

NUMBER

#18-68-24

DATE

November 8, 2018

OF INTEREST TO

County and Tribal Social
Services Directors

County and Tribal Social
Services Supervisors and Staff

SSIS Mentors

County and Tribal Attorneys

ACTION/DUE DATE

Please read information and
prepare for implementation

EXPIRATION DATE

November 8, 2020

New Adoption and Foster Care Analysis and Reporting System requirements for Indian children

TOPIC

Implementation of new federal Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements, and new state reporting requirements, when working with Indian children.

PURPOSE

Announce new federal Indian Child Welfare Act and Minnesota Indian Family Preservation Act reporting requirements in the Social Service Information System.

CONTACT

Reanna Jacobs, ICWA Compliance Supervisor

Child Safety and Permanency Division

Phone: 651- 431- 4386, Reanna.jacobs@state.mn.us

Email: DHS.ICWA.MIFPA@state.mn.us

SIGNED

NIKKI FARAGO

Assistant Commissioner

Children and Family Services Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Background

The Adoption and Foster Care Analysis and Reporting System (AFCARS) collects foster care and adoption information on children in the child welfare system. The Minnesota Department of Human Services (department) complies with federal reporting requirements by collecting data in the Social Service Information System (SSIS) and submits it to the federal Department of Health and Human Services (DHHS), Children and Families Administration, semi-annually.

AFCARS regulations were originally published in December 1993; the new regulations were published in January 2017 with implementation required by October 1, 2019.

On August 21, 2018, DHHS published notice of a one-year delay in implementation of the AFCARS final rule. Implementation of the new regulations must be completed by October 1, 2020. This means the first submission of data files must be compliant with the final rule no later than May 15, 2021, for the reporting period October 1, 2020, to March 31, 2021. [45 C.F.R. §§ 1355.41-1355.47]

The revised AFCARS rule is intended to:

- Collect information that is up-to-date and reflects revisions to statutes
- Enhance the type and quality of information reported, including historical data and new data elements for children in out-of-home care
- Incorporate a comprehensive collection of data related to the status of American Indian/Alaskan Native children to whom the Indian Child Welfare Act (ICWA) applies, and
- Implement the statutory mandate to assess penalties for noncompliance with providing quality data.

The majority of new reporting requirements focus on documentation of a local social services agency's (county agency) efforts to implement requirements of ICWA for Indian children.

Department staff, in collaboration with SSIS MNIT staff, prioritized completing the ICWA data elements and over an 18-month period worked to bring SSIS into compliance with the new AFCARS rule. Department and MNIT staff have shared information at SSIS mentor and worker advisory group meetings. Department staff developed SSIS training materials to assist county staff in completing the ICWA/MIFPA data elements.

Most of the required ICWA AFCARS and MIFPA data elements were included in the SSIS 18.1 and 18.3 releases. The remaining ICWA data elements for qualified expert witness will be included in the 19.1 release.

Many of the **required activities need to occur before a child is placed**, and may not be directly tied to a placement. Some activities, such as inquiries into whether a child may have tribal lineage, apply to all children who receive child welfare services.

State law requirements for county and private child-placing agencies working with Indian children were effective August 1, 2015. The Minnesota Indian Family Preservation Act (MIFPA) was significantly amended to incorporate some provisions of the Tribal/State Agreement to clarify and codify best practices and provide county agencies with guidance for provision of services to Indian children and families. Related child welfare statutes were also amended, including the Minnesota Reporting of Maltreatment of Minors Act and Northstar Care for Children. [Minnesota Statutes, Chapters 260, 260C, 259, 259A, 256N and 626]

The initial reason for adding new data elements in SSIS was to meet ICWA AFCARS and MIFPA reporting requirements, and later state legislation authorized the department to establish an ICWA Compliance Case Review System to monitor and evaluate county agency performance. Department staff began case file reviews, relying primarily on SSIS data, in September 2018. Implementing the new ICWA AFCARS and MIFPA data elements in SSIS will assist county staff in understanding and documenting federal and state Indian child welfare requirements. [\[Bulletin 18-68-21, ICWA Compliance Case Review System Implementation\]](#)

This bulletin addresses ICWA AFCARS and MIFPA reporting requirements for county agencies working with Indian children.

II. ICWA AFCARS data elements

An ICWA folder was created and eligibility/determinations and child custody proceeding notifications subfolders were added, as well as an ICWA placement preferences/ICWA adoptive placement preferences tab on the permanency folder to provide workers with a logical work flow to enter information, as well as providing a step-by-step process of complying with reporting requirements.

Embedded in these folders is help text for workers who have questions. The help text provides plain language descriptions of the new reporting requirements, and a comprehensive listing of applicable federal and state statutes and rules.

A. SSIS ICWA folder

The ICWA folder includes the federal requirements for inquiry, ICWA determination, transfer to tribal court, active efforts and ICWA and MIFPA notices.

ICWA and MIFPA apply to a case when a county agency has reason to believe a child is Indian. A critical component to be documented in SSIS is the inquiry of tribal lineage of every child receiving voluntary or involuntary services.

Rather than relying on one data element in SSIS to identify whether ICWA applies, there are now a series of data elements required before a determination can be made that ICWA/MIFPA applies.

County agencies are required to make efforts at the earliest point possible to:

- Identify whether a child may be Indian
- Identify, notify, and request participation of an Indian child's tribe(s)
- Develop an alternative plan to out-of-home placement with an Indian child's tribe(s) and family.

County workers will document an agency's compliance with notice requirements for child custody proceedings. An ICWA notice must be sent by registered or certified mail with return receipt requested to an Indian child's parent(s), Indian custodian(s), tribe(s) and copies to the Bureau of Indian Affairs regional office. Documentation is required to show that no foster care placement or termination of parental rights hearing was held until at least 10 days after receipt of notice by the parent(s) or Indian custodian(s), and Indian child's tribe(s).

Documentation of when cases are transferred to tribal court, or good cause to not transfer, are now required.

County agencies are required to make active efforts at the earliest point possible and throughout a case. Workers will document active efforts to prevent out-of-home placement, and during a child's continuous out-of-home placement episode. Active efforts means affirmative, active, thorough, timely and rigorous. Active efforts exceed reasonable efforts. The ICWA folder is organized by subfolders and tabs.

The ICWA folder includes:

- Eligibility and determinations sub folder, including:
 - Inquiry tab.
 - MIFPA notices tab.
 - Applies/Determinations tab.
 - Transfer to tribal court tab.
- Active efforts folder under eligibility and determination sub folder, including:
 - Active efforts tab.
 - Active efforts tab for out-of-home placement.
- Child custody proceeding notifications sub folder, including:
 - ICWA notice, which includes:
 - Grid 1 – notices sent to parents/Indian custodian/Bureau of Indian Affairs (BIA) copies (available in SSIS 18.4 release).
 - Grid 2 – notices sent to child's potential tribes/BIA copies.

B. SSIS permanency folder

The permanency folder includes ICWA placement preferences for foster care and adoption. The court must, when appropriate, also consider the placement preference of an Indian child or their parent(s).

In any foster care or preadoptive placement of an Indian child, when their tribe has not established a different order of preference, preference must be given in descending order as listed below:

- Members of an Indian child's extended family
- A foster home licensed, approved, or specified by an Indian child's tribe
- An Indian foster home licensed or approved by an authorized non-Indian licensing authority
- An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet child's needs.

In any adoptive placement of an Indian child, when their tribe has not established a different order of preference, preference must be given in descending order as listed below:

- Members of an Indian child's tribe
- Other members of an Indian child's tribe
- Other Indian families.

Workers will document which preference order a foster, preadoptive or adoptive family represents, and if placement preferences were not followed, document a court's determination of good cause to depart from placement preferences.

The permanency folder includes:

- Placement/Locations/Absences sub folder, including:
 - Placement record > ICWA placement preferences tab.
- Continuous placement sub folder, including:
 - Continuous placement record > ICWA adoptive placement preferences tab.

Completing the ICWA eligibility/determinations record that applies to a continuous placement is required to be entered on the continuous placement screen for all children in out-of-home placement, regardless if ICWA and/or MIFPA apply.

III. MIFPA data elements

MIFPA notices are in the ICWA folder on the eligibility/determinations record. Notices require a phone call and a follow-up email or fax. MIFPA notices are required in addition to federal ICWA notices. When a county agency has reason to believe it is providing services to an Indian child, agency staff are required to provide:

- Immediate 24-hour notice when a child protection report is screened in for Family Assessment or Family Investigation
- Seven-day voluntary notice when an agency is providing services (i.e., children’s mental health, developmental disabilities) to Indian child(ren)
- Seven-day voluntary placement notice when an Indian child(ren) is placed in foster care voluntarily by their parent(s)
- Notice of continued voluntary placement review when there is a request for an additional 90 days in voluntary placement.

IV. Implementation

County agencies are strongly encouraged to begin entering ICWA and MIFPA data elements immediately, even though implementation of AFCARS data elements is not required until October 1, 2020. Entering required ICWA AFCARS and MIFPA data elements gives workers an opportunity to become familiar and proficient at entering data. Complying with ICWA AFCARS and MIFPA reporting requirements will improve documentation of an agency’s efforts to implement federal and state Indian child welfare requirements.

Americans with Disabilities Act (ADA) Advisory

This information is available in accessible formats for people with disabilities by calling (651) 431-4670 (voice) or toll free at (800) 627-35290 or by using your preferred relay service. For other information on disability rights and protections, contact the agency’s ADA coordinator.