


November 7, 2006

Re: ADOPTION ASSISTANCE PROGRAM  
AND CHILDREN SUBJECT TO THE  
INDIAN CHILD WELFARE ACT

To: Area Administrators/Assistant Area Administrators  
Bureau Directors  
County Departments of Community Programs Directors  
County Departments of Developmental Disabilities Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
Section Chiefs/Licensing Chiefs  
Tribal Chairpersons/Human Services Facilitators

From: William R. Fiss   
Interim Administrator

This memo addresses the eligibility of children who are subject to the Indian Child Welfare Act (ICWA) (25 USC ss. 1901-1963) for adoption assistance. This memo also provides clarification on the definitions of "difficult to place" and "child at high risk" as they relate to the Adoption Assistance Program, which the Department of Health and Family Services (DHFS) agreed to do as part of its Program Enhancement Plan (PEP).

### **Adoption Assistance for Indian Children**

To further support the placement of Indian children within their family, tribe, and culture, DHFS has determined that an Indian child, who meets all other adoption assistance criteria, may be eligible for adoption assistance because at this time Indian children cannot be readily placed in an appropriate placement resource according to the placement preferences provided in ICWA. Therefore, an Indian child who is subject to ICWA meets the following special needs criterion for adoption assistance: the child belongs to a minority race and children of that minority race cannot be readily placed due to lack of appropriate placement resources. An Indian child must meet all other eligibility criteria for adoption assistance as discussed below. An Indian child is defined in ICWA as, "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. s. 1903. Documentation of a child's status as an Indian child must be provided to the Department at the time an application for adoption assistance is made.

ICWA establishes placement priorities for Indian children who are being adopted and who are being placed in foster care or pre-adoptive placements. Under 25 USCS §1915(a) and (c), when placing an Indian child for adoption, a preference must be given, absent good cause to the contrary, first, to a member of the child's extended family, second, to other members of the Indian child's tribe, or, third, to other Indian families, if the child's tribe has not established a different order of preference. If a different order of preference is established by the child's tribe the placement should be in accordance with that preference so long as it is the least restrictive placement appropriate to the child's needs and consideration is given to the child's or parent's preferences. These placement preferences must be the basis of the determination as to whether an Indian child can be readily placed for adoption, and supersede the federal requirements under the Multi-Ethnic Placement Act (MEPA) and the Inter-Ethnic Placement Act (IEPA).

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#### Document Summary

This memo establishes the eligibility of children subject to the Indian Child Welfare Act to receive adoption assistance and clarifies the definitions of "difficult to place" and "child at high risk" under the Adoption Assistance Program.

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In addition to complying with the placement preferences, county human services or social services agencies and state and private child placing agencies that place children subject to ICWA in out-of-home care, pre-adoptive homes, or adoptive homes must follow the notice, tribal intervention, and all other requirements under ICWA. For further guidance please see DCFS Numbered Memo 2006-01.

### **Adoption Assistance Eligibility**

The Department of Health and Family Services has established the following guidelines for the Adoption Assistance program.

To be eligible for adoption assistance, a child:

- must be under 18 years of age at the time of adoption,
- must be available for adoption,
- must meet the definition of and criteria for a special needs child, and
- must be the responsibility of the State of Wisconsin as provided in state and federal law.

[Ref. s. HFS 50.03, Adm. Code.]

### **Available for Adoption**

A child is available for adoption if the child is in the guardianship of the DHFS, a county human or social services department, or an adoption agency (see definition below), and the Department, county department, or adoption agency decides that the child cannot or should not return to the home of the child's parents. [Ref. s. HFS 50.03(1)(c), Adm. Code.] A child must be under the guardianship of one of the above entities at the time adoption assistance is applied for and granted; a child cannot be under the guardianship of an individual, a court, or any other entity at the time adoption assistance is granted.

For purposes of the Adoption Assistance Program, an adoption agency is defined as DHFS, a county department authorized to place children for adoption, a licensed child welfare agency authorized to accept guardianship and to place children under its guardianship for adoption, or an American Indian tribal agency in this state. [Ref. s. HFS 50.01(4)(c), Adm. Code.]

### **Special Needs Child**

A special needs child is a child:

- Who is legally free for adoption,
- For whom it is difficult to find an adoptive home,
- Who meets the adoption assistance eligibility criteria in s. 50.03, Adm. Code, including availability for adoption and Wisconsin responsibility, and
- Who meets at least one of the following special needs criteria contained in s. HFS 50.03(1)(b), Adm. Code, at the time of the adoptive placement:
  - ◆ The child is 10 years of age or older, if age is the only factor in determining eligibility.
  - ◆ The child is a member of a sibling group of three or more children that must be placed together.
  - ◆ The child exhibits special need characteristics judged to be moderate or intensive under the schedule of difficulty of care levels specified in s. HFS 56.11(3), Adm. Code.
  - ◆ The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources.
  - ◆ The child is at high risk of developing a moderate or intensive level of special needs under the schedule of difficulty of care levels specified in s. HFS 56.11(3), Adm. Code.

[Ref. s. HFS 50.03(1)(b), Adm. Code.]

### **A Child at High Risk**

A child is determined to be at high risk under s. HFS 50.01(4)(j), Adm. Code, when a child is in the guardianship of an adoption agency and does not have a known special need but is at high risk of developing a moderate or intensive level of special needs based on one or more of the following:

- There is documented information that one or both birth parents have a medical diagnosis or medical history which could result in the child developing a moderate or intensive level of emotional, behavioral, or physical and personal care needs.
- The child has experienced four or more placements with extended family or in foster care that could affect the normal attachment process.
- The child experienced neglect in the first three years of life or sustained physical injury or physical disease that could have a long-term effect on the child's physical, emotional, or intellectual development.
- There is documented evidence in a medical or hospital record, law enforcement record, social or human service department record, court record, or record of an agency under contract with a county department or the Department to provide child welfare services, that the birth mother used harmful drugs or alcohol during pregnancy which could later result in the child developing a moderate or intensive level of emotional, behavioral, or physical and personal care needs.
- There is documented evidence in a medical or hospital record that the birth mother received inappropriate prenatal care that could later result in the child developing a moderate or intensive level of emotional, behavioral, or physical and personal care needs.

### **Difficult to Place Children**

A difficult to place child is a child who meets the requirement of HFS 50 and who cannot readily be placed into an adoptive home because of age, minority status, emotional problems, behavioral problems, or developmental problems that require specialized care and/or treatment, as determined in consultation with the State Permanency Consultant (SPC) prior to termination of parental rights.

### **Wisconsin Responsibility**

A child brought to Wisconsin for adoption from another state or country is not eligible for adoption assistance from Wisconsin unless the child is eligible for federal Title IV-E assistance under 42 USC s. 670 et seq., meets all state adoption assistance eligibility requirements, and it is determined that Wisconsin is responsible for providing adoption assistance for the child under federal law.

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