



# NCAI TESTIMONY ON IMPLEMENTATION OF THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT

*House Committee on Ways and Means*

*Subcommittee on Income Security and Family Support*

*September 15, 2009*

## EXECUTIVE COMMITTEE

**PRESIDENT**  
**Joe A. Garcia**  
*Ohkay Owingeh*  
*(Pueblo of San Juan)*

**FIRST VICE-PRESIDENT**  
**Jefferson Keel**  
*Chickasaw Nation*

**RECORDING SECRETARY**  
**W. Ron Allen**  
*Jamestown S'Klallam Tribe*

**TREASURER**  
**gaiaashkibos**  
*Lac Courte Oreilles*

## REGIONAL VICE PRESIDENTS

**ALASKA**  
**Mike Williams**  
*Akiak Native Community*

**EASTERN OKLAHOMA**  
**Joe Grayson, Jr.**  
*Cherokee Nation*

**GREAT PLAINS**  
**Ron His Horse is Thunder**  
*Standing Rock Sioux Tribe*

**MIDWEST**  
**Robert Chicks**  
*Stockbridge-Munsee*

**NORTHEAST**  
**Randy Noka**  
*Narragansett*

**NORTHWEST**  
**Brian Cladoosby**  
*Swinomish Tribe*

**PACIFIC**  
**Juana Majel**  
*Pauma-Yuima*

**ROCKY MOUNTAIN**  
**Scott Russell**  
*Crow Tribe*

**SOUTHEAST**  
**Archie Lynch**  
*Haliwa-Saponi Tribe*

**SOUTHERN PLAINS**  
**Darrell Flying Man**  
*Cheyenne-Arapaho Tribe*

**SOUTHWEST**  
**Derek Valdo**  
*Pueblo of Acoma*

**WESTERN**  
**Alvin Moyle**  
*Fallon Paiute Shoshone Tribe*

**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson Pata**  
*Tlingit*

**NCAI HEADQUARTERS**  
1516 P Street, NW  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax

On behalf of our country's tribal nations, the National Congress of American Indians (NCAI) is pleased to present testimony on Implementation of the Fostering Connections to Success and Increasing Adoptions Act. The recommendations that we are making are supported by the National Indian Child Welfare Association and the Association of American Indian Affairs, with whom we collaborate on this and other child welfare matters. We look forward to working with this Subcommittee to ensure that the critical programs and initiatives authorized and supported by this body are implemented with effectiveness in consultation with tribal governments.

This Act authorizes tribes, for the first time, to receive administer the Title IV-E federal programs for foster care and adoption assistance. While tribal governments are not eligible to receive reimbursement from Title IV-E under this law until October 1, 2009, there has been increasing interest from tribal governments to prepare for implementation of this important new funding and service opportunities for their children, families and communities. The work of the Ways and Means Committee along with this Subcommittee was crucial to the enactment of this new law and the many benefits we see beginning to take shape. In particular, we want to recognize the leadership of Chairman McDermott, former Ranking Member Weller, Representative Pomeroy, and Representative Camp. Through their support, the Fostering Connections to Success and Increasing Adoptions Act authorizes tribes to directly administer the Title IV-E Foster Care and Adoption Assistance programs.

NCAI has facilitated numerous tribal discussions regarding implementation of the Act. This testimony reflects our observations on tribal activities regarding the Act and some of the challenges to tribal participation in the Title IV-E program. Not since the 1978 enactment of the Indian Child Welfare Act has there been a federal law with such potential for positively transforming tribal child welfare services for American Indian and Alaska Native children.

As the number of tribal governments participating in the Title IV-E program increases, we anticipate that the number of our tribal children achieving permanency will also grow significantly.

### **Implementation Achievements**

While at this early stage in the process, there are not any tribes directly administering the IV-E program, there are good indications of interest and progress being made towards tribes successfully applying to directly administer the Title IV-E program. As of the date of this hearing, approximately 73 tribal entities have signaled their interest in submitting a plan to operate the Title IV-E program through letters of intent provided to the Children's Bureau. These tribal entities include singular tribal governments, tribal organizations, and tribal consortia. They represent tribal entities from seven out of the ten federal regions in the United States. In addition, 15 tribal entities have submitted grant applications for the development grants authorized under the law that provide tribes with funding to support their Title IV-E readiness activities for up to two years. Given the number of tribes that applied to operate similar federal assistance programs after they have become available for the first time, including Temporary Assistance for Needy Families and Child Support Enforcement, these numbers represent a healthy tribal interest and movement towards participating in the Title IV-E program.

Other areas where there are indicators of progress in implementing the new law include:

- Increased discussion with states on collaboration regarding Title IV-E;
- More tribes engaging in broad child welfare reform within their communities;
- Additional tribal requests for technical assistance on implementing the Title IV-E program; and
- Forums and workgroups being formed to facilitate discussion of implementation issues and development of tribal strategies for addressing these issues.

Since enactment last October, states and tribes have been engaged in discussions regarding the opportunities present in the new law, the role of each government in supporting greater access to IV-E services to tribal children, and new strategies for increasing tribal support to operate the

program directly. In several states there have been discussions about states continuing-- and even increasing-- tribal access to state Title IV-E resources, including funding to meet non-federal match requirements and data collection systems. Some tribes are considering contracting with state or county agencies to perform certain specific IV-E functions with the tribe as the lead applicant, such as eligibility determinations, and others are looking at mutually beneficial training activities authorized under the law. Another important area of collaboration is information sharing between tribes and states to help tribal children maintain their eligibility for health and other services provided under other federal or state programs. Memorandums of Understanding and intergovernmental agreements are being discussed and will likely be available for broader dissemination in the future.

One of the barriers for tribal governments engaging in large-scale child welfare reform has been the absence of a solid funding base. With the opportunity to access Title IV-E funding many tribes can now consider meaningful systems change. Two tribal nations that are engaged in child welfare reform and have expressed an interest in applying for Title IV-E directly are the Navajo Nation and the Tlingit and Haida Indian Tribes of Alaska. Both tribes are working with the National Indian Child Welfare Association through the Administration for Children and Families' Western and Pacific Implementation Center ([www.wpic.org](http://www.wpic.org)), which is part of the Children's Bureau technical assistance network. These tribes were selected for participation from among a number of applicants, including states, counties and tribes. They will be required to evaluate their entire child welfare system, including current and proposed funding sources like Title IV-E, and plan and implement system changes to improve outcomes for their tribal children and families. The systems reforms they are planning now will help them become better prepared to operate the IV-E program directly and potentially become a model for other tribes. Without the potential access to Title IV-E, it is unlikely that these tribes could have undertaken these extensive efforts.

A number of national organizations, both Indian and non-Indian, have come together since last October to provide forums for discussion of key implementation issues, such as strategies for culturally-appropriate technical assistance, tribal court and code reform, and resources for developing tribal IV-E data systems. The organizations include National Congress of American Indians, National Indian Child Welfare Association, Association on American Indian Affairs,

Casey Family Programs and Child Welfare League of America. Together they have provided over 20 technical assistance events for tribes both regionally and locally, developed a number of critical written resource materials for tribes, and have often consulted with state and federal agencies on Title IV-E implementation matters. These collaborations have been provided without federal support and are continuing today.

Several regional Indian organizations, including the All Indian Pueblo Council in New Mexico and the Indian Child and Family Resource Center in Montana, have been providing technical assistance and helping tribes assess their readiness to operate the Title IV-E program. In addition, we have witnessed a number of states holding forums to discuss implementation issues and offer technical assistance to tribes when requested.

Tribes have also had good access to the Children's Bureau through regional forums and conference calls regarding the new law and program requirements of Title IV-E. The Children's Bureau, like many of the technical assistance providers, has a steep learning curve in preparing for implementation of the law, but has provided quick responses to issues that have been raised by tribes and Indian organizations. The Children's Bureau has a key role in helping tribes with implementing the IV-E programs. This role includes being responsive to unique tribal needs, utilizing the expertise and knowledge in Indian Country, and adequately explaining their agency's requirements and expectations.

### **Implementation Challenges**

Congress anticipated several of the challenges that tribes might have in trying to implement the IV-E program and included specific provisions to address those issues, such as making tribal consortia eligible to apply, protecting tribal children's eligibility for services when tribes switch from an agreement to direct funding, and establishing tribal-specific technical assistance. However, some additional challenges for tribes are starting to appear. The top challenges currently are:

- Identifying sufficient non-federal match sources to meet IV-E requirements;
- Securing the development of a Title IV-E compliant automated data system;

- Managing unique tribal service delivery issues that were not contemplated in the IV-E program; and
- Securing a development grant in a timely manner to assist program readiness.

Match Requirements. A key challenge for tribal governments who are considering operation of the Title IV-E program is meeting the non-federal match requirements. Even with the allowances for the use of third party in-kind sources and expanded cash match sources many tribes are finding it difficult to identify sufficient match sources. This is not a measure of tribal commitment to the operation of foster care services or lack of capacity to effectively run the IV-E program, but rather a reflection of the economic realities that many tribes face. With unemployment rates in many tribal communities above 20% and poverty rates well above the national average, many tribes' ability to generate unrestricted general revenue is extremely limited. This is especially for true for those tribes that are in more geographically isolated rural areas where economic and job development opportunities are scarce. As has been the case with the TANF program, tribes that have been able to take advantage of this program are usually those tribes that either have enough of an economic base to match federal payments or have been able to secure matching funds from states. While there are benefits for states to provide funding to help tribes participate in federal programs and serve their community members, a number of states with tribes in them do not provide this support.

The Fostering Connections Act provides some use of in-kind funds for tribes to use as a non-federal match, and gives DHHS until October 2011 to implement final regulations. In light of the difficulty for tribes to identify sufficient match funds, we urge that the final in-kind regulations be as broad as possible so as to eliminate any unnecessary limitations that are hindering the Act's effective application. We appreciate that Congress provided this flexibility with regard to the final tribal in-kind regulations and urge you to monitor this issue.

Data Systems. Title IV-E requires tribes and states to collect and submit required data via an automated data system. State experiences with this task indicate that development of this data system can be both very expensive and time consuming. One larger tribe recently told us that even with a \$300,000 development grant they could easily spend all of the development grant, and more, getting a comprehensive system in place, and that it would take the full two years or more to develop and successfully test the system. As tribes consider whether to apply for and

accept development grant funding, the ability to create a viable data system looms very large. Tribes are exploring their options, and organizations like the National Congress of American Indians and National Indian Child Welfare Association are trying to assist tribes through the creation of written materials and development of open source data system software that any tribe could use without expense. In addition, the National Congress of American Indians is developing a report and guidance on data system issues for tribes examining the option of operating the IV-E program. The Children's Bureau has indicated that they will soon be issuing data system protocols for tribes that will clarify some of the questions, including whether tribes could collect and report data using simplified electronic spreadsheet software. Nonetheless, many tribes are interested in developing a more comprehensive system similar to the State Automated Child Welfare Information System (SACWIS) that provides more coordinated information collection across all child welfare service areas and is available for greater federal reimbursement under IV-E.

Unique Tribal Service Delivery Issue. Tribal service delivery and jurisdictional realities are very different than those for states, which creates unique challenges in meeting IV-E requirements and managing the program as effectively and efficiently as possible. As an example, several tribes have tribal lands in more than one state. Because Fostering Connections requires that individual tribal children's eligibility is based upon the state from which they were removed, tribes with reservation lands in more than one state will have to manage differing eligibility standards for their children, making program administration complicated and inefficient. These types of challenges could be relatively easily addressed if the Children's Bureau had the flexibility to issue waivers to address these types of non-safety issues.

Development Grants. Title IV-E is an admittedly complex and administratively time-consuming program to operate - even for states. Tribes have been working diligently to evaluate their readiness and construct plans for getting their programs and communities ready to operate this important program. For most tribes, this means securing a development grant authorized under the Fostering Connections Act to assist them in many of the readiness activities needed to successfully apply for and operate the program. However, the Children's Bureau estimates that only five tribal development grants a year will be available. With 15 applicants this year, even under the best circumstances a third of these will have to wait an additional two years before

beginning their readiness activities and another two years before they will likely be able to submit an application for approval. For the children that need these services now, the wait to get these services and protections is critical barrier.

### **Conclusion**

The opportunities for tribal governments under the Fostering Connections to Success and Increasing Adoptions Act have the potential to transform child welfare services for tribal children and families in several significant ways. Creating access to new funding to support permanency services, helping provide support for new data systems, training of care providers and agency staff, and helping tribal governments fulfill their governmental responsibility to serve their communities are some of the most important. As we have seen in other federal programs, tribal governments are ready to apply their expertise and knowledge of their community to develop the most effective programs for their children. We thank you for the opportunity to share our observations regarding the progress tribes are making in implementing the Title IV-E program, and we appreciate this Subcommittee's support and leadership in these crucial matters.