

Tribal Health and Human Services

Current Program

Over the past decade federal laws have increased the ability of tribal governments to take on administration of federal health and human service programs that had historically been delivered by state and local governments. Most notably, the 1996 welfare reform law created a tribal Temporary Assistance for Needy Families (TANF) program that tribes could administer. Today, 186 tribes in 15 states are served by a tribal TANF program; 76 tribes are involved in Title IV-E child welfare agreements in 15 states; and over 260 tribal child care grantees serve more than 500 tribes in 34 states. In addition, 9 tribes in 7 states operate child support enforcement programs with direct reimbursement from the federal government. Though limited in number, some tribes have won federal approval to determine eligibility for Medicaid and the Food Stamp Program (FSP). Congressional legislation has been introduced to provide tribes with the authority and federal funding for Title IV-E foster care and adoption services.

There are significant coordination issues when tribal programs are located across federal, state, and county borders. States and tribes are faced with how to support service integration while recognizing and dealing with different governments and different federal definitions attached to various human service programs.

Challenges

Each state and tribal relationship will be unique in the way the parties decide to communicate, coordinate, implement, and administer programs. There are, however, some common challenges all will encounter such as the need to reduce federal barriers to administration as well as the need for federal support for capacity building and infrastructure development. There are significant coordination issues when tribal programs are located across federal, state, and county borders. States and tribes are faced with how to support service integration while recognizing and dealing with different governments and different federal definitions attached to various human service programs.

For example, the definition of “Indian Country” for purposes of eligibility and program requirements is different across federal agencies. TANF regulations base the definition on how it is defined in criminal law in the area in question, while the Low-Income Home Energy Assistance Program has a more restrictive definition of “Indian Country” even though the two programs often overlap in the same service area. Similarly, there are varying definitions of “near reservation.” The Bureau of Indian Affairs (BIA) uses an “on and near reservation” designation that is different from the definition used by the Indian Health Service (IHS). Both of these definitions are critical in identifying who can be served by a state or tribe and determining what program rules and regulations will apply.

There are also implementation issues related to data reporting and information system development. Data sharing is often impossible when there are no systems or incompatible systems are in place. In addition, data sharing and program integration efforts have raised confidentiality issues.

Through on-going coordination and collaboration among federal, state, and tribal governments, human service programs can be successfully administered to benefit Native American children and families. The following APHSA proposals address some of the federal barriers to successful administration of human services by tribal governments and suggest ways to support tribal-state relationships

Recommendations

SUPPORTING TRIBAL-STATE RELATIONSHIPS

PROPOSAL

In questions of interpretation of federal statute, the federal government should make every attempt to honor agreements made between tribes and states for human service delivery. Technical assistance and support for both the state and tribe should also be a mandatory component when the federal government provides for the direct administration of a program by a tribal government.

EXPLANATION

Such government entities as tribes, counties, states, and the federal government have all played a role in the delivery of social services to American Indian populations and persons residing on reservations. However, information sharing, best practices, promising approaches, and coordination among these entities are critical to future success. To recognize the importance of tribal-state relationships, the federal government should encourage these relationships by providing joint technical assistance, convening joint meetings between tribal and state administrators whenever possible, and honoring agreements between tribes and states.

CHILD SUPPORT ENFORCEMENT

PROPOSAL

Provide federal guidance for tribal child support programs through the continuation and expansion of the tribal-state child support workgroup.

1. APHSA supports the change of law that allows for direct funding of child support programs. However, further guidance and technical assistance are needed to address issues of jurisdiction and coordination as new tribes and their corresponding states work through transition of responsibilities.
2. A federally established work group, under the direction of the federal Office of Child Support Enforcement (OCSE), should be continued and expanded to support states and tribes with transition issues.

EXPLANATION

Technical amendments to the 1996 welfare reform legislation, contained in the Balanced Budget Act of 1997, authorized direct funding to tribes and tribal organizations to operate child support enforcement programs. The law authorized states to enter into cooperative agreements with Indian tribes or organizations if the tribe has an established tribal court system or Court of Indian Offenses. An August 2000 interim final rule provided the mechanism for tribes to submit child support enforcement plans and, upon approval, to receive direct federal funding of tribally operated programs. Prior to promulgation of the final regulation, the U.S. Department of Health and Human Services (HHS) allowed up to 15 tribes to receive grants under a demonstration project. Nine tribes in seven states presently operate a program under the demonstration. Many tribes interested in running a program waited for final regulations for clarity in designing their program and for federal funding for technical assistance. In early 2004 the HHS Administration for Children and Families (ACF) issued the final regulations and made available up to \$500,000 in two-year grants to tribes for capacity building to run a child support program and provided increased federal match rates in the first few years of implementation. The tribes and states that were involved in the first efforts to transition child support enforcement to the tribal governments benefited greatly from a workgroup organized through the OCSE. To benefit additional states, this workgroup should be continued and expanded.

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CHILD WELFARE

PROPOSAL

Tribes need enhanced capacity and direct access to Title IV-E to address the needs of Native American children.

1. Title IV-E should be amended to enable tribes to have the option of direct access to federal Title IV-E funding.
2. Federal data collection and reporting capacity must be enhanced to better track the progress of Native American children in child welfare.
3. HHS and the BIA should assist states by providing more training on tribal issues, such as the Indian Child Welfare Act (ICWA) and tribal-state agreements.

EXPLANATION

When the Title IV-E statute was written in 1980, tribal governments and children placed by tribal courts were not eligible for this open-ended federal entitlement program. Currently, tribes can only gain access to funding through agreements with state agencies. Only 50 of the 550 federally recognized tribes have been able to enter into agreements with states to provide access to at least some IV-E funds. These agreements primarily provide foster care maintenance funds only—not administrative, training, and data system funding. In only 15 of the 50 agreements do states provide tribes with IV-E administration funds, and only two of the agreements provide any IV-E training funds to tribes. None of the agreements provides funding for information systems development for tribes that are available to states under Title IV-E. A more efficient and equitable system would be to fund tribes directly through Title IV-E, giving them increased capacity to meet outcomes for these children. In

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In addition, more support is needed from the federal government for implementation of the ICWA. There is presently little guidance from the federal government on best practices in other states, model forms and agreements, or what states and tribes can do together toward full implementation. The BIA and HHS should sponsor trainings on specific strategies states can employ to implement both the letter and intent of the ICWA, while recognizing and incorporating individual state ICWA statutes.

FOOD STAMP PROGRAM

PROPOSAL

APHSa supports FSP administration by tribal governments but recognizes that the present complexities of the program must be addressed in legislation and regulations for successful tribal administration.

1. Congress should consider a simplified program structure for tribal FSP that addresses some of the complexities states' faced in the area of fair hearings, quality control (QC), fraud, claims recovery, information technology (IT) systems, electronic benefit transfer (EBT) methods, and reporting.
2. Due to the high cost of contracting with vendors to operate EBT programs, tribes should be allowed to form consortiums and join into group arrangements. In many cases, a group arrangement with the state program may be the most effective and least costly method to distribute EBT payments in tribal programs.
3. Tribes should be responsible for QC error rate sanctions, reinvestment plans, and other consequences of not meeting QC standards and requirements, and the tribal caseload should be removed from the state QC sample.
4. The ability to share information between the tribe and the state is critical, and any regulations need to be structured to support collaboration between governments.
5. Allow tribes to access the FSP and the food distribution program concurrently.

EXPLANATION

The Food Distribution Program on Indian Reservations provides commodity foods to low-income households living on Indian reservations and to Native American families living in designated areas near reservations. Many Native Americans participate in this commodity program as an alternative to the FSP. Although Native American organizations administer the commodity program, federal statute prohibits tribes from administering the FSP. Several tribes administer the FSP through early federal waivers, but the federal government has not allowed these waivers to be duplicated in other states or through arrangements with the state. In Minnesota, the Mille Lacs Band of Ojibwe determines FSP eligibility for their TANF recipients. To meet a requirement in FSP law that program eligibility must be determined by a public employee, the tribe becomes "county 88," after the state's 87 counties. This satisfies information system and legal purposes, while in negotiations and program administration the sovereignty of the tribe is respected. The tribe has state computer access, and both cash and FSP benefits are on EBT cards. However, other states requesting similar waivers from the federal government on behalf of tribes in their state have been denied.

MEDICAID AND SCHIP

PROPOSAL

Increase the ability for states and tribes to provide Medicaid and State Children’s Health Insurance Program (SCHIP) benefits to Native American children through simplification of federal regulations and policy.

1. The Indian Health Care Improvement Act (IHCIA) should be interpreted so that services provided through, and not just at, facilities can be reimbursed at the 100 percent Federal Medical Assistance Percentage (FMAP) rate.
2. SCHIP must be aligned with Medicaid to allow states to claim 100 percent FMAP under SCHIP for all American Indians.
3. Similar to efforts to recognize the uniqueness of school providers, the Centers for Medicare and Medicaid Services should allow provider qualification differences for tribes and expanded services under a Medicaid encounter. The Medicaid program should recognize the lack of resources and the limited workforce prevalent at most Indian health clinics.
4. Recognizing the impact on state Medicaid agencies to re-process claims, the Office of Management and Budget should release the IHS/tribal claims rate within the first quarter of the calendar year.
5. APHSA supports the ability of tribal governments to administer intake, eligibility, and benefit issuance for Medicaid, but recognizes that the present complexities of the program must be addressed in legislation and regulations for successful tribal administration.

EXPLANATION

Health services are provided to American Indians and Alaska Natives through the IHS system, with 638 tribal organizations operating health care under self-governance contracts or compacts. The IHCIA made 100 percent FMAP reimbursement available to states for services received through an IHS facility whether operated by IHS or by an Indian tribe or tribal organization. Congress specifically stated that the purpose of the law was to fulfill its special responsibilities and legal obligation to the American Indian people to assure the highest possible health status for Indians and to provide all resources necessary to effect that policy. However, recently HHS has reinterpreted the law narrowly to apply only to services provided at an IHS facility. States challenged this interpretation in federal court, and the courts concurred with the states’ position. However, this issue is not yet resolved since HHS has challenged the court decision.

Following the sentiment of the IHCIA, which was passed before SCHIP was created, APHSA believes that the same FMAP reimbursement formula for Medicaid should apply to the SCHIP. The present situation creates inequity among states that serve the same tribe or reservation, depending on whether the state has decided to expand Medicaid or run a combined SCHIP/Medicaid program. Also, unnecessary expenses are being incurred by state Medicaid offices due to federal delays in releasing the tribal claim rate. Releasing these rates late in the calendar year, and then applying them retroactively to the beginning of the year, results in an increased number of IHS/tribal claims to reprocess at the new rates and strains limited administrative resources.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

PROPOSAL

Adequately fund the tribal TANF program to address the planning and startup, information systems, and evaluation and technical assistance needs of tribes already administering or planning to administer TANF programs. In addition, restructure the tribal TANF program to become a direct federal-tribal relationship.

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1. APHSA recommends creating a separate TANF block grant for tribal governments funded with 100 percent federal funds and no state maintenance-of-effort (MOE) requirement. The tribal TANF block grant allocation should be in addition to the \$16.8 billion allocated for the state block grants and based on the actual population tribes will serve. The new block grant would allow state and tribal governments to continue to collaborate without financial and service population concerns. The tribal governments would negotiate directly with the federal government on the design and performance measurement of their programs.
2. If Congress does not choose to provide direct federal funding, it is important that the following occur:
 - a. The federal government should clearly identify, in cases where questions arise, the populations that fall under the responsibility of a state or of a tribal TANF program. It should be clear that it is the responsibility of the HHS secretary to determine service populations when more than one tribe submits a Tribal Family Assistance Grant (TFAG) plan within the same service area.
 - b. Reverse the current HHS interpretation to specify that the level of federal funding should be tied to a specific, stated service population.
3. Federal support is also needed to address the planning and startup, information systems, and evaluation and technical assistance needs of tribes administering or planning to administer TANF programs.
4. With respect to areas of high unemployment or joblessness, states should be allowed to: (a) define work activities as long as the recipient is in compliance with the individual responsibility plan; (b) take families out of the work participation rate denominator if they are exempt due to areas of high joblessness; or (c) allow families who meet their individual responsibility or universal engagement plans in areas of high unemployment to count as meeting their work participation requirement.

EXPLANATION

Under the 1996 welfare reform law, tribal governments may opt to administer their own tribal TANF program. Tribal governments and the federal government negotiate the size and scope of the tribal TANF program without the input of the state TANF agency. If a tribe opts to administer the program, the tribal TANF block grant amount is subtracted from the state's TANF block grant allocation and the state's MOE requirement is decreased proportionately. A TFAG is based on the federal share of the state's expenditures for fiscal year 1994 for Native American families residing in the service area(s) as defined by the Native American tribe. Two or more tribes may expect a TFAG based on the same or overlapping service area(s). Tribes' provision of welfare-related services need not include the

issuance of grants to any or all of the population to be served. Under current law, the federal government does not consider assistance under the TFAG to duplicate a state TANF grant if the service provided to a family through the TFAG does not include a cash grant. In states where tribes make up 50 percent or more of their TANF caseload, the financial impact on states of these policy inconsistencies is substantial.

In addition, tribal governments may negotiate different work requirements from those mandated in the federal statute. Those tribes operating tribal Job Opportunities and Basic Skills (JOBS) Training programs may also use different criteria; however, clients participating in those programs are included in the state's denominator when calculating work participation rates. Therefore, the inconsistencies in these programs may result in states failing the work participation rates through no fault of their own.

Many tribes have not had resources or a history in the delivery of social services. Therefore, their startup costs to hire and train qualified staff, locate a building, and furnish it with the necessary equipment can be significant. Even though tribes were given the flexibility of higher administrative percentage rates, they were not allocated sufficient funding when the TANF program was created for the necessary start-up expenses. In addition, system development for tracking, monitoring, and benefit issuance can also be an expensive start-up cost. Although tribes have taken the responsibility to run their own social service programs, federal funding has hindered successful implementation.