

Report to the Minnesota Legislature

**Minnesota American Indian
Child Welfare Program Plan:**

**Transferring Child Welfare Responsibilities
from Hennepin County to the White
Earth Band of Ojibwe**

January 2012



Minnesota Department of **Human Services**

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Introduction

The 2011 Minnesota Legislature directed the commissioner of the Minnesota Department of Human Services (department) to consult with the White Earth Band of Ojibwe (Band) to develop a plan to transfer legal responsibility for providing child protective services to Band member children residing in Hennepin County (county) to the Band. [Minn. Stat. § 256.01, subd. 14b (i)] The plan is to include a financing proposal, definition of key terms, statutory amendments required, and other provisions required to implement the plan. The commissioner is directed to submit the plan by January 15, 2012.

Consultation occurred over several meetings with a work group, comprised of representatives from the Band, county and the department. Implementation issues and solutions were discussed, county data was analyzed and reviewed, and input from the work group is reflected in this report.

Since 2008, the Band has provided child abuse prevention, family preservation, child protection, reunification, foster care, and permanency services to children and families living on the reservation according to Minn. Stat. § 256.01, subd. 14b, American Indian Child Welfare Projects (current program). During calendar year 2010, the current program received 715 intake calls, served 738 adults and children, conducted 118 child protection assessments involving 166 children and provided foster care for 222 children. The current program is supported by a combination of state funds and federal reimbursements.

The Band and department's experience with the development, implementation and on-going operation of the current program provided much of the foundation necessary for developing a plan to transfer legal responsibility for child protection for Band members living in Hennepin County to the Band.

Definition of Key Terms

Definition of key terms provides descriptions and clarifications of the children, families, types of cases and services that would be covered under a transfer of legal responsibility from the county to the Band.

Child Welfare/Child Protective Services

For purposes of clarification, child protective services under Minn. Stat. § 256.01, subd. 14b (i), has the same meaning as child welfare services under Minn. Stat. § 256.01, subd. 14b (a).

Child Eligibility Criteria

Child eligibility criteria is defined in Minn. Stat. § 256.01, subd. 14b (b), as (sic.) "a person under 18 years of age who is a tribal member or eligible for membership and who is residing on the reservation." The Band determines eligibility based on tribal enrollment and/or membership status. Once a child is determined eligible, the Band is responsible for providing services. To implement a transfer of legal responsibilities, it would be necessary to modify child eligibility criteria to mean a child who is residing in Hennepin County at the time the child maltreatment report is received.

Blended Family

The term “blended” family is defined as consisting of at least one child who qualifies for the program, but also includes child(ren) within a sibling group who do not qualify. In cases where one parent is a member of a tribe other than White Earth, or is non-American Indian, but one parent is enrolled/eligible for enrollment with White Earth, tribal staff ask if the family would like to be served by the Band or by the county. Blended families may be served by the Band.

In Hennepin County, the data indicates a high prevalence of “blended” families that will need to be taken into consideration when determining the size of the population to be served, and costs associated with those services. For example, in calendar year 2010, 78 percent of the children receiving initial child protection services, which involved at least one child in the family with a White Earth affiliation, had either more than one race (non-American Indian) and/or more than one tribal affiliation in addition to White Earth.

If “blended” families choose to receive services from the Band instead of the county, this could result in a number of individuals receiving services from the tribal program that do not technically meet eligibility criteria.

Eligible Cases

Eligible case types include family preservation, child welfare, child foster care licensing, child protection, long-term foster care and adoption/guardianship.

Ineligible case types include children placed due solely to their disability (mental health, developmental disabilities, medical), juvenile corrections, incompetent minors (civil commitment) and children participating in a program developed to promote permanency for children in foster care (Minnesota Permanency Demonstration Single Benefit Program).

Eligible Child Welfare Services

A comprehensive array of child welfare services would be provided to children and families living in Hennepin County. Those services include:

- Prevention and intervention of child abuse/neglect
- Intake and assessment of child abuse/neglect reports
- Out-of-home placement for children for child protective reasons
- Reunification services for families with children who have been placed in foster care
- Child foster care licensing program
- Child mortality reviews conducted when a death or near-death of a child has occurred
- Children’s mental health screenings
- Permanency for children unable to reunify with parents (i.e., transfer of legal custody to a relative or adoption)
- Other activities and services approved by the commissioner of human services that further the goals of providing safety, permanency and well-being.

Statutory Amendment Required

A change in state law would be necessary to authorize a transfer of legal responsibility for child protective services from Hennepin County to the White Earth Band of Ojibwe. Creating a new section 14c in Minn. Stat. § 256.01 is recommended, since the program would be limited to a specific geographic area and include White Earth Band members only.

Implementation and Financing

There are two options for implementing a transfer of legal responsibility for child protection from the county to the Band.

One, a transfer would occur on a specific date, authorized by the department. From that date forward the Band would assume county responsibilities for responding to reports of child maltreatment, conducting child protection assessments, placing children in foster care, and providing reunification and permanency services only for new cases. The Band prefers this option.

Two, a transfer for new cases would occur on a specific date, same as above, but current cases being served by the county would also be transferred into the tribal program. The transfer of existing cases (i.e., child protection, foster care, adoption) would occur over an agreed upon timeframe (six to twelve months).

Financing

The primary financing consideration for a transfer of legal responsibility would be how to fund the non-federal share of costs to operate the program. All cost estimates presented in this report should be considered preliminary.

Hennepin County data provided the basis for cost estimates. A combination of program and fiscal reporting information was used to develop the estimates. For example, program data such as the average number of children per year receiving child protection services (147) and foster care (86) was used to calculate the estimate for associated administrative and services costs. Historical data (2008-2010) was compiled to provide comparison of number of children and adults served and associated costs over a three year period.

When the department receives data and cost estimates from the Band for projected staffing and overhead costs, the cost estimate for the transfer would be adjusted to reflect Band costs versus county costs for operating the program.

Description of Costs and Non-Federal Share

Administrative costs reflect staff related and overhead expenses the county has incurred with serving children identified as affiliated with the White Earth Band and individuals in blended families.

Service costs (i.e., family preservation, out-of-home placement) are based on costs associated with children and adults who were identified as affiliated with the White Earth Band. Tribal affiliation is recorded in the state's social services information system at the time the family first comes to the attention of the county. The definition of an individual's tribal affiliation (i.e.,

enrolled, not enrolled, eligible for membership) is often not known until sometime later when the county receives enrollment/membership information from the Band. Some of the purchased service costs included in the estimate may be for children and adults that would not meet eligibility requirements for the program.

The estimate for the non-federal share of costs are the costs (administrative and purchased services) to operate the program minus any federal earnings. These costs are covered by a combination of state and county funds.

Federal share/earnings is reimbursement received through the federal Title IV-E program for eligible out-of-home placement costs.

Option One – New Cases Only

The following figures represent estimated costs the county has incurred for providing child welfare services to children and families affiliated with the White Earth Band, taking into consideration that children already in out-of-home placement would be ineligible for a transfer of legal responsibility, and would remain the responsibility of Hennepin County. For option one, the estimated cost for the non-federal share for the program would be \$1,253,687.

Option 1: Estimated non-federal share costs for the program	
Service costs	\$676,135
Administrative costs	\$546,027
Total non-federal costs	\$1,253,687
Federal share/earning	<u>\$515,043</u>
TOTAL	\$1,768,730

Option Two – Current and New Cases

The following figures represent estimated costs the county has incurred for providing child welfare services to children and families affiliated with the White Earth Band, including children already receiving services from the county that would be eligible for a transfer of legal responsibility. For option two, the estimated cost for the non-federal share for the program would be \$2,073,558.

Option 2: Estimated non-federal share costs for the program	
Service costs	\$1,138,116
Administrative costs	\$935,442
Total non-federal costs	\$2,073,558
Federal share/earnings	<u>\$922,873</u>
TOTAL	\$2,996,431

Department Costs

The department would incur minor costs to implement the program regardless of which option is implemented. The anticipated expense would include hiring an additional full time equivalent

(FTE) staff member to manage the increased volume of new referrals to the department's child support program, along with administrative support. In order to meet a federal requirement, state staff must manually create cases in the state's child support information system for whom federal funds are used to cover a portion of the out-of-home placement costs. Estimated costs for the non-federal share is \$63,048 for options one and two.

Other Provisions Required for Implementation

Transfer of legal responsibility for child protection services for White Earth Band members in Hennepin County would present some challenges for implementation in areas such as the child maltreatment reporting process and court jurisdiction not experienced in the current program.

Child Protection Screening and Intake

For the current program, the majority of child protection reports are made by family members who are knowledgeable about the race and tribal affiliation of an alleged victim. Mandated reporters are often knowledgeable of race and tribal affiliation because of the small town/rural setting. These factors contribute to a level of confidence that reporters can easily distinguish which agency should receive the report of alleged child maltreatment, the Band or a county.

In contrast, the majority of child maltreatment reports in Hennepin County are made by mandated reporters such as police, school and medical personnel. The reporter may or may not have knowledge of the victim's race and/or tribal affiliations.

To ensure that mandated reporters and community members will not be confused as to which agency should receive a report of alleged child maltreatment, the county's Child Protection Screening Unit should continue to receive child maltreatment reports that occur in Hennepin County, and forward reports that may be eligible for transfer to the Band.

The county would establish new screening protocols, such as requesting race and tribal affiliation information, at first point of contact with a reporter. Alleged child maltreatment reports that include at least one child and/or one parent that have been identified by a reporter as being affiliated with the White Earth Band would be referred to the Band.

At that point of entry, the Band would determine if a child meets program eligibility. If eligible, the Band would respond to the alleged maltreatment report according to Minnesota's Reporting of Maltreatment of Minors Act, [Minn. Stat. § 626.556] Minnesota's Child Protection Screening Guidelines, tribal screening guidelines and tribal code. If ineligible, the Band would refer the report back to the county. Because of the time sensitive nature of responding to reports of child maltreatment, the Band would establish eligibility in a timely manner to ensure state child protection screening timelines are met by the Band and the county, regardless of which agency is ultimately responsible. This system works effectively for the current program.

After the child protection intake process is completed, the family may be referred for on-going services such as family preservation, reunification, foster care, and/or permanency services, depending on the needs of a child and family.

Court jurisdiction

The transition of child welfare responsibilities is not complete without the transfer of court oversight from district to tribal court. In order to achieve this, the transfer to tribal court would need to occur early in the proceedings. By law, once a child protection case has advanced to the pre-adoptive or adoptive placement stage, the district court cannot transfer the case to tribal court.

For children served under the current program, nearly all of their cases are heard in tribal court from the beginning. The federal Indian Child Welfare Act authorized tribal jurisdiction over child protection proceedings on an Indian reservation. [25 U.S.C. 1911]

For children living in Hennepin County, the Minnesota Constitution and state law authorizes district court jurisdiction over child protection proceedings. [Minnesota Constitution, Article VI, section 3; Minn. Stat. § 260C.101, subd. 1] In Hennepin County, all children, including children eligible for the transfer, would be required to have their first hearing held in district court.

According to the Minnesota Supreme Court juvenile court rules and state law, only a county attorney has authority to verify the facts of alleged child maltreatment in a Child in Need of Protection or Services (CHIPS) petition in district court. [Minnesota Rules of Juvenile Protection Procedure effective 08/01/2009, Minn. Stat. § 260C.141, subd.4] A standing court order to allow a tribal attorney, instead of a county attorney, to verify a CHIPS petition in district court may resolve this issue. Once the initial court hearing has occurred in district court, the Band would request transfer of court jurisdiction.

Recommendations

Prior to authorization of the transfer of legal responsibilities, it is recommended that:

- A work group comprised of representatives from the Band, county and department be convened to review emerging data, develop implementation processes and timelines, draft written guidelines and address unresolved issues
- Additional county and tribal data be collected and analyzed to reflect the potential population of children and families that would be served by the Band, and associated costs to provide those services, once the child welfare responsibilities are transferred
- Further fiscal analysis be conducted once a decision has been made whether the tribal program would include transfer of county cases or begin with new tribal cases.

If transfer of legal responsibilities is authorized, it is anticipated that the following steps would need to be taken:

- The department would amend the state grant contract, and if necessary, amend other contracts with the Band
- The Band would expand tribal infrastructure in Hennepin County to meet the needs of additional children and families being served
- The department and Band would review and, if necessary, amend tribal state Title IV-E agreement

- The department, Band and county would develop tools and strategies for guiding the transfer of responsibilities which may include memorandums of understanding, written protocols, and creation of an implementation team comprised of representatives from the Band, county and department
- The county would develop a standing court order that facilitates allowing a tribal attorney to verify a petition in district court.

Transfer Timeline

The estimated timeline for transfer of child welfare responsibilities is expected to be 12-18 months from the effective date of authorizing legislation.