an approved home study that includes fingerprint-based criminal records checks and child protection checks on the adoptive parent(s) and other adults living in the home.

Applicable Child: The requirements differ for the determination of special needs and for the eligibility determination, depending on whether the child is an “applicable child.” The term “applicable child” means:

- A child for whom an adoption assistance agreement is entered into during any federal fiscal year listed below if the child attained the applicable age for that fiscal year before the end of that fiscal year. The applicable age for a fiscal year is as follows:

In the case of fiscal year:	The applicable age is:
2010 (10/1/09-09/30/10)	16
2011 (10/1/10-09/30/11)	14
2012 (10/1/11-09/30/12)	12
2013 (10/1/12-09/30/13)	10
2014 (10/1/13-09/30/14)	8
2015 (10/1/14-09/30/15)	6
2016 (10/1/15-09/30/16)	4
2017 (10/1/16-09/30/17)	2
2018 (10/1/17-12/31/17)	Any age
2018-2025 (01/01/18-09/30/25)	2
2026 (10/1/25 or later)	Any age

or

- Beginning 10/1/09 a child of any age who:
  1. Has been in foster care under the responsibility of the State and/or Tribe for at least 60 consecutive months; and
  2. Meets the “eligibility requirements for an applicable child” as defined in this attachment;or
- Beginning 10/1/09 a child of any age who:
  1. Is a sibling of a child who is an applicable child for the fiscal year;
  2. Is to be placed in the same adoption placement as an applicable child for the fiscal year who is their sibling; and
  3. Meets the “eligibility requirements for an applicable child” as defined in this attachment.

2. **Special Needs Determination for Adoptions:** Requirements A, B, and C below must be met for a child to be determined as a special needs’ child eligible for an adoption subsidy or for reimbursement of non-recurring adoption expenses:

- A. A reasonable, but unsuccessful, effort has been made to place the child without providing a subsidy except where it would be against the best interest of the child due to such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child. Documentation of these efforts includes, but is not limited to, documentation that the adoptive parent(s) have been asked whether they are willing to adopt without a subsidy, and they say they cannot adopt the child without a subsidy. The reasonable efforts to place without a subsidy must be documented in the child’s file, and
- B. Tribe has documented, and the Department has determined that a specific factor or condition exists that makes it difficult for a child to be placed for adoption without adoption assistance. Factors and conditions may include:
  1. Ethnic background;
  2. Age;
  3. Membership in a minority or sibling group;
  4. The presence of factors such as medical conditions or physical, mental, or emotional handicaps; or
  5. High risk of such factors e.g. due to alcohol or cocaine being present when the child was born or mental illness of the child’s parent(s); and
- C. The Department or Tribe has determined that the child cannot or should not be returned to the home of her or his parents.

3. **Title IV-E Adoption Eligibility Requirements**

- A. Eligibility Requirements for an Applicable Child: An applicable child is eligible for a Title IV-E adoption subsidy if it has been determined that the child is a special needs child, as defined above, and the child is either a United States citizen or a qualified alien, and one of the following situations applies:
  1. Removed Based on Court Order:
    - a. At the time of initiation of adoption proceedings, the child was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to an involuntary removal of the child from the home in accordance with

- a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
    - b. Prior to the finalization of the adoption, it is determined that the child is a child with special needs; or
  - 2. Eligible Due to Prior Eligibility for a Title IV-E Adoption Subsidy:
    - a. The child is adopted and receives Title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die;
    - b. The child is SSI eligible;
    - c. The child is a child of a minor parent that receives increased IV-E maintenance to cover the cost of the child in foster care; and
    - d. Prior to signing the subsidy agreement for the subsequent adoption, it is determined that the child is a child with special needs.
- B. Eligibility Requirements for a Child who is Not an Applicable Child: A child who is not an applicable child is eligible for a Title IV-E adoption subsidy if it is determined that the child is a special needs child, as defined above, and the child is either a United States citizen or a qualified alien, and one of the following situations applies:
  - 1. Relinquished to the Tribe:
    - a. The child has been placed with the Tribe via a voluntary relinquishment from the parents; and
    - b. The child was not already in Tribal custody at the time of the relinquishment; and
    - c. The child lived with the parent or other specified relative as defined in most current Aid to Families with Dependent Children (AFDC) Manual, within six months of the most recent removal from home; and
    - d. The Tribe petitions the court within six months of the child living with the specified relative and obtains a judicial determination to the effect that remaining in the home would be contrary to the child's welfare. (Note: If the court merely sanctions the voluntary relinquishment without making a determination that it is contrary to the child's welfare to remain in the home, the child is not eligible for Title IV-E adoption assistance); and
    - e. The child would have been eligible for AFDC, per the requirements in the most current AFDC Manual, in the home of the specified relative at the time of the petition for a judicial determination; and
    - f. Prior to the finalization of the adoption, it is determined that the child is a child with special needs; or
  - 2. Removed Based on Court Order:
    - a. The child was removed from the home of a parent or other specified relative (i.e. a relative by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child) who is the child's legal guardian pursuant to a judicial determination that it was contrary to the child's welfare to remain in the home (reasonable efforts findings are not included in the eligibility requirements for a Title IV-E adoption subsidy) (Note: for children who were removed from home prior to 1/23/01 the judicial determination of contrary to the welfare must be made within six months of the removal from home; and for children removed

from home on or after 1/23/01 the judicial determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. If, for children removed on or after 1/23/01, the determination is not made in the first court ruling pertaining to removal from the home, the child is not eligible for Title IV-E adoption assistance); and

- b. The child lived with the specified relative within six months of the most recent removal from home; and
  - c. The child would have been eligible for AFDC, per the requirements in the most current AFDC Manual, in the home of the specified relative in the month that court proceedings were initiated which led to the removal; and
  - d. Prior to the finalization of the adoption, it is determined that the child is a child with special needs; or
3. Eligible Due to Prior Eligibility for a Title IV-E Adoption Subsidy:
- a. The child is adopted and receives Title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, and
  - b. Prior to signing the subsidy agreement for the subsequent adoption, it is determined that the child is a child with special needs.

4. **Background Checks Requirements for Adoptive Parents**

A. Federal law requires the following background checks:

- 1. Fingerprint-based criminal records checks must be completed for prospective adoptive parents.
- 2. If a name-based criminal background check is done due to rejected fingerprint cards and the fingerprints were rejected solely because the fingerprint impressions were of low quality due to lack of technological capacity or use of improper techniques, the federal requirement for a criminal background check is not met and a federal adoption will not be approved.

B. Federal law prohibits Title IV-E reimbursement for adoption costs for a child who is placed in an adoptive home where a prospective adoptive parent has committed any of the following crimes:

- 1. A felony conviction at any time for child abuse or neglect; spousal abuse; a crime against children (including child pornography); a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or
- 2. A felony conviction within the past 5 years, for physical assault, battery, or a drug-related offense.

C. Child and abuse registry checks must be completed for prospective adoptive parents in each state where the prospective adoptive parents have lived in the preceding five years.

5. **Application and Eligibility Determination Process**

A. Requesting a Subsidy:

The request for an adoption subsidy shall be made by the child's Tribal social worker on behalf of the child. The Tribal worker shall submit required documents to the county social services office and to Department. If an adoptive home study is not included with the supporting documentation, the Tribal worker will ensure that the background check information has been completed and submitted for the adoptive parents prior to submitting the request.

B. Subsidy Eligibility Determination

The Department IV-E Eligibility Specialist or other designee will determine whether the child is eligible for a Title IV-E adoption subsidy and document the determination. Department will notify the Tribal worker the outcome of the determination.

6. **Subsidy Negotiation and Agreement:** The subsidy amount must be negotiated, and the subsidy agreement must be approved and signed by the Department Director or designee, the county social services office and the prospective adoptive parents prior to finalization of the adoption.

A. Subsidy Negotiation

1. Once it has been determined that the child is eligible for a Title IV-E adoption subsidy, the amount of the monthly subsidy is negotiated between the county social services office and the adoptive parent(s).
2. The subsidy amount is individualized to each specific child being considered and consistency between families is not a factor. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child and family situation may result in different amounts of payment.
3. All adoptive subsidies must be individually negotiated and agreed-upon with the Department, the county social services office and the adoptive family based on:
  - a. The identified special needs of the child;
  - b. The costs associated with meeting these special needs; and
  - c. The family's existing circumstances and resources, which may assist with meeting the child's special needs.
4. In no case can the amount of the monthly subsidy payment exceed the foster care rate for which the child would be eligible in the state where the child resides, including augmented or specialized foster care rates, if applicable.
5. The amount of the subsidy payment is arrived at through an analysis of the child's needs and the family's ability to meet those needs on an ongoing basis. It is the child who is eligible for the subsidy, not the adoptive family; therefore, a means test for potential parents may not be used as a basis for eligibility for subsidy payments.
6. Once a subsidy agreement is in effect, the parent(s) can spend the subsidy in any way they see fit to incorporate the child into their lives. Department does not require an accounting of how the subsidy is spent.

B. Adoption Subsidy Agreements

1. Once an agreement is reached about the subsidy amount, the prospective adoptive parents, county social services office, and Department will sign the Title IV-E Adoption Subsidy Agreement. The agreement is a written document which is binding on the parties and which is between Department, county social services office as a designee of the department, and the adoptive parent(s). The agreement must be signed by all parties prior to the final decree of adoption.
2. In order for an adoption subsidy to be provided, an agreement must be completed for every adoption of a child with special needs who meets eligibility criteria. The completed form will verify the child's eligibility and enable negotiation of a future subsidy, if necessary.
3. For adoptions, subsidy cash payments and Medicaid may begin after the subsidy agreement has been signed and prior to finalization of the adoption.

C. Termination of a Subsidy Agreement

1. Adoption subsidy payments may terminate when the child reaches age 18, but no later than age 21. Payments must terminate if the parents cease supporting the child prior to age 18 or if the parents are no longer legally responsible for the child, and the parents must inform the agency if they become ineligible for further payments. The conditions under which a subsidy agreement may be unilaterally terminated are when:
  - a. The State determines that the parents are no longer legally responsible for the child;
  - b. The State determines that the child is no longer receiving any support from such parents; or
  - c. With the death of the adoptive parents and/or the death of the adopted child.
2. Adoptive parents are required to inform Department of circumstances that would make them ineligible to continue to receive adoption subsidy payments or eligible to receive those payments in a different amount.

**D. Modification of a Subsidy Agreement**

The subsidy amount may be readjusted periodically, with the concurrence of the adoptive parent/guardian, based on the child's changing needs and the circumstances of the adoptive parent/guardian. An adoptive parent/guardian who wants to renegotiate the subsidy amount should contact Department.

**7. Non-Recurring Adoption or Guardianship Expenses**

All special needs children for whom a Title IV-E adoption subsidy agreement has been signed are eligible for reimbursement of non-recurring adoption expenses, up to a \$2,000 limit. These expenses may include attorney's fees, court costs, adoption/guardian home study fees, costs of pre-placement visitation and travel, and other one-time expenses directly related to the adoption. Payment for non-recurring costs cannot be made until after the adoption is finalized, therefore, if the adoption is not finalized, non-recurring expenses cannot be paid. The adoptive parent(s) must provide Department a copy of the decree of adoption and bills or receipts for all claimed expenses for reimbursement to occur. The adoptive parent must be reimbursed directly.

**8. Medicaid Based on the Subsidy**

The medical needs of a child approved for a Title IV-E adoption subsidy are met through the Medicaid program. Medicaid for adoption will be opened when the subsidy agreement has been signed. Medicaid for children with a Title IV-E adoption subsidy is handled by the applicable county social services office.

**9. Appeal and Fair Hearings**

The Department must grant an opportunity for a fair hearing before the Department to any individual whose claim for Title IV-E adoption benefits is denied or is not acted upon with reasonable promptness. Grounds for a fair hearing include:

- A. Relevant facts regarding the child were known by the Tribe/State agency or child-placing agency and not presented to the adoptive parents prior to the finalization of the adoption;
  - B. Denial of assistance based upon a means test of the adoptive;
  - C. Adoptive family disagrees with the determination by the State that a child is ineligible for adoption;
  - D. Failure by the Tribe/State agency to advise potential adoptive parents about the availability of adoption assistance for children included in the Tribal IV-E Maintenance Pass through Program;
  - E. Decrease in the amount of adoption assistance without the concurrence of the adoptive parents;
- and

F. Denial of a request for a change in payment level due to a change in the adoptive parent(s) circumstances.

10. **Adoption Subsidy Process for Tribal Custody Children/ Tribe Doing the Adoption Work**

A child in Tribal custody is eligible for adoption subsidy if the child is determined to be IV-E eligible at the time of the initial removal from the home and the child is determined to be a child with special needs, or

A child in Tribal Custody who is not IV-E eligible in foster care but is determined to be a child with “special needs” and who may convert to IV-E eligible based on the “applicable child” provision of P.L.110-351.

The following steps must be completed prior to the finalization of the adoption of the child. Should you have questions, please contact Department Adoptions Administrator. All forms noted below are available on the State’s e-forms web site, which can be accessed at the following link:

<http://www.nd.gov/eforms/>.

- A. Special Needs Designation: To facilitate a designation of “special needs” for the purposes of adoption subsidy (also referred to as the 1084 packet), all of the following information is sent to the Administrator of Adoption Services, ND Department of Human Services. *You will want to have copies of all this information, as it will become the basis for your adoption assistance packet to the county.*
1. Completed and signed SFN 1084.
  2. Copy of family’s current adoption assessment/ home study and criminal background checks that clear the adoptive parents and any adult living in the home for the purposes of adoption.
  3. Copy of Termination of Parental Rights Order or Suspension of Parental Rights of the Tribal Court, unless the child can be adopted in accordance with Tribal law without a TPR or relinquishment. If there is a suspension of parental rights, you must include documentation as to the valid reason the child cannot or should not be returned to the home of his or her parents and copies of the Tribal statute that allow for such a customary adoption.
  4. Child Social History and additional information related to Tribal Social Service involvement.
  5. Copy of the Birth Certificate.
  6. Medical or psychological information that documents the child’s mental, physical or emotional special needs.
  7. Permanency Planning Report(s) – the most recent available.
  8. Birthparent History forms.
  9. Copies of any other court orders other than TPR.
  10. Any other miscellaneous items in the file that is child specific.
- B. Adoption Subsidy Application: To facilitate an adoption subsidy request, all the following information is sent with a memo of request addressed to the County Director or their designee at the County Social Services Office. *Note that much of the information requested in B is duplicative of that in A. We maintain two files, so this duplication is necessary.*

Two packets of the information (one for the county and one for the State) are mailed to the County that the adoptive parents reside in or the county with financial responsibility, if the child is placed with a family out-of-state. The County will negotiate the subsidy amount with the family, and forward to the Department for final review, along with the second packet of documentation.

1. SFN 1084 (Returned and signed by State Adoption Administrator)
  2. SFN 854 (Completed by the Tribal worker)
  3. If the child's care is being paid through 638 funds, a statement from the Tribe regarding the amount the tribe is reimbursing the foster parents for the child's care.
  4. SFN 869 if such a determination has been made for the purposes of foster care and if not, a statement as to the Tribes responsibility for foster care payments).
  5. The initial removal order that placed the youth in foster care and upon which the foster care eligibility determination was made.
  6. SFN 1865 (Completed by case worker if the subsidy amount being requested is more than the regular foster care rate for the age of the child).
  7. Copy of TPR or other as noted above.
  8. Child social history.
  9. Copy of birth certificate.
  10. Copy of family's adoption assessment/ home study with criminal background check clearances for adoption purposes for all adults living in the adoptive home.
  11. Medical records of the child, including any that support the designation of "special needs" for the purposes of adoption assistance.
  12. Child and Family Team Meeting reports.
  13. Birth parent history.
  14. Letter from the Attorney documenting the cost for finalization.
  15. Receipts of expenses for requested one-time reimbursement.
  16. Any other miscellaneous items in the file that is child specific.
- C. Adoptive Placement: In Tribal cases, the adoptive placement may occur on the date of or before the adoption is finalized in a court of law, but after adoption subsidy has been negotiated.
1. Subsidy payments may begin at the point of adoptive placement.
  2. Adoptive placement may also occur at the time of adoption finalization, if a family with whom they have already been residing is adopting the child.
    - a. In this case, the documents below will be forwarded to the Department along with the Final Decree and a request that the sub adopt payment begins on the date of the finalization.
    - b. SFN 939, completed with all required information regarding the child, the birth family and the adoptive family.
- D. Adoption Finalization: When the adoption has been finalized in Tribal Court, you will need to forward a copy of the Decree to Department for our files. If you have any questions about this process or the specific documents included, please contact Department Adoptions Administrator.



**State (Department) Subsidized Guardianship Program for Foster Children**

1. **General Requirements for the State (Department) Subsidized Guardianship Program for Foster Children**

Guardianship is a permanency option, available through the courts, for foster children regardless of state or Tribal custody. If a subsidy through Department Subsidized Guardianship Program for Foster Children is sought and approved, the eligibility for the program must be met. Guardianship as a permanency option for foster youth should not be ruled out merely because a subsidy payment is not an option.

The Subsidized Guardianship Program for Foster Children provides a means for a monthly reimbursement for the child's maintenance needs to an eligible guardian who provides care to an eligible former foster child.

A. Department Subsidized Guardianship Program for Foster Children **requires the following two processes** be accomplished in tandem to result in a subsidized guardianship for the family. It is not possible to receive a subsidy without establishment of a legal guardianship through the courts.

1. Application for and approval of subsidy pursuant to the Department's program; and
2. Petition for and creation of a legal guardianship under the laws of the State or Tribal court.

B. If the custodian has custody of a child and the potential guardian resides in another state, the Interstate Compact on the Placement of Children (ICPC) applies. The custodial agency must complete an ICPC with the goal of guardianship indicated in the referral.

C. North Dakota continues the financial responsibility for the subsidy, if the guardian/child moves from North Dakota to another state.

D. It is the responsibility of the guardian to keep the courts and Department informed of address changes.

E. The custodial agency, and/or guardian must work out medical coverage for the child between the two states prior to the move. It is not possible for North Dakota to guarantee medical coverage if the child moves to another state.

2. **Department Subsidized Guardianship Program for Foster Youth Eligibility**

Guardianship is considered only after other permanency options such as return home, termination of parental rights, and adoption are ruled out. The decision to proceed with a guardianship is the responsibility of the child's custodian (Tribe) working with the permanency planning committee.

A. When a permanency resource has been identified for a child in custody and guardianship appears the best permanent arrangement, the child may be eligible for a subsidized guardianship. This is not an entitlement for either the subsidy or cost of establishing a legal guardianship. This discussion and agreement of the parties is necessary to proceed with exploration of a subsidy. All parties must indicate agreement by signing the "Subsidized Guardianship Contingent Approval Request" form (SFN 1834). The custodial agency is required to complete and submit a "Compelling Reason(s) for Determining that filing a petition

to Terminate Parental Rights would not be in the Child's Best Interest" form (SFN 348) along with the request to Department.

1. Foster youth age 12 and older, where reunification and adoption has been ruled out as the permanency plan. Siblings will also be included if one member of the sibling group is 12+. Youth age 16 – 18 will be given priority. Sibling groups which include a youth in the 16 – 18 age group will also be given priority consideration.
2. Youth who are legally free for adoption and do not wish to or cannot be adopted.
3. Youth in temporary custody whose parents are incapacitated or unwilling to have anything to do with planning for the child and whose parental rights will not be terminated.
4. Eligibility is limited to children in the foster care system for at least six months, for whom the state or tribe has responsibility for maintenance payments.
5. The potential guardian must agree that the ward's permanent residence will be with the guardian, and the child will reside in the guardian's home while receiving a subsidy.

B. To receive a subsidy payment:

1. The child's custodian must have sought and received contingent approval for a subsidy for the potential guardian prior to the guardianship appointment.
2. The guardian must be at least 21 years of age.
3. The court requires the custodial agency to provide the court with an assessment of the guardian/home, and a background check. The subsidized guardianship program requires a background check specific to guardianship.)
4. Children who would receive a guardianship subsidy of less than \$3.00 per day, after monthly SSI/SSA benefits are deducted from the maximum subsidy are excluded for consideration of a subsidy.
5. Subsidy for guardianship must be approved by the custodian, regional supervisor, and the state office. If demand for subsidy exceeds resources, Department will prioritize requests.

3. **Background Checks Requirements for the State Subsidized Guardianship Program for Foster Youth potential Guardians and Household Members:**

N.D.C.C. 50-11.3-01 requires that before appointment as a legal guardian under Chapter 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation. In addition, any adult living in the household is also subject to a criminal history record investigation made under this section. In all cases, a criminal history record check will include a Bureau of Criminal Investigation (ND BCI) check and a fingerprint-based FBI check; facilitated by the Department Criminal Background Check Unit.

Potential guardians and other adults living in the home who are applying for a subsidy under Service Chapter 623-10 Subsidized Guardianship are required to have a criminal background check specific to guardianship, meaning the "Guardianship" box must be checked on the "Personal Authorization for Criminal History background Check Inquiry" (SFN 838) form. A former background check completed for foster care, or any purpose other than guardianship, will not be accepted for the purpose of the Department Subsidized Guardianship Program for Foster Children.

The custodial agency will seek direction from the court on how to accomplish the guardianship home assessment required by law to be furnished to the court.

4. **Roles and responsibilities of the custodial agency:** Identification of child in need of guardianship; Identification of potential guardian.
- A. Custodial agency agrees on guardianship as the child's permanency goal and agrees to pursue a subsidy.
  - B. Custodial agency completes the "Subsidized Guardianship Contingent Approval Request" form (SFN 1834) and obtains signatures of the prospective guardian, custodian, and regional supervisor and forwards to Department for review.
  - C. Department will review the contingent subsidy approval request in relation to the child's assets and other subsidized guardianship criteria. Department will consider the child's contingent subsidy application together with other contingent subsidy applications and prioritize, keeping in mind the limited funds available for subsidized guardianship.
  - D. The referring agency, the prospective guardian, and others will be notified, usually within 30 days, whether the contingent subsidy approval has been approved or denied. If denied, an explanation will be provided. If the request is approved, contingent subsidy approval is in effect for six months following the Department's approval. This allows time for the legal process of establishing the guardianship. If six months have elapsed and the guardianship has not been established by the court, the contingent subsidy approval is null and void. (When contingent approval of the subsidy is granted, funds are earmarked for that particular guardianship. If it does not take place, those funds are earmarked for another subsidized guardianship situation.)
  - E. Prospective guardian files petition for appointment as guardian.
  - F. Custodial agency initiates the required background checks and home assessment and submits the completed home assessment and background checks to the court. Notice to all parties.
  - G. Custodial representation at guardianship proceedings.
  - H. Guardian ad litem (GAL) for child if court determines it is necessary.
  - I. After the guardian has been named by the court, a copy of the court order, home assessment, and background checks are forwarded to Department.
  - J. Following the establishment of the legal guardianship through the courts, and receipt of the court order, home assessment, and background check results, Department sends the "Application for Subsidized Guardianship" (SFN 1833), the "Agreement for Subsidized Guardianship" (SFN 1832), and a Substitute W-4 form to the guardian for completion and signature. Upon return of these completed forms, Department makes a final determination of the monthly subsidy amount and informs the guardian and custodial agency.
  - K. The custodial agency closes the foster care case effective the date of guardianship.
  - L. Department initiates subsidized guardianship payments effective the date guardianship is awarded. Subsidy payments are made during the first two weeks of the month following the month of service.
  - M. The guardian must submit the "Guardianship Subsidy Agreement – Annual Review" (SFN 1831) to Department annually to continue to receive a guardianship subsidy. It is the responsibility of the guardian to provide Department with current address. If the annual review form is not completed in its entirety and returned, the subsidy payment will cease, and the child terminated from the program.

- N. The Guardianship Subsidy will cease under the following conditions:
1. Child reaches age 18.
  2. Child custody or guardianship is awarded to another person.
  3. Child is incarcerated.
  4. Child is no longer living in the home.
  5. Child dies.
  6. Guardianship terminates for any reason.
  7. Department does not have guardian's current address, and mail is undeliverable.
  8. Department does not receive the completed annual review forms.
- O. The guardian has a duty to notify Department within 30 days of any of the above and to return any guardianship subsidy payment received for any days after the guardianship has terminated.

5. **Subsidy Negotiation and Agreement for the State Subsidized Guardianship Program for Foster Youth**

- There is no subsidy negotiation. The subsidy is a set amount determined by the state legislature. Currently the maximum subsidy is \$16.75 per day.
- The child's assets, for example Social Security Disability Benefits and Death Benefits are considered when determining the amount of the monthly subsidy.
- North Dakota subsidized guardianship program does not have a means test for the guardian. The guardianship subsidy is for the child's maintenance needs.
- Eligibility of the child for subsidized guardianship must be determined prior to the filing of the guardianship petition. This is done on the "Subsidized Guardianship Contingent Approval Request" (SFN 1834) form. The contingent approval request form includes information on the child's income and assets. The custodial agency will assist the prospective guardian in completing this form.
- All other sources of income available to the child should be reviewed and considered prior to filing the contingent approval form. The "Subsidized Guardianship Contingent Approval Request" (SFN 1834) is signed by all parties and forwarded to Department.
- The guardianship subsidy rate is a flat rate which may not be adjusted when foster care rates change.

6. **Non-Recurring Guardianship Expenses**

Custodial agencies may contact the Director of Department to request funding to assist with the establishment of the legal guardianship for those children contingently approved for the Department Subsidized Guardianship Program for Foster Children.

7. **Medicaid Based on the Subsidy**

Medical assistance eligibility for a child in a guardianship is determined by county social services eligibility staff. These children typically will be poverty level eligible for Medicaid. The child is set up in their own case, and Medicaid will not look at parental income and assets unless the guardianship court order specifies that the parents are responsible for the child's needs. The guardian's income and assets are also not considered in determining the child's Medicaid eligibility.

**Attachment 5**

**Adoption and Foster Care Analysis and Reporting System Requirements (AFCARS)**

Adoption and Foster Care Analysis and Reporting System (AFCARS) collects case level information on all children for whom Title IV- E funds are used to pay for foster care and included in the foster care reporting population. Children who are adopted and receiving Title IV-E adoption subsidy are also included in the reporting population. AFCARS reporting elements include information on foster and adoptive parent s.

Administration for Children and Families (ACF) uses AFCARS data for a number of reasons. States are required to submit AFCARS data semi-annually to ACF. The AFCARS report periods are October 1 through March 31 and April 1 through September 30. Data for each report period are due no later than May 15 and November 14, respectively.

Foster Care Elements		
Item	Category	Date Data is Required from Tribe
1. State 2. Report period ending date 3. Local agency FIPS code 4. Records number	<b>General Information</b>	<b>DEPARTMENT determines upon case creation.</b>
5. Most recent periodic review date 6. Date of birth 7. Sex 8. Race 9. Hispanic Origin 10. Child diagnosed with disabilities 11. Mental retardation 12. Visually or hearing impaired 13. Physically disabled 14. Emotionally disturbed 15. Other diagnosed conditions 16. Has child ever been adopted 17. Age of child when adopted	<b>Child's Demographic Information</b>	<b>Within 10 business days of change in circumstances.</b>
18. Date of first removal from home 19. Total number of removals 20. Discharge date from last episode 21. Date of latest removal 22. Computer-generated date 23. Placement date in current setting 24. # of previous setting in episode	<b>Removal/Placement Setting Indicators</b>	<b>DEPARTMENT will have information for State transfer cases.</b>
25. Manner of removal for episode 26. Physical abuse 27. Sexual abuse 28. Neglect 29. Parent alcohol abuse 30. Parent drug abuse 31. Child alcohol abuse 32. Child drug abuse	<b>Circumstances Associated with Removal</b>	<b>DEPARTMENT will have information for State transfer cases.</b>

33. Child disability 34. Child's behavior problem 35. Death of parent 36. Incarceration of parent 37. Caretaker inability to cope 38. Abandonment 39. Relinquishment 40. Inadequate housing		
41. Current placement setting 42. Out of state placement	<b>Current Placement Settings</b>	<b>DEPARTMENT will have information for State transfer cases. All placements must be updated within 2 business days of change in placement.</b>
43. Most recent case plan goal	<b>Most Recent Case Plan Goal</b>	<b>Creating Case Plan Goals or changes in Case Plan Goals must be reported within 10 business days</b>
44. Caretaker family structure 45. 1 <sup>st</sup> principal caretaker birth year 46. 2 <sup>nd</sup> principal caretaker birth year	<b>Principle Caretaker Information</b>	<b>DEPARTMENT will have information for State transfer cases. Caretaker information changes must be reported within 5 business days.</b>
47. Date of mother's TPR 48. Date of father's TPR	<b>Termination Parental Rights</b>	<b>Must be reported within 10 days of receipt of court order.</b>
49. Foster family structure 50. 1 <sup>st</sup> foster caretaker's year of birth 51. 2 <sup>nd</sup> foster caretaker's year of birth 52. 1 <sup>st</sup> foster caretaker's race 53. 1 <sup>st</sup> foster caretaker's Hispanic origin 54. 2 <sup>nd</sup> foster caretaker's race 55. 2 <sup>nd</sup> foster caretaker's Hispanic origin	<b>Foster Parent Data</b>	<b>DEPARTMENT will have information for State transfer cases. Must be reported within 2 business days of provider change.</b>
56. Date of discharge from foster care 57. Computer generated date 58. Reason for discharge	<b>Discharge Data</b>	<b>Must be updated within 2 business days of discharge</b>
59. Title IV-E (foster care) 60. Title IV-E (adoption assistance) 61. Title IV-A (AFDC) 62. Title IV-D (Child Support) 63. Title XIX (Medicaid) 64. SSI or other social security 65. None of the above 66. Amount of monthly payment	<b>Sources of Federal Financial Support / Assistance for Child</b>	<b>DEPARTMENT will provide this information</b>

**Adoption Elements**

<b>Item</b>	<b>Category</b>	<b>Date Data is Required from Tribe</b>
1. State 2. Report period ending date 3. Record number 4. State involvement	<b>General Information</b>	<b>DEPARTMENT determines upon case creation</b>
5. Child's date of birth 6. Sex 7. Race 8. Hispanic origin	<b>Child's Demographic Information</b>	<b>DEPARTMENT will have information in system due to Foster Elements above</b>
9. Special needs – agency 10. Special needs – primary basis	<b>Special Needs Status</b>	<b>At time of Application for Adoption Subsidy</b>

11. Mental retardation 12. Visually/hearing impaired 13. Physically disabled 14. Emotionally disturbed 15. Other diagnosed condition		
16. Mother's year of birth 17. Father's year of birth 18. Mother married	<b>Birth Parents</b>	<b>Already in system</b>
19. Date of mother's TPR 20. Date of father's TPR 21. Date adoption legalized	<b>Court Actions</b>	<b>TPR at time of Application of Adoption Subsidy.</b>  <b>Date Adoption is legalized should be reported within 10 days after receipt of Adoption decree.</b>
22. Adoptive family structure 23. Mother's year of birth 24. Father's year of birth 25. Adoptive mother's race 26. Hispanic origin – mother 27. Adoptive father's race 28. Hispanic origin – father 29. Relationship – stepparent 30. Relationship – other relative 31. Relationship – foster parent 32. Relationship – other non-relative	<b>Adoptive Parent Data</b>	<b>At time of Application of Adoption Subsidy if not already provided for Foster Care.</b>
33. Child was placed from 34. Child was placed to	<b>Placement Information</b>	<b>At time of Application of Adoption Study</b>
35. Monthly subsidy 36. Monthly amount 37. Adoption assistance	<b>Financial Adoption Support</b>	<b>DEPARTMENT will provide this information</b>

Attachment 6

**Tribal Service Area including “near” reservation  
(place holder)**

Standing Rock Sioux Tribal Council defines via the **Tribal Resolution 53-20** defines the tribal service area to foster homes within 100 miles of their external boundaries and authorizes chair or designee to sign, signed by Chairperson Mike Faith, on January 8, 2020.

Standing Rock Sioux Tribal Social Services will license Native American homes to increase placements on or near.



**Tribal Support Plan (place holder)**

The Standing Rock Sioux Tribal Social Service office will continue to provide services to foster families residing “near” the reservation in the same manner as those residing on the Standing Rock Sioux Tribal Reservation.

# Tribal Resolution Authorizing IV-E Agreement (place holder)

## RESOLUTION NO. 054-20

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], and 1[o], is authorized to promote and protect the health, education and general welfare of the members of the Tribe; to manage and protect and preserve the property of the Tribe and to safeguard and promote the peace, safety, morals, physical and general welfare of the Tribe; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV Section 1[a], 1[c], 1[h], 1[j], is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, is further authorized to promote and protect the health, education and general welfare of the members of the Tribe; and

WHEREAS, the Tribal Child Protection Services program has the duty to protect the child of the Reservation and such duty includes sometimes removing children from harmful environments and make foster care placement of these children; and

WHEREAS, the State of North Dakota receives Title IV-E funds from the United States Department Health and Human Services for the administration of foster parents for the care of children placed pursuant to court orders;

WHEREAS, the State and the Tribe recognizes the need to coordinate their efforts with respect to these children to ensure the best care of these children and have had a Title IV-E Agreement since 1983, which was updated in 2001 and 2019;

NOW THEREFORE BE IT RESOLVED, the Standing Rock Sioux Tribe approves the memorandum of understanding with the North Dakota Department of Human Services, Child and Family Services Division, regarding the Title IV-E Program and authorizes the Tribal Chairman or his designee to sign such Memorandum of Understanding.

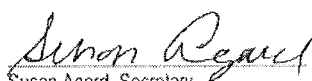
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

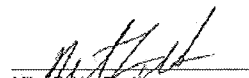
### CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] members, of whom 15 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 8<sup>th</sup> day of JANUARY, 2020, and that the foregoing resolution was duly adopted by the affirmative vote of 14 members, with 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.

DATED THIS 8<sup>TH</sup> DAY OF JANUARY, 2020.

ATTEST:

  
Susan Agard, Secretary  
Standing Rock Sioux Tribe

  
Mike Faith, Chairman  
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Exhibit 2

**Tribal Foster Care Licensing Standards (place holder)**

The Standing Rock Sioux Tribe follows the North Dakota Foster Care Licensing Standards (policies and procedures) that are defined within the North Dakota Century Code 75-03-14.

<http://www.nd.gov/dhs/policymanuals/62205/62205.htm>

## Exhibit 3

### County to Tribe Jurisdictional Transfer Requirements

#### ONGOING - CASE TRANSFER

- A. When it is determined that a case transfer from the County to the Tribe will occur, in order to comply with the requirements of 45 CFR section 1356.67, a copy of the entire case file for the current foster care episode is to be provided to the tribal agency upon the transfer of the child. This would include the eligibility, case services and licensing information for the child's most recent placement, etc. The documents in the court file should also be provided to the tribal agency. Confidentiality is not violated because the provision of documentation is required by the federal regulations (45 CFR section 1356.67 [b][2]). Moreover, providing the entire file recognizes the need for the receiving agency to have essential documentation and information to maintain the seamless care and provision of services for the well-being of the child.
- B. In order to facilitate consistency in the structure of the file transfer and for purposes of the continuity of eligibility and services to the child, below highlight the steps to engage to ensure all parties are aware of the changes and the documentation is provided to support the ongoing case management by the Tribe:
1. County Social Services will contact Tribal Social Services review the case progress and transfer options.
  2. County Social Services will notify the parents/guardians/custodians, and foster parents/relative provider that the child's foster care case has been transferred to Tribal Social Services.
  3. County Social Services will review the case file and perform any final case record duties to ensure that all documentation is contained in the case file to provide to the Tribal Social Services case manager.
  4. Tribal Social Services will receive case information including:
    - a. Eligibility Determination: Paperwork verifying the child's eligibility status
    - b. Legal Initial Order: Removal pursuant to a State Court Order must be on file
    - c. Legal Ongoing Judicial Activity: Copies of all child welfare court proceedings
    - d. Child Placement - Placement Stability
      - (i) List of placements and proof of active and/or reasonable efforts made to return the child home or maintain the child's current placement. (Ex: monthly home visits, offered respite care, transportation services, referral to agency services, program registration for services to meet the child & family's needs, placing the child in close proximity to the residence of their parents, current school, family and friends.)
      - (ii) Placement with siblings.
    - e. Child Safety Requirements
      - (i) Documentation of monthly home-visits to the child and foster parents.
      - (ii) Meeting with the child alone to assess if the child is safe and comfortable.
    - f. Child Permanency Planning: Documentation of the child's care plan and identified goal; reunification, guardianship by relative, guardianship by non-relative, another planned permanent living arrangement or adoption.
    - g. Child Wellbeing: Documentation the agency made concerted efforts to meet the behavioral health, physical health, educational and wellbeing needs of child in care while placed in out-of-home care.

## Exhibit 4

### Tribal Title IV-E Foster Care Case Closure Requirements

A child is considered to be discharged from foster care when any of the following is true:

1. The court enters an order:
  - a. Denying a petition to grant care, custody, and control of the child to the agency,
  - b. Terminating a custody order, or
  - c. Appointing a legal guardian; or
2. The court order under which the child entered foster care ends by operation of law; or
3. The child is placed in a parental home by the court or legal custodian and the legal custodian lacks authority to remove the child without further order of the court; or
4. The child is placed in a parental home by the legal custodian with the intent for the child to remain home. (This is not a trial home visit, rather reunification achievement.)

#### Terminating Court Orders:

If the custodian has a valid court order providing care, custody, and control on behalf of a foster child; custodians are required to continue to have monthly visitation with children in foster care, quarterly Child & Team Meetings, and oversee the case management of the child's case plan. If the Child & Family Team determines foster care is no longer necessary due to successful reunification with the family or permanency has been achieved, then the custodian shall request to terminate the court order and close the foster care program.

#### Closing a Foster Care Case:

Tribes as the custodian are required to close the foster care program. The Tribe must provide notice to the administrative county and NDDHS within 15 days to allow time for the program to be closed in FRAME before the 30-day requirement. Federal regulations require the case be closed no later than 30 days from the date of discharge from foster care. Documentation needed for FRAME closure:

- SFN 45 – Notice of change indicating “case closure”
- Final monthly face-to-face visit dates and required data entry information (who completed the visit, date, time, where the visit occurred).
- Final Care Plan
- FC Permanency Goal – end date must be effective the date the child was discharged
- County or Regional office will
  - ✓ Update monthly face to face
  - ✓ Update/finalize the last CFT meeting information and care plan
  - ✓ Close placement - effective the date the child was discharged
  - ✓ End the participation of the Youth Representative (closing)
  - ✓ If youth has 18+ Continued Care Agreement – end agreement effective date of discharge.
  - ✓ Close Program and Program Workers
  - ✓ Close service period - The closing date of FC permanency goal, last placement, foster care program, primary foster care program worker, and service period **must all be the same date**