


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

DSP Memo Series 2010 -05  
April 7, 2010  
Re: Levels of Care Initiative –  
Applicability to Tribes

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 A. Behroozi   
Administrator

As provided in the biennial budget (2009 Wisconsin Act 28) and the promulgation of the Emergency Rules for Foster Care and Kinship Care, the Levels of Care Foster Care Licensing Initiative became effective January 1, 2010.

2009 Wisconsin Act 71 made additional changes to implement the Levels of Care initiative, specifically regarding changes to the requirements for a Kinship Care provider to receive payments through the Kinship Care program. The Act requires that, for a child placed in the home of a Kinship Care relative under a Wisconsin Statute Ch. 48 or 938 court order on or after January 1, 2010, in order for the Kinship Care Provider to receive Kinship Care payments, the Kinship Care provider must apply for a foster care license. If the provider is eligible for licensure, then the provider must become a licensed foster care provider or he or she will no longer receive payments. If the provider is ineligible for licensure, then the Kinship Care provider may continue to receive payments under the Kinship Care program if the appropriate Kinship Care agency recommends to the Ch. 48 or 938 court and that court orders that the child remain in the home. These requirements apply to Kinship Care providers court-ordered prior to January 1, 2010 as well, unless such provider refuses licensure or is ineligible for licensure, in which case the provider can still continue to receive payments under the Kinship Care program for the period of that placement.

Implementing these changes with the tribes raised questions about how changes to the Kinship Care program could be implemented by tribally-administered Kinship Care programs. Because the Levels of Care Initiative makes changes to both the Kinship Care program and foster care licensing so that both programs intersect, jurisdictional questions arose regarding the new initiative in the context of Indian child welfare.

The Division has concluded that the new requirements under Levels of Care do not apply to a child placed in the home of a Kinship Care relative under a tribal court order. The language in Act 71, by reference to the definition of a court in section 48.02(2), refers to Kinship Care cases under the order of a court with jurisdiction under Chapters 48 and 938. These are Ch. 48 or 938 state courts, not tribal courts. Therefore, when a tribal court places a child with a Kinship Care provider, that provider does not need to apply for foster care licensure in order to receive payments under the Kinship Care program. This applies to any tribal court-ordered Kinship Care placement, whether the provider lives on or off of tribal lands.

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#### DOCUMENT SUMMARY

This memo outlines requirements under Levels of Care that do not apply to tribally-administered Kinship Care programs.

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The new requirements under Act 71 still apply to all Ch. 48 or 938 state court ordered Kinship Care placements.

Questions and answers regarding this decision are attached to this numbered memo, and will be updated as more questions and answers are developed for future clarification.

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MEMO WEB SITE: <https://dcf.wisconsin.gov/cwportal/policy>

Attachment: Questions and Answers

Levels of Care Initiative – Applicability to Tribes  
Questions and Answers

- 1. If tribes are not required to comply with the new rules under Levels of Care, how will funding for tribally-administered Kinship Care programs work?**
  - a. Any tribal court-ordered placement with a Kinship Care relative will work the same way that it does now. Tribes will continue to receive the same TANF funding to pay for those Kinship Care payments, and those Kinship Care providers are under no obligation to apply for foster care licensure.
- 2. What if a tribe does want to participate in the Levels of Care program?**
  - a. Tribes can use their discretion in applying the eligibility standards where discretion is allowed (e.g., whether a crime should be a bar to Kinship Care), but they must apply the applicable eligibility requirements.
- 3. What about the other aspects of the Levels of Care program (such as the requirement that a foster parent be certified at a certain level to receive various levels of payments, and the requirement that children be assessed at a certain level of need)? Has the Department determined whether those provisions apply to the tribes?**
  - a. This issue will need to be addressed in the coming year, because levels 3 through 5 will not be implemented until 2011. During the next year, the Department will meet with tribes, work with the Tribal/State Policy and Law Workgroup, and consult other tribal stakeholders to determine the best strategy for implementing levels of care for children placed in foster care under a tribal court order.
- 4. What if a Ch. 48 or 938 state court orders a Kinship Care placement in the home of a tribal member living on a reservation? Under the Levels of Care initiative, can the Kinship Care provider continue to receive payments?**
  - a. In that scenario, the provider would have to apply for licensure from a licensing authority in order to continue to receive payments, unless the case is transferred to tribal court.
- 5. Under the Levels of Care initiative, if a tribe transitions court-ordered Kinship Care providers to foster parents, how will they be funded since most tribes do not have out-of-home care budgets?**
  - a. This process does not change under Levels of Care. The process for funding will depend upon whether the tribe has a 161 Agreement with the county of the child's residence and on the content of the Agreement, or whether the funding can be negotiated on a case-by-case basis. It may be necessary for the tribe and county to enter into or revise a 161 Agreement, or the tribe will have to somehow fund the placement, or the case could be transferred to state court.