

STATEMENT OF THE

National Indian Child Welfare Association

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PRESENTED BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

REGARDING

**TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE FOR INDIAN CHILDREN IN THE CONTEXT OF WELFARE REFORM  
REAUTHORIZATION**

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The National Indian Child Welfare Association appreciates this opportunity to testify regarding the reauthorization of what is collectively known as welfare reform programs. Because our area of expertise is child welfare, we will focus on the Title IV-E Foster Care and Adoption Assistance Act<sup>1</sup> and the need for welfare reform legislation to authorize direct tribal administration of this federal entitlement program. It would also authorize tribal-state agreements. Legislation to accomplish this goal was introduced by Senator Daschle as S. 550<sup>2</sup> and by Representative Camp as H.R. 2335. In addition, the text of S. 550 is also a part of Senator Baucus's tribal welfare reform proposal.

We especially thank the Members of the Senate Committee on Indian Affairs who are cosponsors of S. 550 - Senators Inouye, Campbell, Johnson, McCain, Wellstone, Akaka, and Domenici. Your support for this very important legislation to help Indian children is very much appreciated. We also give special thanks to the American Public Human Services Association, the Child Welfare League of America, and the Children's Defense Fund for their support for direct tribal administration of the Title IV-E program. And, as you would expect, there is widespread support in Indian Country for this legislation.

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#### RECOMMENDATION

##### **Tribal Access to the Title IV-E Program**

*Our primary recommendation is that the Title IV-E amendments of S. 550, which are also included in the Baucus tribal welfare reform proposal, be included in any welfare reform reauthorization bill that the Finance Committee recommends for passage to the full Senate body. These amendments would correct an oversight in the 1980 Title IV-E Foster Care and Adoption Assistance law to make otherwise eligible Indian children placed in out-of-home placements by tribal courts eligible for Title IV-E services and to allow tribal governments to administer these programs directly. The statute has left out a whole class of children - Indian children living in tribal areas - from receiving the entitlement benefits. All other income eligible children in the United States receive this program as an entitlement. Congress must correct this situation. This program should be offered to tribes consistent with government-to-government federal policy. This would necessitate tribes having the ability to directly administer the program.*

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It is incredulous that a program designed for poor children who must be placed in out-of-home placements has generally bypassed a segment of the population that clearly meets the criteria for eligibility. Indian children living in tribal areas are among the poorest in the nation, and they are living in foster or adoptive homes at rates higher than other segments of the society. But tribal governments are not eligible to administer this program for children under their jurisdiction. As a result, placement options for Indian children in tribal care continue to be very limited and many times unstable, even with the incredible knowledge and experience of tribal child welfare programs in general. In our view, this funding issue, as much as any other issue, has impacted the ability of Indian children to secure a sense of permanency after being removed from their homes.

##### **Tribal Administration of Foster Care/Adoption Assistance Program is a Necessary Component of Welfare Reform Law**

Our recommendation that the Title IV-E legislation be included in the welfare reform reauthorization bill in order to provide direct funding to eligible children on Indian reservations and to tribal governments for the administration of the program serves the purposes of the current welfare reform law.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a state cannot receive Temporary Assistance for Needy Families (TANF) funding unless it operates both a Foster Care and Adoption Assistance and a Child Support Enforcement program under Titles IV-E and D of

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<sup>1</sup> Title IV-E of the Social Security Act.

<sup>2</sup> The CBO score on S. 550 is \$104 million over five years and \$380 million over ten years. The bill was referred to the Senate Finance Committee.

the Social Security Act. Congress explicitly recognized the interrelationship between the effort to end dependence on public assistance with the need for a strong child support enforcement program and an effective system for helping our most vulnerable children - those living in poverty that require temporary or permanent placements outside their homes. Sadly, the federal entitlement statutes concerning foster care and adoption and child support enforcement have been of very little benefit to Indian children living on reservations.

TANF, foster care and adoption assistance, and child support enforcement serve as a three-legged stool for providing services to families, but tribes have not been given the option of administering the IV-E Foster Care and Adoption Assistance program. While the 1996 welfare reform law authorized tribes to administer the IV-D Child Support Enforcement program, the regulations for tribal child support enforcement are still not finalized; thus tribes are not yet able to use this authority.

Tribes are teetering on one leg of a stool, and that leg is TANF. We need the other two legs. We need the final tribal child support enforcement regulations to be issued, and we need to enact legislation to allow tribes to administer the federal entitlement program for foster care and adoption assistance.

We cannot imagine that states would be able to administer the kind of foster care and adoption assistance programs they currently run absent the federal entitlement funds from the IV-E program. The federal government currently provides \$6.7 BILLION in IV-E funds to states.

#### **Tribal IV-E Amendments Would Help Provide Permanency for Indian Children**

Enacting legislation to allow tribes to directly administer the IV-E program would increase the chances of permanency for Indian and Alaska Native children because of the following:

- More families on Indian reservations could afford to be foster and adoptive parents because of IV-E payments that assist for clothing, school supplies, transportation, and other daily needs of the child. Families on Indian reservations now sometimes find they must give up foster children because of financial concerns.
- Families would receive training, increasing their chances to be successful foster and adoptive homes
- Improved tribal social services and case management because of the permanent base of IV-E administrative, training and data collection funding
- Medicaid eligibility for children -- many of the emotional and mental health needs of these children cannot be met by tribally based health programs, and Medicaid would provide access to other health facilities. Families on Indian reservations sometimes now find they cannot keep foster children because of behavioral or health needs for which they do not have appropriate services.

#### **Title IV-E Foster Care and Adoption Assistance Programs - Services Which are Not Guaranteed to Indian Children**

*Below we provide an overview of the services provided under the Title IV-E entitlement program in order to emphasize that these are services not guaranteed to otherwise eligible Indian children.*

Title IV-E provides states with a permanently authorized entitlement program that supplies matching funds to support placements of income-eligible children in foster care homes, private non-profit child care facilities, or public child care institutions. These foster care maintenance payments are intended to support the costs of food, shelter, clothing, daily supervision, school supplies, general incidentals, liability insurance for the child, and reasonable travel to the child's home for visits. Matching funds are also available for administrative activities that support the child's placement and training for professionals and parents involved in these placements.

Title IV-E also provides entitlement funds to states to support adoption assistance activities, and like the foster care program, is mandatory for all states that operated the former Aid to Families with Dependent Children (AFDC) program or the TANF block grant and Child Support Enforcement program.

Activities which qualify for matching funds include maintenance payments for eligible children who are adopted, administrative payments for expenses associated with placing children in adoption, and training of professional staff and parents involved in adoption. To be eligible for these matching funds, states must develop agreements with parents who adopt eligible children with special needs. Special-needs children must be AFDC- or Supplemental Security Insurance (SSI)- eligible. However, states may also claim non-reoccurring adoption expenses for children with special needs who are not AFDC- or SSI-eligible. While Title IV-E broadly defines special needs children as those who have characteristics that make them difficult to place, Title IV-E gives states discretion as to the specific categories of special needs children that they will recognize (e.g., older children, minority children, and children with physical, emotional, or behavioral problems).

Another area of support under Title IV-E is the Independent Living Program that assists youth up to age 21 in making a transition from the foster care system to independent living. Examples of services provided under this program are basic skills training, educational services (e.g., GED preparation), and employment preparedness.

The services under Title IV-E foster care, adoption assistance, and independent living programs provide the core funding for a continuum of state efforts to find a lasting and permanent home for children who have been or are currently in the foster care system. Without this funding, it is doubtful that any state could operate and maintain a child welfare system that was successful in securing permanent homes for children.

#### **Indian Children and Title IV-E**

Why did the Foster Care and Adoption Assistance Act of 1980 not include Indian children under tribal jurisdiction as eligible beneficiaries? We believe that is was a drafting oversight that left Indian children and tribes ineligible to receive Title IV-E services. We see nothing in the legislative history to suggest otherwise, and conversations with the office of Representative George Miller, the primary author of the 1980 Act, suggests it was not intentional. Indeed, Representative Miller is a co-sponsor of H.R. 2335, legislation that would amend the Social Security Act to allow tribal governments to directly administer the Title IV-E program. Unfortunately, the Title IV-E statute is not the only social services related program that has given little thought to services for people living on Indian lands. We urge Congress to always keep in mind that tribal governments are not subsets of state governments. They are legally distinct and separate from state governments. Federal statutes authorizing services need to make specific provisions for tribal delivery systems.

While approximately 70 tribes/tribal organizations have agreements with states to operate portions of the Title IV-E program, these agreements have not benefited many of the approximately 4,500 Indian children on tribal lands who are eligible for Title IV-E services. The formation of these agreements is not mandatory for states, and many tribes that would like to operate Title IV-E have no opportunity to do so. Furthermore, states do not always provide equitable access to the services that Title IV-E offers in the agreements, making tribal implementation more difficult.

Nonetheless, when tribes have been given the opportunity to operate portions of the Title IV-E program, they have shown themselves to be creative and effective administrators of the program. For example, Three Affiliated Tribes of Fort Berthold in North Dakota, using a combination of the Title IV-E program they operate through agreement with the state and other community-based child and family services, has been able to reduce their foster care caseload by more than half since the early 1990s. Professional staff used the community knowledge they possessed to make services more responsive, while building upon program funding to expand services, resulting in this dramatic change. This kind of program model is promising but would not have been feasible without core funding support for a variety of child welfare services.

#### **DHHS Office of Inspector General Report**

A picture of the situation for tribal access to Title IV-E and other federal social service and child welfare funds was provided in a report by the DHHS Office of Inspector General (OIG), *Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children*, produced in August 1994. The report documented that tribes receive little benefit or funding from federal Social Security Act programs, specifically

Title IV-E Foster Care and Adoption Assistance, the Title XX Social Services Block Grant, and the Title IV-B Child Welfare Services and Family Preservation and Support Services monies. While tribes receive a small amount of direct funding under both of the IV-B programs (\$4.6 million for Title IV-B, subpart 1, and \$4.4 million for Title IV-B, subpart 2 for FY 2002), there is no direct funding available to tribes under the much larger Title IV-E and Title XX programs.

In listing options for improving service to tribes, the OIG study stated that the surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to amend the authorizing statutes to provide direct allocations to tribes. This statement was repeated in a hearing conducted by the Senate Committee on Indian Affairs on April 5, 1995, by the Office of Inspector General from DHHS.

The OIG report discusses the barriers to tribal-state agreements regarding Title IV-E:

- *No explicit authority.* Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to tribes and the law neither requires nor encourages States to share funds with tribes.
- *State responsibility for tribal compliance with requirements of Title IV-E funds is problematic for states.* Some states are reluctant to enter into Title IV-E agreements with tribes because under the law, the state would be held accountable for tribal compliance with Title IV-E. States could, if tribal records evidenced non-compliance, lose a portion of their Title IV-E and IV-B funds. We know that this is an issue with a number of states, including Alaska, Arizona, California, and New Mexico.
- *Disputes between tribes and states about issues unrelated to child welfare.* Both state and tribal officials reported that points of contention between state and tribal governments unrelated to child welfare have made agreements impossible to reach. Issues concerning land rights and jurisdiction have thwarted these agreements. At least one state made receipt of foster care money contingent upon the tribe adopting the complete set of state child welfare policies and procedures, without consideration for the impact this would have upon working effectively with Indian children and families or federal law to the contrary.
- *Tribal lands which extend into multiple states.* In cases where tribal lands extend across state borders (e.g., Navajo is in Arizona, New Mexico, and Utah), the prospects of concluding multiple IV-E agreements have proved unfeasible. Eight federally recognized tribes have lands that extend into multiple states, with several more that border at least one other state where significant tribal populations reside.

The OIG report also notes that state officials with whom they talked favored direct IV-E funding to tribes:

With respect to IV-E funding, most State officials with whom we talked favored ACF (Administration on Children and Families) dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements, and because Title IV-E is an uncapped Federal entitlement, would not affect the moneys available to the States. (p. 13)

### **Consequences for Indian Children and Tribal Communities from the Current Lack of Stable Funding**

Below are three examples of problems encountered by the lack of tribal authority to directly administer the IV-E programs at Navajo Nation, Three Affiliated Tribes, and Metlaktala Indian Community.

#### *The Risk To Indian Children's Permanency From Unsubsidized Homes*

Not wanting to leave children in harmful situations, tribes have had to resort to alternative vehicles for protecting children who must be removed from their homes. A common method is the placement of Indian children in unsubsidized homes. This often requires the good will of a family in the community that will commit its personal resources, time, and home to a foster care, legal guardianship, or pre-adoptive placement for a needy child. Even though the commitment is made with love, the vast majority of these families find this event to be stressful and sometimes unworkable after a period of time, especially when considering the numbers of Indian families on tribal lands who live in or close to poverty.

Most tribes will still license the unsubsidized family foster home and provide assistance on foster parenting even though it often involves shifting scarce child protection funds from one account to another in order to meet emergency and other pressing needs. However, additional services that support the child and foster family that are reimbursable under Title IV-E state programs are not always available, causing additional stress on the foster or pre-adoptive family and putting the placement at risk for disruption.

In one situation, a three-year old Navajo child was transferred from the state of New Mexico to a foster home on the reservation. The tribal child welfare program had a promising placement for the child and was feeling hopeful that a good ending for the child was soon to be. This was particularly encouraging because the child had many special needs and was a victim of sexual abuse. The foster mother who the tribal program had recruited, a non-relative, was asked to support the foster child with no subsidy because the tribe did not have sufficient funding in this area. Nonetheless, the foster mother accepted the placement. Several months later, in coordination with the tribal child welfare program, the foster mother was seriously considering adopting the child. After a year in the foster mother's care the adoption was almost ready to go into the final stages when the foster mother's job situation changed and she became unable to fully support the child. This resulted in the child having to be moved to another placement and all the work that went into securing a permanent placement for the child was lost and, of course, the child's life was disrupted by the move.

#### *The Connection Between Support Services and Permanency for Indian Children*

The lack of Title IV-E funding is also felt at the front end of developing permanency for Indian children. Tribal child welfare programs, which are responsible for recruiting potential foster care and adoptive families, have difficulties recruiting and maintaining families because they cannot guarantee basic maintenance payments and few support services for the placement. While strong community values and individual generosity often prevail in helping provide temporary homes for needy Indian children, the numbers of homes actually needed often does not meet the need because of limitations on support that can be offered to these families.

Child welfare work in Alaska presents some unique challenges, but the Metlakatla Indian Community south of Juneau has the additional challenge of doing this work without the necessary resources. Karen Thompson of Metlakatla's Social Services Division knows these challenges only too well. During one situation, she encountered a pre-adolescent child with serious mental health problems. Since the Indian community had no access to funding for recruiting, training, and supporting foster families that could handle a child with these special needs, she was left with virtually no viable options for care. Karen could 1) try to piece together short-term care arrangements among several families in the community, which would be risky and very difficult based upon the needs of the child and lack of trained therapeutic foster homes in the community; 2) have the child committed for protective custody to the local jail facility; or 3) try to get the state to agree to provide services, which would mean flying the child hundreds of miles away for care, making any meaningful permanency planning involving relatives or other community members almost impossible. This may sound like an isolated incident, but for Karen, it is a regular event. This example points out the extreme challenges and strain for a tribal community that has little to offer prospective foster and adoptive parents.

The Navajo Nation also shares in this dilemma. While the tribe works hard to provide adequate services for Navajo children and families, it is sometimes necessary to transfer children to shelters in border towns on or near the reservation boundary, sometimes hundreds of miles away from their families. These arrangements are made when foster placements for Navajo children with special needs cannot be developed or located due to funding constraints. This makes coordinating regular involvement of the child's relatives, which is critical to securing a permanent placement for the child, very difficult if not impossible in some cases.

#### *Jurisdictional and Service Coordination Problems Impacting Permanency for Indian Children*

The value of community-based services cannot be underestimated, especially for children who have been the victims of abuse or neglect. This same value also holds true to the would-be caregivers for these children who are making tremendous efforts to provide a loving and stable home to these children. Gaps in service coordination are not easily worked out in many cases and can both delay a child getting a permanent home and delay their caregivers from getting the support they need for months. Jurisdictional conflicts between tribes and states are often a precipitating factor in these service coordination problems, resulting in the child being further victimized by child welfare systems that don't communicate well with one another. For tribes, getting access to state services can be very challenging and frustrating when working with systems that don't understand their community or needs. The services the state may offer are too often geared toward mainstream ideas of family and community and are also located long distances from tribal members' homes. For states, the overlay of federal Indian law and tribal law often seems confusing and out of step with state practices, raising questions

about how to proceed. An additional concern for states is what their liability for services to tribal members is, especially on tribal lands. For both parties, budgetary concerns are important, sometimes creating a tug of war over who will pay for services.

On the Three Affiliated Tribes of Fort Berthold Reservation, Janet Gunderson, a child welfare professional, has been thinking about the process she encountered while trying to adopt her child Jordan Rose. While her tribe has been operating a Title IV-E foster care program through an agreement with the state for several years, the tribe has been unable to secure funding for the Title IV-E Adoption Assistance program.

When Janet first met Jordan, she (Jordan) had just come from the hospital after having surgery for congenital heart disease. At this time, she was temporarily placed with the Gundersons until a more permanent placement could be found. After the placement with Janet and her husband extended to 18 months, the Gundersons informed the tribe that they would like to be considered as prospective adoptive parents for Jordan. For the first four years of her life, the Gundersons took her to frequent doctor's appointments 80 miles away because of her fragile heart.

Eventually, Janet and her husband were able to adopt Jordan and asked that the adoption be subsidized because of her heart condition, which placed Jordan in a position to be considered a special needs child and eligible for Title IV-E adoption assistance subsidies. Janet, understanding some of the eligibility criteria for Title IV-E, asked that this request and Jordan's circumstances be put into the court order granting her adoption, which it was. However, the tribe was never able to access any of the subsidy through Title IV-E despite her fragile medical condition and clear eligibility. The county stepped out of the picture once the adoption was finalized, later saying that the "adoption was not done according Title IV-E specifics." This reference was apparently related to the court order not being client specific enough. The Gundersons were faced with little they could do but try to find private insurance to help with the intensive medical services that Jordan required at first. This quickly became a very difficult and expensive option.

Janet and her husband have no regrets about their decision to adopt Jordan but still feel angry about the problems they encountered. Some of Janet's most intense feelings come from the knowledge that the county was involved with Jordan from the first day she came to the Gundersons in foster care. The county arranged for the Gundersons to receive Title IV-E foster care subsidies for Jordan, while also having full knowledge about Jordan's medical condition and the hardships involved for the Gundersons. Nonetheless, they failed to direct the tribe on how to ensure that Jordan received adoption assistance benefits.

While this story has a happy ending for Jordan and the Gundersons, Jordan's health is still a concern to her adoptive mother. The months of frustration, hardship, and expense that the Gundersons experienced were unnecessary and most likely would not have occurred if the tribe had been in control of the Title IV-E Adoption Assistance program. One can try to blame the tribal court for not adhering exactly to the specific criteria for court orders under Title IV-E, but in reality, the mistake was a simple one that came about from a lack of service coordination between two separate jurisdictions. The consequence of which became the burden for the adoptive parents and Jordan.

Again, thank you for the opportunity for the National Indian Child Welfare Association to testify before this Committee. We should now seize the opportunity before us in welfare reform reauthorization to provide every Indian child the opportunity to grow up knowing a permanent and stable home comparable to that provided to other eligible children throughout the United States. It is time to make the Title IV-E entitlement program an entitlement for all children.