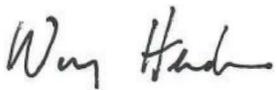


To: DCF/DMCPS Administrator
DCF Area Administrators
Child Placing Agency Directors
Child Welfare Agency Directors
County Departments of Community Programs Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Group Home Providers
Tribal Social Service/Indian Child Welfare Directors
Private Child Placing Agencies
Residential Care Center Providers
Shelter Care Providers
Tribal Chairpersons

From: Wendy Henderson
Division Administrator 

Re: **High-Cost Pool Fund for Tribal Court Placements and Tribal Subsidized Guardianship**

PURPOSE

This memo explains the process for accessing high-cost pool funds for tribal court placements in out-of-home care, as well as subsidized guardianships entered into by county agencies for guardianships of Indian children ordered by tribal courts. The high-cost pool does not supplant the overall responsibility of county human/social services agencies to pay for placements ordered by tribal courts under 161 Agreements or for subsidized guardianship payments under s. [48.623 \(1\)](#) or [\(6\)](#) for guardianships of Indian children ordered by tribal courts.

High-cost pool funds can be requested as supplemental funding to meet the specific needs of Indian children placed by a tribal court where the costs significantly affect the county or tribal out-of-home care budget, or for a subsidized guardianship entered into for an Indian child. Requests can be made for specific children in situations where the county or tribe meets the high-cost pool requirements.

This memo supersedes DSP Memo Series 2021 – 08i

BACKGROUND

The high-cost pool was created by 2007 Wisconsin Act 20 to provide funds to counties and tribes for unexpected or unusually high-costs for out-of-home care placements of Indian children by tribal courts. “High-cost” for out-of-home care placements is defined by statute to mean the amount by which the cost to a tribe or county for out-of-home care placements of Indian children by tribal courts exceeds \$50,000 in a fiscal year.

The 2013-15 biennial state budget (2013 Wisconsin Act 20) was signed into law on June 30, 2013 with a provision allowing the high-cost pool fund to be used for subsidized guardianship payments under s. [48.623 \(1\)](#) or [\(6\)](#) for guardianships of Indian children ordered by tribal courts.

The 2017-2019 biennial state budget (2017 Wisconsin Act 59) increased available funds by \$247,500.

The high-cost fund is currently funded at \$642,500 per year.

2021 Wisconsin Act 132 was signed into law on February 4, 2022 and removes subsidized guardianship payments from the high-cost pool fund reimbursement, effective January 1, 2022.

INFORMATION SUMMARY

Tribal Out-of-Home Care Placements

A. Accessing Funds:

1. A tribe and a county with a functionally active 161 Agreement must submit a joint application for the county to receive funds. This applies to situations where the county is paying for placements made by the tribal court.

“Functionally active” means a county and a tribe operate under an agreement, whether 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 are renewed. The Division of Safety and Permanence considers a functionally active 161 Agreement as an agreement that has been signed by the county and tribe at some point in the past and the county continues to pay for placements by the tribal court.

2. A tribe may submit an individual application if the tribe is paying for placements made by the tribal court.

B. Expenditure Threshold:

1. The tribe and county, for a joint application, or a tribe for an individual application must expend a minimum of \$50,000 for out-of-home care costs to access the high-cost pool fund.

For both requesting high-cost pool reimbursement and meeting the \$50,000 threshold, out-of-home care placement costs may include the equivalent under tribal codes of CHIPS placements and the four types of JIPS placements subject to ICWA {uncontrollable [s. 938.13(4)], habitually truant [s. 938.13(6)], school dropouts [s. 938.13(6m)], and habitual runaways [938.13(7)]}. Costs for JIPS placements not subject to ICWA cannot be reimbursed under the high-cost pool nor can such costs be counted towards meeting the \$50,000 threshold. For both requesting high-cost pool reimbursement and meeting the \$50,000 threshold, counties and tribes may include expenses incurred for tribal court-ordered placements of Indian children, including foster care, group homes, shelters, and residential care centers.

Note: Costs for secure detention, corrections, and hospital placements cannot be

reimbursed by the high-cost pool fund and cannot be counted towards meeting the \$50,000 threshold.

For purposes of meeting the \$50,000 threshold only, TANF Kinship Care program costs incurred by county and tribal Kinship Care programs for court ordered Kinship Care placements of Indian children can be included. High-cost pool funds cannot be requested for Kinship Care since TANF funds are provided in county community aids allocations to cover these costs, and available to counties and tribes.

For purposes of meeting the \$50,000 threshold only, tribal per capita payments that have been redirected by the tribal court to support placements of children may be included. High-cost pool funds cannot be requested for placements that are supported by tribal per capita payments.

C. Eligibility of Placements:

1. The Indian child must be placed by the tribal court of a federally recognized tribe headquartered in the State of Wisconsin.
2. Placements must be made to a state or tribal licensed out-of-home care provider located in the State of Wisconsin. Placements with an out-of-state licensed provider may be granted if the Indian child is also a resident of Wisconsin.

AND

3. The child placed must be under the jurisdiction of the tribal court as i) a child in need of protection or services as defined under § 48.13 or under like provisions of the tribe's children's code, or ii) a juvenile in need of protection or services as defined under § 938.13 (4) to (7) or under like provisions of the tribe's juvenile code

D. Duration of High-Cost Pool Placements:

1. Each request for funds must be for a specific child or group of children placed in foster care, group foster care, shelter care, or residential care. The placement costs for the child/children must result in the county or tribe exceeding \$50,000 for 2021.
2. Each request may be granted until **April 15, 2022**, but not beyond without the submission of a new request the following year.
3. Once high-cost pool funds have been approved for the placement of a child, agencies may apply in the next fiscal year to request extensions of funding for that child. In such an instance, agencies must meet the \$50,000 threshold for that fiscal year to be eligible for funds. The number of extensions is not limited, but extensions are not guaranteed. Consideration will be based on available funding and the number of new applicants.

Subsidized Guardianship

Note: An Indian child's subsidized guardianship eligibility continues to be based on Ch. DCF 55 Subsidized Guardianship administrative code and is not contingent upon availability of high-cost Pool funds.

A. Accessing Funds:

1. A tribe and a county with a functionally active 161 Agreement, or memorandum of understanding or other written agreement, must submit a joint application for the county to receive funds.

B. Expenditure Threshold:

1. There is no expenditure threshold for subsidized guardianship payments.

C. Eligibility of Placement

1. The child is a member of a federally recognized tribe headquartered in the State of Wisconsin or is i) eligible for membership of a federally recognized tribe headquartered in the State of Wisconsin AND ii) a biological parent is a member of a federally recognized tribe.
2. The subsidized guardianship is entered under Ch. DCF 55 subsidized guardianship administrative code.
3. Each request must be for a specific child.
4. The guardianship must be ordered by a tribal court.

D. Duration of Subsidized Guardianship Payment

1. Each approved request will fund the supplemental and exceptional portion of the payment for the life of the case (until the child turns 18 or is otherwise ineligible for subsidized guardianship). The State will reimburse counties the cost of the supplemental and exceptional portion of the payment.
2. The amount of all approved requests in a given fiscal year is not to exceed 50% of high-cost pool funds. If funding remains in the high-cost pool at the end of a fiscal year and no out-of-home care requests remain, additional subsidized guardianship cases may be approved for the current fiscal year. In these instances, the payment is a one-time payment only. A new request must be submitted in the following year in order to pursue future funding for that child.

Requests for Funding:

- A. Requests must be made on a form prescribed by the Department. Placement requests must identify the actual duration of the placement during the application period, the placement provider, the maintenance cost of the placement (if applicable), and daily administrative cost for the child. Requests will be funded based on the actual cost for that particular child.

For subsidized guardianship, the request must include the date the child turns 18, the guardian, and the monthly supplemental and exceptional payment amount.

- B. High-cost pool funds are available during each State fiscal year. **This application period will cover expenditures from January 1, 2021 through December 31, 2021.** All applications are due by **April 15, 2022.** The Department will prorate the funds based on each county or tribe's percentage of the total expenditures. For example, if the total expenditures submitted by all counties and tribes equals \$1,000,000 for a given fiscal year, and a particular applicant's expenditures equals \$200,000, that applicant would receive 20% of the available \$642,000 (or \$128,400).

The portion of the request not funded remains the fiscal responsibility of the county or tribe.

Subsidized guardianship funding will be calculated prior to prorating the remainder of the requests

- C. All applications must include proof of payment for each child.
- D. All applications must include a copy of the Tribal Court order, placing the child in each placement.

ACTION SUMMARY

Those seeking to access high-cost pool funds must inform the Tribal Affairs Specialist of your intent to apply. You will then be granted access to a confidential SharePoint site where you can upload your application and supporting documents by **April 15, 2022.**

CENTRAL OFFICE CONTACT: Tribal Affairs Specialist
Administrator's Office
920-785-7839
dcfwicwa@wisconsin.gov

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

ATTACHMENT LINKS: [High-cost Pool Fund Application](#)