

Tribal Title IV-E Maintenance Program



An agreement between: the State of Alaska & TCC



Table of Contents

Section 1: Parties	4
Section 2: Purpose	4
Section 3: Term of Agreement	4
Section 4: Services and Documentation to be Provided	5
Section 5: Licensure	6
Section 6: Service Area	6
Section 7: TCC's Authority to Act	6
Section 8: Reimbursement and Payments	6
Section 9: Title IV-E Allowable Training Costs	6
Section 10: Benefits Received on Behalf of the Child	7
Section 11: Creation and Retention of Records	7
Section 12: Accounting, Cost Principles and Audit	7
Section 13: Repayment of Improper or Erroneous Payments	7
Section 14: Assignment, Transfer or Delegation	8
Section 15: Indemnification	8
Section 16: Insurance Coverage	9
Section 17: Confidentiality and HIPAA Requirements	9
Section 18: Agreement Termination	9
Section 19: Liaison and Service of Notices	9
Section 20: Choice of Law, Remedies and Venue	10
Section 21: Scope, Amendment and Interpretation of Agreement	10
Section 22: Negative Declaration	10
Section 23: Adoptions and Guardianships	11
Section 24: Waiver of Sovereign Immunity Not Required	11
Section 25: Definitions	11
Section 26: Miscellaneous	12

List of Attachments

Attachment 1: Tanana Chiefs Conference Member Tribes	13
Attachment 2: Tanana Chiefs- Conference Service Area	14
Attachment 3: Monthly Fiscal Claim and Placement Certification	15
Attachment 4: Population to be Served Under this Agreement	17
Attachment 5: Adoptions and Foster Care Analysis and Reporting Systems Requirements	18
Attachment 6: Tribal Title IV-E Maintenance Application for Tribally Initiated Cases	21
Attachment 7: Eligibility Documentation	25
Attachment 8: Title IV-E Out of Home Case Plan and Case Review Requirements	26
Attachment 9: Title IV-E Subsidized Adoption and Guardianship	33
Attachment 10: Adoption Subsidy Eligibility Initiation Checklist	42
Attachment 11: Guardianship Subsidy Eligibility Initiation Checklist	43
Attachment 12: Special Needs Verification	44
Attachment 13: Tribal License Standards, Forms, Procedures and Processes	45
Attachment 14: Resolution	46
Attachment 15: State of Alaska Department of Health and Social Services, Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Business Associate Agreement	48
Appendix A: The Alaska Tribal Foster Care Standards, Procedures and Forms for Tribal Title IV-E Maintenance, dated October 2013	53



Tribal Title IV-E Maintenance Program Agreement

Introduction

This Agreement is made between Tanana Chiefs Conference (hereinafter known as “TCC”) and the State of Alaska, Department of Health and Social Services, Office of Children’s Services (hereinafter known as “DHSS”). TCC is a nonprofit corporation, incorporated under the Alaska Nonprofit Corporation Act, comprised of 37 federally recognized member tribes in interior Alaska identified in Attachment 1.

The best interests of tribal children in the TCC Region will be served by entering into this Agreement, respectfully recognizing the rights, duties and privileges of both Tribal and State citizenship.

This Agreement is entered into under the authority of the Indian Child Welfare Act 25 United States Code (U.S.C.) 1919, 42 U.S.C 672, and Alaska State Statute AS 47.14.100. Both parties agree that this document is federally authorized and bound by the law, intent and spirit of the Indian Child Welfare Act.

This Agreement allows TCC access to federal funding pursuant to Title IV, Part E of the Social Security Act. This federal reimbursement program allows funding to be passed through to TCC to pay for foster care in tribally licensed homes in the TCC service area as defined in Attachment 2. By entering into this Agreement both parties embrace the intent of Congress as expressed in the Indian Child Welfare Act to support federally recognized Tribes within the TCC region to care for tribal children.

The Parties agree to perform their respective duties and responsibilities in good faith and in a spirit of cooperation to accomplish the purpose of providing foster care services to tribal children under this Agreement.

Section 1: Parties

This Agreement is entered into between the State of Alaska, by and through the DHSS, whose mailing address and telephone number are: P.O. Box 110630, 130 Seward Street, Juneau, Alaska 99801, 907-465-3191; and TCC, whose mailing address and telephone number are: 122 First Avenue, Suite 600, Fairbanks, Alaska, 99701, 907-452-8251.

As used herein, “Parties” refers to TCC and the DHSS.

Section 2: Purpose

The purpose of this Agreement is to set the terms, definitions and conditions by which the Parties intend to perform their respective duties and responsibilities, in good faith and with a genuine spirit of cooperation, in providing lawfully available Title IV-E foster care maintenance payments to all Title IV-E eligible Indian children as set forth herein. This Agreement does not apply to voluntary placements, re-entry cases or Interstate Compact on the Placement of Children cases.

Section 3: Term of Agreement

- A. The term of this Agreement shall begin on the latest date of the final necessary signature and continue for thirty-six months with the option to renew subject to agreement by both Parties, or unless earlier terminated according to Section 18: Agreement Termination.
- B. The completion date of performance for purposes of issuance of final pass-through payment for services is the date upon which TCC submits to the DHSS final reports per Attachment 3 under this Agreement that have been determined by the DHSS to be satisfactory in form and content.

- C. Each Party, five years after termination of this Agreement, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities under this Agreement including, but not limited to, record retention, audits, indemnification, insurance, the protection of confidential information, recipient grievances and appeals, and property ownership and use.

Section 4: Services and Documentation to be Provided

A. The DHSS agrees as follows:

1. The DHSS shall provide funding to TCC in accordance with this Agreement for monthly foster care base rate payments as defined in Attachment 4 and made on behalf of the Population defined in Attachment 4 up to the amount of \$200,000 in year 1, \$360,000 in year 2, and \$480,000 in year 3.
2. Upon request and as mutually agreed upon, the DHSS shall provide technical assistance and consultation to TCC regarding the documentation necessary for determining a child's Title IV-E eligibility.
3. Upon receipt of all required Title IV-E determination documentation, the DHSS shall determine the Title IV-E eligibility of children included in the Population as defined in Attachment 4.
4. The DHSS shall notify TCC of all relevant available training to enhance Title IV-E compliance with federal regulations.
5. The DHSS shall provide to TCC federal guidance, policy interpretations, information memorandums, and program instructions related to Title IV-E received by the DHSS from the Administration of Children and Families, Children's Bureau, and other information affecting or impacting this Agreement to the extent such information is not otherwise independently available to TCC (such as notices of Title IV-E Foster Care Reviews and requests for information).

B. TCC agrees as follows:

1. TCC shall provide Title IV-E foster care payments to tribally licensed foster care providers on behalf of the Population defined in Attachment 4 in accordance with this Agreement.
2. TCC shall comply with all applicable federal requirements and with Attachments 1 through 14, which are incorporated by reference into this Agreement.
3. For children who are in Tribal custody initiated by a Tribe within the TCC region, TCC shall provide the DHSS all Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements as outlined in Attachment 5, the Tribal Title IV-E Maintenance Application for Tribally Initiated Cases (Attachment 6), and the eligibility documentation as listed in Attachment 7 within the timeframes specified.
4. TCC shall provide eligibility documentation as required Attachment 7.
5. TCC agrees to follow the case plan and case review requirements as required in Attachment 8.

6. TCC shall document all caseworker visits in ORCA by the 10th calendar day of the month for visits occurring in the previous month.
7. TCC shall provide all documentation required in Attachments 9 through 12 to the DHSS for each child whom TCC refers for a Title IV-E adoption or guardianship subsidy.
8. TCC shall allow the DHSS and the Administration for Children and Families access to case files, provider files, financial and eligibility documentation, and foster care payment information on children receiving Title IV-E support as necessary for periodic reviews and to ensure Title IV-E compliance. Site reviews are for Title IV-E purposes only and do not to measure quality or substance related to case practice. Files shall be made available for inspection at a mutually agreed upon location. The files shall at all times remain TCC's property and shall be returned to TCC immediately upon completion of the review.

Section 5: Licensure

TCC agrees to comply with all the requirements related to licensure in Attachment 13 using all forms in Appendix A. The "Sovereign Immunity" clause on page 13 of 14 of Appendix A is not applicable in the context of this Agreement.

Section 6: Service Area

TCC's service area is identified in Attachment 2, and includes Fairbanks and the villages in which the 37 federally recognized member tribes operate.

Section 7: TCC's Authority to Act

Each Tribe that elects to participate in this program will be required to sign a resolution with TCC per Attachment 14.

Section 8: Reimbursement and Payments

- A. The DHSS shall reimburse TCC for foster care maintenance on behalf of the Population, following TCC's submission of all required information necessary to determine eligibility, completion of all required data entry as specified in Section 4, and submission of the monthly reports (Attachment 3). The DHSS shall make timely foster care reimbursement payments on a lagged monthly basis (e.g. payments for the month will begin three months after execution of this Agreement – April payments would be reimbursed in July, May payments would be reimbursed in August).
- B. Equality of Payments: Foster care payments made under this Agreement shall be equal to the base rate foster care payments that the DHSS would make if the children were in the care of the DHSS under State court jurisdiction.

Section 9: Title IV-E Allowable Training Costs

In order to be eligible for reimbursement, all training costs shall be included in the TCC's training plan that is included in the DHSS Child and Family Services Plan submitted to the federal Administration of Children and Families regional office and have prior assurance from the DHSS that the training is Title IV-E reimbursable. TCC's training plan can be amended to include appropriate training throughout the contract period with prior the DHSS approval. Training must be claimed on the Certification of Expenditure included under the Administrative Provider Agreement.

Section 10: Benefits Received on Behalf of the Child

- A. Before the DHSS can transfer a Title IV-E foster care payment under this Agreement on behalf of a Title IV-E eligible child, TCC shall utilize all funding available to the child including, but not limited to, Social Security death benefits, Auxiliary benefits from a disabled parent, Railroad or Veteran benefits, and child support payments, to offset the cost of care.
- B. When custody of a child who is receiving social security benefits is transferred to TCC tribal jurisdiction, OCS shall notify the Social Security Administration of the custody change, and TCC shall request to be the representative payee.
- C. When OCS maintains a Permanent Fund Dividend trust fund for a child in a case that is transferred from state court to tribal court, TCC shall provide OCS with a copy of the tribal court order accepting transfer of the child's case from state jurisdiction to a Tribe in the TCC region. Upon receipt of the order, OCS shall transfer the money in the trust fund to the trust fund established by the Tribe on behalf of the child.

Section 11: Creation and Retention of Records

- A. TCC shall create and maintain records of the services covered by this Agreement, including financial records, supporting documents and such other records as are required by law or this Agreement.
- B. TCC and the DHSS shall retain records for a period of five full federal fiscal years from the completion of the foster care episode, or five full calendar years after the end of this Agreement, whichever period is longer. If any litigation, review, claim or audit is started before the expiration of the retention period applicable under the prior sentence in this paragraph, the records shall be retained until all litigation, reviews, claims or audit findings involving the records have been resolved.

Section 12: Accounting, Cost Principles and Audit

TCC shall permit authorized representatives of the DHSS and the applicable audit agencies of the United States Government to review the records of TCC in order to satisfy audit or program evaluation purposes. Audit and program evaluation purposes include, but are not limited to, the following:

1. To document the relationship between the financial assistance paid by the DHSS under this Agreement and the amounts expended by TCC or its member Tribe.
2. To ensure that reportable expenses under this Agreement are in accordance with Federal OMB Circular A-133 as applicable on allowable costs.

Section 13: Repayment of Improper or Erroneous Payments

- A. In the event of a potential erroneous or improper payment, the following procedures shall apply:
 1. If TCC believes an overpayment or another erroneous or improper payment has been made, TCC shall notify the DHSS verbally and send an email follow-up as soon as possible and no later than five working days of the discovery.
 2. If the DHSS believes an overpayment or another erroneous or improper payment has been made, the DHSS shall notify TCC verbally and send an email follow-up as soon as possible and no later than five working days of the discovery.

3. The DHSS shall determine if the payment was erroneous or improper and notify TCC of its determination. If the error is not resolved between the Parties within two billing cycles, the TCC Child Protection Coordinator and the DHSS Tribal Title IV-E Program Coordinator shall meet for the purpose of discussing and resolving the issue per paragraph B.
- B. If the TCC Child Protection Coordinator and the DHSS Tribal Title IV-E Program Coordinator cannot resolve the payment issue identified in paragraph A, they, along with TCC's Director of Client Development and the DHSS Fiscal Program Officer, will meet and endeavor to enter into a written agreement that includes repayment timelines; provisions for deducting amounts owed from future payments; and remedies in the event of noncompliance.
- C. If the Parties fail to come to a resolution of the situation, then the Parties may exercise their rights to a remedy as provided in Section 20: Choice of Law, Remedies and Venue.
- D. If federal authorities demand repayment of all or a portion of the federal funds or disallow payment of all or a portion of the federal funds to TCC under this Agreement, TCC shall pay the DHSS the amount necessary to satisfy the disallowance that is related to this Agreement.

Section 14: Assignment, Transfer or Delegation

- A. TCC has designated its Child Protection Program as its lead for implementing this Agreement. The State of Alaska has designated the DHSS as the lead state agency to administer the Tribal Title IV-E Maintenance Program Agreement.
- B. TCC may not assign, transfer, or delegate, in whole or in part, this Agreement or any right or duty arising under this Agreement, unless the DHSS and TCC mutually agree to the terms in writing.
- C. An assignment, transfer, or delegation entered into by TCC must be in writing, be subject to the terms and conditions of this Agreement, and contain any further conditions as may be required by the DHSS.
- D. The DHSS's approval of any assignment, transfer, or delegation neither makes the DHSS a party to that agreement nor creates any right, claim or interest in favor of any party to that agreement against the DHSS.
- E. TCC shall immediately notify the DHSS of any litigation concerning any assignment, transfer, or delegation.

Section 15: Indemnification

TCC shall indemnify, hold harmless, and defend the DHSS from and against any claim of, or liability for error, omission or negligent act of TCC under this Agreement. TCC shall not be required to indemnify the DHSS for a claim of, or liability for, the independent negligence of the DHSS. If there is a claim of, or liability for, the joint negligent error or omission of TCC and the independent negligence of the DHSS, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "TCC" and "DHSS", as used within this and in Section 16; Insurance Coverage, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the DHSS's selection, administration, monitoring, or controlling of the TCC and in approving or accepting TCC's work.

Section 16: Insurance Coverage

Without limiting TCC's indemnification, it is agreed that TCC shall purchase at its own expense and maintain in force at all times during the performance of services under this Agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the TCC's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the DHSS prior to beginning work and must provide for a notice of cancellation, nonrenewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of this Agreement. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

1. **Workers' Compensation Insurance:** TCC shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.
2. **Commercial General Liability Insurance:** covering all business premises and operations used by TCC in the performance of this Agreement with minimum coverage limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate per year.
3. **Commercial Automobile Liability Insurance:** covering all vehicles used by TCC in the performance of services under this Agreement with minimum coverage limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate per year.

Section 17: Confidentiality and HIPAA Requirements

- A. TCC agrees to comply with all requirements in the State of Alaska Department of Health and Social Services, Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Business Associate Agreement, Attachment 15.

Section 18: Agreement Termination

- A. Either Party may terminate this Agreement for good cause only. The Party terminating this Agreement shall give notice of termination to the other Party at least sixty (60) days prior to the effective date of termination.
- B. Notice of termination must be given in writing to the individuals listed in Section 19: Liaison and Service of Notices.
- C. Neither Party may revoke a notice of termination once given, without the express consent of the other Party.
- D. Notwithstanding termination of this Agreement under this section, the Parties shall complete performance per Section 3; Term of Agreement.

Section 19: Liaison and Service of Notices

- A. Tribal Title IV-E Program Coordinator, P.O. Box 110630, 130 Seward Street, Juneau, Alaska 99801,

907-465-3191 is the DHSS's liaison for program, financial and Title IV-E eligibility matters under this Agreement.

- B. Child Protection Program Coordinator, 122 First Avenue, Suite 600, Fairbanks, Alaska 99701, 907-452-8251, ext. 3360 is TCC's liaison for program, financial and Title IV-E eligibility matters under this Agreement.
- C. The above-listed persons serve as the primary contacts between the Parties for written notices regarding audits and/or quality assurance reviews, any fiscal matter, trainings under Section 4: Services and Documentation to be Provided and Section 5: Licensure, and other significant program related issues.

Section 20: Choice of Law, Remedies and Venue

- A. This Agreement shall be governed and interpreted according to applicable federal laws and regulations and applicable State of Alaska laws and regulations.
- B. In the spirit of this Agreement, the Parties shall first meet and confer for the purpose of resolving any disputes that may arise under this Agreement.
- C. If resolution under paragraph 20.B is not possible, the Parties shall enter into binding arbitration with one Tribal and one State arbitrator. If binding arbitration is unsuccessful, Parties may seek any other remedies provided by law.
- D. Venue shall be in Alaska State Court or United States Federal Court as appropriate.

Section 21: Scope, Amendment and Interpretation of Agreement

- A. This Agreement consists of 11 pages and Attachments 1 through 14, including Appendix A as incorporated by reference. This is the entire agreement between the Parties.
- B. No statements, promises, or inducements made by either Party or their agents are valid or binding if not contained herein.
- C. The headings to the sections of this Agreement are for convenience of reference and do not modify the terms and language of the provisions to which they are headings.
- D. This Agreement may not be modified or altered except by written amendment signed by the Parties.
- E. If any provision of this Agreement is determined by a court of law to be invalid legally, all other provisions of this Agreement remain in effect and are valid and binding on all Parties.
- F. If there is a conflict among documents, pages 1 through 11 of this Agreement shall govern the resolution of the conflict.
- G. To the extent this Agreement or any attachment is based on or contains references to federal regulations, current federal regulations control.

Section 22: Negative Declaration

This Agreement has been entered into to set forth the terms, definitions, conditions and responsibilities of

the Parties with regard to the provision of Title IV-E foster care services pursuant to TCC's Child Protection Program. It is not intended to reflect or be viewed as reflecting in any other context either Party's position with respect to any issue of tribal or state jurisdiction on any matter. Nothing in this Agreement shall be construed as reason or authority to substitute any Federal or State statute for Title IV-E of the Social Security Act as the basis for any civil or administrative claim which names the State of Alaska or any of its agencies as named Party, or which may involve the State of Alaska or any of its agencies as a named, impleaded, or necessary third party. Neither this Agreement nor conduct under this Agreement shall be offered as evidence, otherwise referred to in any present or future litigation unrelated to the subject matter of this Agreement, or used to further either Party's equitable or legal position in any litigation unrelated to the subject matter of this Agreement. Each Party reserves all rights, arguments and defenses that are available to it under the law, and nothing in this Agreement shall be interpreted or construed as an express or implicit waiver of any such right, argument or defense.

Section 23: Adoptions and Guardianships

The DHSS shall pay Title IV-E Adoption and Guardianship assistance payments on behalf of tribal children, who are Title IV-E foster care eligible and included in the Population defined in Attachment 4 and meet Title IV-E Adoption or Guardianship eligibility requirements per 42 U.S.C. § 673 and Attachments 9 through 12.

Section 24: Waiver of Sovereign Immunity Not Required

Because TCC is a nonprofit corporation under the laws of the State of Alaska, TCC represents and warrants that it is not "an arm of the Tribe" entitled to sovereign immunity. TCC represents and warrants that no waiver of sovereign immunity is necessary because they are not entitled to claim sovereign immunity.

Section 25: Definitions

"Consultation" means a conference between two or more people to consider a particular question or issue related to the maintenance program.

"Improper or erroneous payments" means payments made in error that result in an underpayment or overpayment.

"Maintenance program" means the Tribal Title IV-E Maintenance Program entered into by TCC and the DHSS under this Agreement.

"Population" refers to the Tribal children defined in Attachment 4.

"Re-Entry Case" means a case where the child has been released from custody of a Title IV-E agency and voluntarily comes back into custody in order to receive services.

"Service Area" means the geographical area defined in Attachment 2.

"Technical Assistance" means providing advice, assistance, and training pertaining to the implementation and operation of the maintenance program.

"Tribal children" means children placed within the service area who are members of, or are eligible for membership in, any of the 37 federally recognized member tribes of TCC.

Section 26: Miscellaneous

1. Agency Contract Number:
2. ASPS Number:
3. Financial Coding:
4. Agency Assigned Encumbrance:
5. Vendor Number:
6. Project/Case Number:
7. Alaska Business License Number:

The Parties through their authorized agents have executed this Agreement on the dates set out below:

By: _____ Date: _____

Jerry Isaac, President/Chairman
Tanana Chiefs Conference

By: _____ Date: _____

William Streur, Commissioner
State of Alaska, Department of Health and Social Services



_____ TRIBAL COUNCIL
Resolution No. 2013-_____

**PARTICIPATION IN THE TANANA CHIEFS CONFERENCE
TITLE IV-E FOSTER CARE MAINTENANCE PROGRAM**

- WHEREAS,** Federally recognized Tribes in Alaska have inherent authority to regulate internal domestic relations which include but are not limited to (1) initiating tribal court proceedings to protect eligible and actual tribal member children and (2) accepting transfer of jurisdiction of eligible and actual tribal member children from the State of Alaska, Department of Health and Social Services, Office of Children's Services (hereinafter referred to as "DHSS") and (3) administering placement and care responsibility of the children for both types of cases; and
- WHEREAS,** There is a shortage of foster homes for tribal children throughout the State of Alaska and there is a shortage of funding for tribally licensed foster homes; and
- WHEREAS,** Tanana Chiefs Conference (hereinafter known as "TCC") and the DHSS have entered into a 42 USC §672 (a) (2)(B) Title IV-E Maintenance Agreement (herein after the "Agreement") which gives TCC responsibility to administer the Title IV-E Foster Care Maintenance Program for tribes located in the TCC service area; and
- WHEREAS,** The Social Security Act, 42 USC 672 (a)(2)(B)(ii) provides the authority for the State of Alaska to reimburse a "public agency" which has the responsibility of a child's placement and care. For purposes of the Agreement, the _____(Tribe) will serve as an agent for the day to day responsibility which includes placement and care authority given to the Tribal Social Service agency by the Tribal Court ; and
- WHEREAS,** TCC, as a "public agency" for federal program purposes, will administer and provide oversight of the Title IV-E Maintenance Agreement; and
- WHEREAS,** Through the Agreement, the State of Alaska will pass-through foster care payments to TCC on behalf of eligible tribal children placed in tribally licensed foster homes in the TCC service area.
- NOW THEREFORE BE IT RESOLVED** that the _____(Tribe) agrees to participate in the Tanana Chiefs Conference, Title IV-E Foster Care Maintenance Program; and
- BE IT FURTHER RESOLVED** that the _____(Tribe) shall follow Title IV-E mandated statutory and regulatory protections for tribal children covered under the Agreement including, but not limited to, case planning, administrative reviews, permanency hearings, health and education records; and