

**CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES**

P.O. Box 419064, Rancho Cordova, CA 95741-9064



July 16, 2010

CSSIN LETTER: 10-06

ALL IV-D DIRECTORS  
 ALL COUNTY ADMINISTRATIVE OFFICERS  
 ALL BOARDS OF SUPERVISORS

Reason for this Transmittal

- State Law or Regulation Change
- Federal Law or Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

SUBJECT: CHILD SUPPORT PROGRAM AND FEDERALLY RECOGNIZED INDIAN TRIBES

The purpose of this informational notice is to promote greater understanding and awareness for child support workers when providing Title IV-D services to program participants who may be tribal members, reside on tribal land, work for a tribal enterprise, or are party to a tribal court order.

The California Department of Child Support Services (DCSS) recognizes and respects the sovereignty of Indian tribes and the unique relationship between the federal government and federally-recognized Indian tribes. DCSS also recognizes and respects the unique character of each tribal government and encourages each local child support agency (LCSA) to establish direct and open communication with tribal governments in an effort to build cooperative relationships and collaborate to deliver high quality child support services to all children and families in need of child support services.

The following questions and answers address frequently asked questions related to Court Order Jurisdiction (California), Tribal Court Appearances, Service of Process, Income Withholding Orders and Tribal IV-D Program – Information Sharing/Service Coordination.

**Court Order Jurisdiction (California)**

**Question 1:** Must an LCSA IV-D agency enforce existing tribal court orders or are they permitted to establish their own California superior court orders?

**Response 1:** Per the Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B), tribal child support orders are entitled to the full faith and credit accorded state orders when the tribe has properly exercised jurisdiction over the parties and the subject

matter (OSCE-AT 02-03). Orders can be registered and enforced but not modified if the tribe continues to have Controlling Exclusive Jurisdiction (CEJ).

**Question 2:** What if the LCSA establishes a California superior court order prior to having knowledge that a tribal court order already exists?

**Response 2:** If a state issues a new child support order at a time when a child support order from a different jurisdiction clearly exists, knowing or unknowingly, the new order is void. (See Uniform Interstate Family Support Act (UIFSA); Family Code §4911). As with UIFSA cases, the LCSA will need to determine which order is the controlling order.

**Question 3:** What if the tribal court order that the LCSA is enforcing does not include an order for medical health coverage?

**Response 3:** If the LCSA is enforcing a tribal order that does not include a health insurance order and the tribe still has CEJ, then the order needs to be modified in tribal court to add a health insurance order. The tribal court may determine that there is not a need to order health insurance coverage as the child is or may be eligible for United Indian Health Services (UIHS)<sup>1</sup>. The LCSA should attempt to obtain the coverage information and input the dependent participants benefit information in the Child Support Enforcement system.

**Question 4:** The LCSA is enforcing a tribal court order but it is an “in-kind” order (non-monetary), ordering payment of child support using goods or services, i.e., to supply a cord of firewood every month to the custodial parties residence. How should LCSAs manage such support orders?

**Response 4:** Presently, there are no tribes in California that have applied for or receive funding through the federal Office of Child Support Enforcement to operate a Tribal IV-D program. However, if a tribe operates a Tribal IV-D program, then the tribal court must associate a monetary dollar value to the order pursuant to 45 CFR 309.105(a)(3).

If the LCSA is attempting to enforce a child support order issued by a tribal court with an “in-kind” order, the LCSA would need to request (through the tribal court) that the “in-kind” order be assigned a monetary value. Every non-cash payment will have an associated monetary value; each payment will be reducible to a specific dollar amount. Since each non-cash payment will have an associated dollar value, it can be credited towards arrears as well as current support obligations. Non-cash support cannot be used to satisfy assigned support (including assigned arrears).

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<sup>1</sup> United Health Services does not provide health insurance coverage but is responsible for providing Federal health services to the approximately 1.5 million American and Alaskan Natives who belong to more than 562 federally recognized tribes in 35 States.

**Question 5:** Do tribal courts establish paternity?

**Response 5:** Tribes establish paternity in accordance with tribal law, code, or custom. States are required to honor tribal paternity orders when they are the basis for child support orders pursuant to tribal law; likewise, tribes are required to honor states' paternity orders when they are the basis for child support orders through state court.

### **Tribal Court Appearances**

**Question 6:** Must an LCSA attorney/representative appear in tribal court when requesting a modification of a tribal child support order?

**Response 6:** Each tribe/tribal court has its own rules and requirements for appearing in their court. If a tribal court order needs to be modified and the tribe has CEJ, the order needs to be modified in tribal court following that tribal court's procedures. LCSA staff should research the requirements of each tribe in their area/county and take the necessary steps to obtain approval to appear in tribal court when necessary.

### **Service of Process**

**Question 7:** There is no existing tribal court order and the LCSA needs to personally serve the Summons and Complaint on the NCP who is a tribal member. How does the LCSA do that?

**Response 7:** In California, tribal members may be served on or off tribal land. If service of process is required on tribal land, it is recommended that the LCSA first contact the individual tribe to ascertain their policy. Many tribes voluntarily cooperate with child support agencies.

If service of process is needed on an NCP (tribal member) in another California county, it is recommended that the LCSA first make contact with the LCSA in that county and discuss/ascertain the tribes preferred approach for service of process of tribal members on tribal land.

If service of process is required on tribal land outside of California, the LCSA first needs to determine if Long Arm Jurisdiction exists. If Long Arm Jurisdiction exists, the LCSA may serve by mail (Code of Civil Procedure section 415.30 and 415.40) or personal service. If Long Arm Jurisdiction does not exist, the LCSA needs to establish an interstate action with the appropriate jurisdiction (state or tribal IV-D agency). In some rare instances, the LCSA may need to establish an interstate case even if Long Arm Jurisdiction does exist but the LCSA has been unable to complete service of process.

### **Income Withholding Order's on Tribal Employers**

**Question 8:** An LCSA needs to serve an IWO on a tribal employer. Must the tribal employer honor the IWO?

**Response 8:** The Full Faith and Credit for Child Support Orders Act (28 U.S.C. Section 1738B) applies to all tribes and requires tribes to enforce child support orders established by a court or administrative agency which has appropriate jurisdiction and afforded the parties a reasonable opportunity to be heard. This would include enforcement of orders providing for income withholding. However, note that tribal law or the tribal court determines how income withholding orders are processed. The tribal court may be willing to serve the IWO on the employer on behalf of the LCSA. If the tribe does not have a tribal court, contact the tribal office for direction/assistance.

NOTE: California employer's are required to honor tribal court or tribal IV-D IWO's pursuant to Family Code sections 4901(s)(1) and 5230.1.

### **Information Sharing and Providing Services**

**Question 9:** When a tribe does not operate a Tribal IV-D program, may State IV-D programs provide child support case information to other tribal entities such as tribal court or tribal councils if performing child support functions such as establishing/modifying a child support order?

**Response 9:** Information may only be shared if the state has a cooperative agreement with the tribe to perform certain IV-D functions such as establish/modify court orders, establish paternity, and so on. The data to be provided must be necessary to perform these functions and the tribe, through the cooperative agreement, is bound to the same confidentiality rules that apply to State IV-D programs. (See AT 98-21) LCSA's may release information as provided in F.C. §17212.

Requests from federally recognized Tribal IV-D programs should be honored similar to requests from a recognized federal reciprocating country.

**Question 10:** May a Tribal IV-D agency reject a request for assistance from an LCSA or vice versa?

**Response 10:** As previously stated, there are no tribes in California currently operating a Tribal IV-D program. However, there are tribes in other states that are currently funded to operate Tribal IV-D programs. Pursuant to federal requirements, a Tribal IV-D agency must extend the full range of services under its IV-D Plan to respond to all requests from, and cooperate with, other IV-D agencies (state and tribal) and to

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recognize child support orders issued by states and other tribes. A state must also extend the full range of services available under its IV-D Plan to other states and tribal IV-D programs.

*NOTE:* Tribal IV-D Plans are not required to meet the same requirements as a State IV-D Plan and therefore may not offer the same range of services. However, both tribal and state IV-D agencies must accept applications and open a case from anyone that applies. Neither agency can turn a person away and refer them to another IV-D agency. For example, an LCSA can not refuse to accept an application from a tribal member and direct them to the Tribal IV-D program. Likewise, a Tribal IV-D program can not refuse a non-tribal member's application and refer that person to the LCSA.

Additional information and resources on Tribal IV-D programs can be found at [www.acf.hhs.gov/programs/cse/resources/tribal](http://www.acf.hhs.gov/programs/cse/resources/tribal). If you have any questions regarding this letter, please contact Vicky Lind at (916) 464-5883.

Sincerely,

/os/

BILL OTTERBECK  
Deputy Director