



State-Tribal Partnerships on Child Support

By Natalie O'Donnell

There are currently 562 recognized tribes within the United States. Each tribe operates as a sovereign nation, with its own elected officials, courts and legal system. The U.S. Constitution, numerous court decisions and federal statutes clearly give to Indian tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes, to tax and to license. States must respect the authority of the tribes and simultaneously provide services for tribal members, as they are also citizens of the state in which they reside.

Providing child support services to tribal families has been a challenge.

Providing Child Support. Providing child support services to tribal families has been a challenge for states and tribes alike. Before enactment of the Personal Responsibility and Work Opportunity Act of 1996 (commonly called “welfare reform”), federal funding for child support enforcement programs was available only indirectly to tribes through cooperative agreements with the states. Tribes were required to comply with all aspects of the state child support program and states were limited in their ability to provide a full range of child support services on tribal lands. Native American families have had difficulty getting child support services from state programs due to such complicating factors as a lack of coordination between states and tribes, inadequate or incomplete information, full faith and credit issues, differences in state and tribal legal systems, and insufficient resources.

There are many ways tribes can provide child support services.

Tribes can provide child support services in many ways to their communities. Tribes that opt to administer a child support program that is directly funded by the federal government can integrate tribal laws and traditions, although the program must still comply with federal requirements. Tribes may also decide that their children are best served by an existing program, cooperative arrangements with a state or other tribes, or through another program entirely independent of federal funding.

Federal Action

Final regulations for tribes that wish to receive federal funding directly were released last year.

In March 2004, the federal Office of Child Support Enforcement released final regulations for tribes that wish to receive federal funding directly. Eligible tribes must be federally recognized and have at least 100 children under the age of majority in the population subject to the jurisdiction of the tribe. Tribes are responsible for certain program functions, including establishing paternity; modifying and enforcing child support orders; collecting and distributing support; and locating non-custodial and custodial parents. The regulations strive for a balance between leaving enough flexibility for tribes to exercise their inherent sovereignty and invest in culturally appropriate programs, and ensuring the consistency needed to make the

program work across jurisdictional boundaries. State and tribal programs, and other entities, must cooperate, form partnerships and communicate effectively to ensure that child support orders are reliably enforced.

Under the new regulations, tribes are eligible for federal funding of costs up to \$500,000 for a maximum of two years for start-up of a program. Tribes that receive federal funding for a comprehensive program must contribute 10 percent of the cost of operating the program, while federal funds will pay 90 percent of “reasonable and necessary costs” in a program’s first three years, after which the tribe will be asked to contribute 20 percent. Tribes that cannot contribute 10 percent are allowed to request a federal waiver. Unlike state programs, tribal child support programs are not eligible to receive incentive payments.

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Challenges. Tribes and states should be cognizant of the many challenges tribal child support programs face. All entities must remain committed to working cooperatively for the program to succeed. Open communication, while often challenging, is a crucial component to success. The relationship can become strained and ineffective without ongoing dialogue and reciprocal information sharing. The expense of information systems and other technological issues can be a problem. The systems can be too costly for tribes to operate independently, so they must obtain access to state systems. States sometimes charge tribes fees to use these systems. In addition, state and tribal judges sometimes conflict as cross-jurisdictional issues arise.

Benefits. Despite these challenges, tribal child support programs can benefit both states and tribes. States with large tribal populations often have difficulty locating Native American obligors and enforcing child support. Tribal programs often have more information on the whereabouts of these obligors, and are better able to locate them. If state programs can transfer these cases to tribes, the state’s performance record may improve, which can lead to increased federal incentive payments. States are able to include tribal child support in their caseloads, so any increases in tribal child support will lead to an increase in a state’s overall collections. The resources provided to tribal programs can increase staff size, helping tribes to provide better services. Additionally, opening the lines of communication in child support can lead to improvements in other state-tribal relationships. Most important, the collaboration that occurs when state and tribal child support programs work well together advances the most fundamental goal—providing financial and emotional support to children.

Tribal child support programs can benefit both states and tribes.

Nine tribes currently operate federally funded child support programs, handling more than 32,000 cases, and many other tribes operate child support programs independent of federal funding.

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Tribes have the inherent sovereignty to govern the domestic relationships of their members. It is important for state policymakers to learn to work with tribes as sovereign governments, rather than treating tribes as special interests or minority groups.

Selected Reference

Final Rule on Tribal Child Support Enforcement Programs. 45 Code of Federal Regulations Parts 286, 302, 309 and 310. March 2004.

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