

# ACF

Administration  
for Children  
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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children, Youth and Families

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**4. Key Words:** Title IV-B, subparts 1 and 2, State Plan Assurances; Indian Tribes

## PROGRAM INSTRUCTION

**TO:** Indian Tribes, Indian Tribal Organizations, and State Agencies Administering Title IV-B of the Social Security Act

**SUBJECT:** State and Indian Tribal responsibilities for the provision of the foster care protections under section 422(b)(10) of title IV-B.

**LEGAL AND RELATED REFERENCES:** Sections 422(b)(10) and 428 of title IV-B, and Section 471 of title IV-E of the Social Security Act; Public Law 103-432, The Social Security Act Amendments of 1994, Section 202; Public Law 96-272, The Adoption Assistance and Child Welfare Act of 1980; 45 CFR 1357; ACYF-PI-CB-96-01, March 13, 1996.

**PURPOSE:** The purpose of this Program Instruction is to clarify the title IV-B State plan requirement at 422(b)(10) of the Social Security Act (the Act), 45 CFR 1357.15(q), and 45 CFR 1357.40(c)(1).

**BACKGROUND:** Title IV-B, subpart 1 of the Act, the Child Welfare Services program, is a formula grant program. The grant provides States and Indian Tribes with Federal support for a wide variety of child welfare services. These services include preplacement preventive services to strengthen families and to prevent removal of children from their homes (such as respite care and intensive family preservation programs), services to prevent abuse and neglect (such as in-home visits), and services related to the provision of foster care and adoption.

The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) was enacted on June 17, 1980. One of the changes as a result of this law was the addition of section 428 to title IV-B of the Act. Section 428 authorizes direct payments to all Federally recognized Indian Tribes or Indian Tribal Organizations for title IV-B, subpart 1, child welfare services. The intention of this section was to link title IV-B, subpart 1 funds with other major Federal Indian social services programs to complement the provisions of the Indian Child Welfare Act of 1978 (ICWA) (Public Law 95-608).

In October 1994, The Social Security Act Amendments of 1994 (Public Law 103-432) repealed section 427 of title IV-B of the Act, effective October 1, 1996. Section 427 had authorized States and Indian Tribes to receive title IV-B funds above their basic allotment, if the specific protections outlined in section 427 were provided to all children in foster care. The intent of section 427 was to provide children and families with protection against unwarranted removal of children from their homes and inappropriate and unnecessarily prolonged foster care placements. The major objectives of the protections were to establish placement and review procedures and services to promote the permanent placement of children with families.

As a result of the repeal of section 427, the additional "incentive" funding requirements for title IV-B, subpart 1, were eliminated and the protections were incorporated into section 422(b)(9) (now section 422(b)(10)) as title IV-B State plan assurances. This change does not affect the roles and responsibilities of the State agency or the population to be covered by the protections.

The Children's Bureau issued guidance (see [ACYF-PI-CB-96-01](#), Instructions: Requirement #1) to States and Indian Tribes to amend their title IV-B Plans to comply with the assurances at 422(b)(10). The assurance was to be submitted by June 30, 1996 and the requirements of section 422(b)(10) were to be in place by October 1, 1996.

On December 18, 1996, the final rule for title IV-B, Child and Family Services became effective, amended existing Federal regulations at 45 CFR 1355, 1356 and 1357 and superseded the guidance regarding section 422(b)(10) of title IV-B as outlined in ACYF-PI-CB-96-01. 45 CFR 1357.15 describes the comprehensive five year Child and Family Services Plan (CFSP) requirements that States and Indian Tribes must meet to receive title IV-B funding for subparts 1 and 2. 45 CFR 1357.15(q) requires the States to describe the arrangements made with Indian Tribes for the provision of child welfare services and the "protections" in 422(b)(10). 45 CFR 1357.40(c)(1) requires Indian Tribes to describe the process that will be followed to assure that the protections will be provided for tribal children.

**ISSUE:** ACF Regional Offices have indicated to the Children's Bureau that some Indian Tribes were not able to provide the assurances under section 422(b)(10) within the time frame required (by October 1, 1996).

We plan, through the ACF Regional Offices, to work jointly with States and Indian Tribes to assure that all children in foster care are provided the protections under section 422(b)(10). Also, we recognize that some Indian Tribes may be providing child welfare services directly and may have legal responsibility for Tribal children in foster care and some Indian Tribes may have an agreement with the State for the State to provide some or all of the child welfare services. We also recognize that there are Indian Tribes that currently do not provide foster care services, including the section 422(b)(10) protections, and are working towards building the capacity to do so.

The "Action" section below provides a discussion of the regulatory requirements that States and Indian Tribes must follow in order to be in compliance with section 422(b)(10).

## **ACTION:**

### **REQUIREMENTS FOR STATES**

45 CFR 1357.15(q) (Services in relation to permanency planning) requires States to:

- explain how [title IV-B] services will help meet the permanency provisions for children and families in sections 422(b)(10) and 471 of the Act; and,
- describe the arrangements made for the provision of the child welfare services and protections in section 422(b)(10) to Indian children whether they are under State or Tribal legal responsibility.

**DISCUSSION:** The specific arrangements made by the State to meet the title IV-B, subpart 1 assurances with respect to Indian children under Tribal jurisdiction can be effective only if they are discussed jointly between the State and the Indian Tribe. Accordingly, States are to contact all Indian Tribes receiving title IV-B funds within their boundaries, if they have not done so already, to discuss the provision of the 422(b)(10) protections to Indian children.

The State is to provide information in the CFSP on those Indian Tribes in the State's boundaries that have legal responsibility for Tribal children in foster care and how the Indian Tribe is providing the protections under section 422(b)(10). States are not required to enter into an agreement to provide the protections if the Indian Tribe is providing the protections.

The State is to also describe the arrangements that have been developed and agreed upon by the State and those Indian Tribes in the State's boundaries for the provision of child welfare services and protections for tribal children for whom the Indian Tribe may or may not have legal responsibility for placement. This also includes arrangements made with those Indian Tribes that do not provide the protections but are working towards the capacity to do so.

If a State does not work with the Indian Tribes to reach an agreement on the specific arrangements made to ensure all children are provided with the section 422(b)(10) protections, then that State's title IV-B, subpart 1 funding could be jeopardized.

### **REQUIREMENTS FOR INDIAN TRIBES**

To meet the requirements of 45 CFR 1357.40(c)(1), Indian Tribes that receive direct funding under title IV-B, subpart 1, must submit a description of the arrangements, jointly developed with the State, made for the provision of the child welfare services and protections in section 422(b)(10) to Indian children whether they are under State or Tribal legal responsibility.

**DISCUSSION:** Indian Tribes with the legal responsibility for Tribal children in foster care are to provide information in the CFSP on how they are meeting the requirements under section 422(b)(10). The Indian Tribe is not required to enter into an agreement with the State for the State to provide the protections if the Indian Tribe is providing the protections for Tribal children.

Indian Tribes that do not have legal responsibility and/or do not provide the protections for Tribal children in foster care must describe the agreements made with the State for the provision of the services and protections and submit the description with the APSR by June 30, 1998, if it has not already been submitted. This also includes those Indian Tribes that do not provide the protections but are working towards the capacity to do so arrangements made with.

If an Indian Tribe does not do either of the above to assure the protections are provided, then the Indian Tribe's title IV-B, subpart 1 funding could be jeopardized.

**TRAINING AND TECHNICAL ASSISTANCE FROM ACF:** Training and Technical Assistance (T/TA) is available to States and Indian Tribes. Contact the appropriate Regional Office for more information.

/s/

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