


STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

MEMO SERIES DCFS 2008 - 11
June 24, 2008
Re: Guidelines for Implementation
of Act 161 Agreements (Out-of-
Home Placements of Indian
Children by Tribal Courts)

Supersedes Memo DCS-95-17

To: Area Administrators/ Human Services Area Coordinators
Bureau Directors
Child Placing Agency Directors
Child Welfare Agency 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
Indian Child Welfare Directors
Licensing Chiefs/Section Chiefs
Tribal Chairpersons/Human Services Facilitators

From: Reggie Bicha
Administrator 

I. General Information

1983 Wisconsin Act 161 became effective March 23, 1984. The Act creates a mechanism for County Departments of Social or Human Services to make payments for costs of out-of-home placements of Indian children when the placement is ordered by a Tribal Court and the county and the Tribe have entered into a written agreement regarding the circumstances under which such payments will be made.

Agencies in counties in which no Tribal reservations or trust land are located, but which occasionally deal with child welfare cases involving Indian children associated with one or more Tribes, may also enter into such agreements.

Finally, the Act acknowledges the authority of Tribes as sovereign nations to license foster homes located on reservation* lands by sanctioning payments for these placements under such agreements.

In establishing a 161 Agreement, the parties should be cognizant of the affected Indian children as tribal members and citizens of the county. In addition, it should be recognized that, absent the authority of the Tribal court and the sovereignty of the Tribe, these cases would be processed through the circuit court.

(*Note: "Reservation" means land in this state within the boundaries of a federally recognized reservation of an Indian tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.)

DOCUMENT SUMMARY

This is an updating and reissuing of DCS-95-17. The basic content of the memo remains unchanged.

II. Implementation Procedures

To implement Act 161, it is necessary for Tribal governments and counties to negotiate written agreements regarding payment of out-of-home placement costs. Department of Health and Family Services staff will, if requested, facilitate the negotiation process.

III. Content and Format of Agreements

Agreements may be general or case specific, although it is anticipated that most will be general in nature. The content and format of agreements will be largely a matter of joint preference by the parties. By necessity, however, all agreements must include:

- A. The names of the parties to the agreement.
- B. Language that complies with federal statutory and regulatory requirements as provided to the parties by the Department of Health and Family Services.
- C. The period covered by the agreement.
- D. The procedures to be used for placements.
- E. The circumstances under which payments shall be made.

All agreements must also include provisions related to Permanency Planning. The agreements must provide assurances that the following Federal and State requirements will be met:

- F. It shall be agreed that, for purposes of complying with federal requirements related to Title IV-E eligibility and reimbursability, the Tribal Court order for each case will specify that:
 - 1. Remaining in his or her home would be contrary to the welfare of the child. This language must be contained in the first order that authorizes the child's removal from the home. (If the "contrary to welfare" finding is not made on the first court order, the child is not eligible for Title IV-E funding for the duration of the out-of-home care episode.)
 - 2. Reasonable or active efforts were made to prevent out-of-home placements or that reasonable or active efforts were not possible prior to the removal of the child from his or her home and must be made no later than 60 days from the date of the child's removal from home. Subsequent court orders must contain judicial findings that reasonable or active efforts were made to achieve the goal of the permanency plan.
- G. The agreement shall identify the agency responsible for development of the permanency plan which conforms to Federal Permanency Planning requirements as codified in s. 48.38(4), Wis. Stats. Upon promulgation of any applicable Wisconsin administrative code, the permanency plan must meet the requirements identified therein.
- H. The parties shall agree on the responsibility for the content and maintenance of case records.
- I. It shall be agreed that for each case to be funded, an administrative review or judicial hearing will be held in accordance with State and Federal law or regulation as codified in s. 48.38(5) and (5m), Wis. Stats.

- J. It shall be agreed that information required for determining eligibility for federal financial participation will be provided to the entity under contract with the State of Wisconsin for recommending eligibility and reimbursability status of each affected child.
- K. For children aged 15 and over who have been in out-of-home care for at least six months, the permanency plan shall describe the services provided to assist the child in making the transition from out-of-home care to independent living.

Agreements may also be used as a vehicle for clarifying roles, responsibilities, and relationships. Further, they may be used to clearly establish mechanisms for communication, cooperation, and coordination of service delivery. Therefore, parties to such agreements may choose to include additional provisions, including but not limited to the following:

- L. Access procedures, including procedures for emergency access.
- M. Initial assessment procedures.
- N. Provision of services to prevent out-of-home placements.
- O. Provision of placement monitoring and supervision services.
- P. Provision of services designed to achieve the goal of the permanency plan.
- Q. Provision of services when a child is returned to his or her own home.
- R. Foster home licensure.
- S. Service coordination.
- T. Referral or case transfer procedures.
- U. Methods for information sharing.
- V. Conflict resolution (i.e., what action will be taken on cases which are not covered under the general agreement or if a disagreement arises regarding a specific case).

IV. Additional Information

Requests for additional information may be addressed to the DHFS Area Administration staff or the DCFS Indian Child Welfare Consultant.

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c: County Foster Care Coordinators
Division of Juvenile Corrections, DOC