

STATE OF WISCONSIN
Department of Children and Families
Division of Safety and Permanence

DSP Memo Series 2008 – 02b
November 25, 2008

Re: High-Cost Pool for
Tribal Court Placements
into Out-of-Home Care

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: Cyrus Behroozi
Administrator



This numbered memo is being reissued for the following reason:

- **The Maintenance of Effort (MOE) Determination is changed to one hundred percent of the agency's 3-year average costs for out-of-home care for Indian children placed by a Tribal Court.**
- **The High Cost Pool Application is revised to reflect the 100% MOE determination.**
- **Clarify functionally active 161 agreements**

County and tribal agencies have found it difficult to surpass the 125% MOE threshold established by the original memo. To assist the counties and tribes to receive funds for unexpected or unusually high-cost out-of-home care placements of Indian children by tribal courts, the three-year average for out-of-home care costs is reduced to a 100% threshold. If an agency surpasses the three year average and projects high cost placement of an Indian child by a tribal court, the agency may qualify for the High Cost Pool fund.

It was not the intent of the High Cost Pool fund to supplant local out-home-care costs, but to meet the specific needs of Indian children placed by a tribal court where the cost significantly impacts county/tribal out of home care budget. The revised memo clarifies how 161 agreements affect applications for funds.

The remaining criteria for the High Cost Pool Fund remain applicable.

Please discard Numbered Memo DSP Memo Series 2008-02 and replace it with this version identified as DSP Memo Series 2008 - 02b.

DOCUMENT SUMMARY

This memo describes the purpose of the High Cost Pool for funding out-of-home care placements made by Tribal Courts and the process for counties and tribes to apply for those funds. The funds become available on July 1, 2008.

Background

1983 Wisconsin Act 161 created a mechanism for County Departments of Social or Human Services to make payments for the costs of out-of-home placements of Indian children when those children are placed by a Tribal Court. Act 161 authorized a county to make payments for such an out-of-home placement if the county and a tribe entered into a written agreement (161 Agreement).

Over the years, there have been occasions in which the out-of-home placement(s) of a tribal child or children by a Tribal Court resulted in an unexpectedly or unusually high cost that exceeded the county resources allocated for out-of-home placements. The Department of Children and Families and tribal representatives recognized the dilemma facing counties in their commitment to adhere to the 161 Agreements, the limited financial resources available to counties, and the tribe's authority to order out-of-home placements through Tribal Court.

As a short-term solution, 2007 Wis. Act 20 provided \$500,000 over the 2007-2009 biennium to cover the unexpectedly or unusually high cost situations that strained budgets for counties and tribes. Sections 9121(1t) and 9155(1t) of Act 20 permit affected counties and tribes to apply for supplemental funds for unexpectedly or unusually high cost out-of-home placements of Indian children ordered by a Tribal Court. Funds from the high cost pool are available effective July 1, 2008 to those entities that qualify for assistance determined by the high cost pool criteria, application process, and agreements.

The remainder of this memo details the following High Cost Pool components:

- Tribal High Cost Pool Application Criteria
- Maintenance of Effort Determination
- Distribution of Funds
- High Cost Pool Application (Appendix A)

Tribal High Cost Pool Application Criteria

A. Accessing Funds – Funds from the High Cost Pool are available to:

1. A tribe and a county that have a functionally active 161 Agreement, provided that both the tribe and the county jointly request funds. This applies to situations where the county is paying for placements made by the Tribal Court.
2. A tribe that does not have a functionally active 161 Agreement or has not had such an agreement in the previous three (3) years. This applies to situations where the tribe is paying for placements made by the Tribal Court.

Functionally active means that a county and a tribe operate under an agreement, whether formal and in writing or not, whereby the county pays for out-of-home care placements made by a Tribal Court. Counties and tribes vary in how 161 agreements have been renewed, so there has been some confusion whether a 161 Agreement is 'functionally active'. The Bureau of Safety and Permanence considers a functionally active 161 Agreement as an agreement that has been signed by the county and tribe within the past three years. An 'inactive 161 agreement' refers to those agreements older than three years. The tribes that do not have an active 161 agreement or a tribe that never had a 161 Agreement but pay for the out of home care cost may apply for the High Cost Pool Fund.]

B. Eligibility of Placements:

1. The Indian child or children must have been placed by the Tribal Court of a federally-recognized tribe located in the State of Wisconsin.
2. The placement or placements must have been made into a licensed out-of-home care placement located in the State of Wisconsin. Full faith and credit will be given to tribally-licensed placements.

3. The child or children placed must have been under the jurisdiction of the Tribal Court as a child in need of protection or services, as defined under s. 48.13, Stats. or like provisions of the Tribe's Children's Code.
4. The cost of the placement(s) must result in the county or tribe exceeding 100% of the average out-of-home care expenditures in the previous three years for children placed by the Tribal Court. This 3-year average amount is the maintenance of effort amount for the applying entity.

C. Duration of High Cost Pool Placements:

1. Each request for funds must be for a specific child or group of children. The projected placement costs for the child/children must result in the county or tribe exceeding the maintenance of effort for the current county or tribal fiscal year.
2. Each request may be granted for a maximum of six months. The six-month period may cross into the next fiscal year for contract purposes.
3. Agencies may request one additional six-month extension of funding, based upon a justification that placement costs will continue to exceed the maintenance of effort amount and depending on the availability of High Cost Pool funds.
4. Requests must be submitted within 60 days of the beginning of the placement. Requests for children in their current placement for more than 60 days will be considered for only the 60-day period prior to the request.

D. Requests for Funding:

1. Requests must identify the placement provider and monthly cost for the child. Funded requests will be based on the cost for that particular provider. Should the provider change during the 6-month period, reimbursement is limited to the actual placement costs for the child, up to the authorized amount. Any unused funds revert to the Department.
2. Requests will be considered on a semi-annual basis, with \$250,000 of the High Cost Pool funds reserved for the period of July – December 2008 and \$250,000 reserved for the period of January – June 2009.
3. Should the amount of requests exceed the High Cost Pool funds available for that period, the Department may deny or pro-rate requests based on the funds available.
4. At the end of the semi-annual period, the Department may make further allocations for requests that were denied or pro-rated based on the funds available.

Maintenance of Effort Determination

Each request from a county/tribe collaborative (with a functionally active 161 Agreement) or tribal agency will be based on the appropriate agency's or agencies' average budget for expenditures for out-of-home care for Indian children placed by a Tribal Court over a three-year period. Projected expenditures for the current fiscal must surpass a minimum of one hundred percent (100%) of the agency's 3-year average for the application to be considered for the High Cost Pool.

In order to ensure that High Cost Pool funds do not supplant normal out-of-home care expenditures, applicants must provide the information requested in the Out-of-Home Care Placement Cost Table in the High-Cost Pool Fund Application.

Distribution of Funds

Applications for High Cost Pool funds should be submitted using the attached application form to the Department's Indian Child Welfare Consultant.

Approved allocations will be added to the State/County or State/Tribal contract as appropriate. For allocations that cross the county or tribal fiscal year, the allocations will be split between the current contract year and the next contract year. Funds will be made available to agencies through the CARS fiscal reporting system.

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Attachment: [CFS-2428, High-Cost Pool Fund Application](#) (PDF)
[CFS-2428, High-Cost Pool Fund Application](#) (WORD)

MEMO WEB SITE: <http://dcf.wisconsin.gov/memos>

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