

Tribal Customary Adoption

Definition

Tribal Customary Adoption (TCA) is a permanency option which can be recommended by the Iowa Department of Health and Human Services (HHS) (“Department”) and pursued in Child In Need of Assistance (CINA) actions involving native children to whom the Indian Child Welfare Act (ICWA) applies. TCA allows Indigenous children to achieve permanency in a manner consistent with their Tribal heritage in cases where reunification efforts have been unsuccessful despite the provision of active efforts. TCA requires concurrent jurisdiction in both the Iowa Juvenile Court and a partnering Tribal court. Through this cooperation, the Indigenous child can receive the benefits of adoption, including applicable IV-E subsidies, without the culturally incompatible requirement of an accompanying termination of parental rights.

Process

- 1) Identify: The Department’s ongoing Social Work Case Manager (“ongoing SWCM”) and their supervisor (ongoing supervisor) identify the potential for recommendation of TCA in an ICWA-applicable case. The ongoing SWCM schedules a staffing with the Adoption Team where the Department’s Adoption Social Work Case Manager (Adoption SWCM) is identified. From this point forward the Adoption SWCM should participate in all meetings with the prospective adoptive family and the Tribe relative to the TCA.
- 2) The ongoing supervisor schedules a staffing between the Department (to include all Department staff, ongoing, adoption, etc.) and Tribe to determine if the Tribe agrees with TCA recommendation. Discussion at this meeting should include conversations regarding the timetable and applicable Tribal court process (i.e., how many hearings the Tribal court will hold, when they anticipate it would be set for hearing in the Tribal court, timing for filings and orders, etc.). At this staffing, all participants are encouraged to review the Tribal Customary Adoption process in HHS manual [18-F\(1\), Adoption Permanent Placement Procedures](#).
- 3) Meeting held between the Department (ongoing SWCM and Adoption SWCM), Tribal representatives, and proposed Tribal customary adoptive parents. This is an opportunity for the SWCMs to explain to the proposed TCA parents what TCA is and how the process will be different.

Provide [Tribal Customary Adoption, Comm 610](#) brochure to prospective adoptive family.

Ongoing SWCM and Adoption SWCM work together to develop a family guide specific to case and provide finalized family guide to prospective TCA parents (template forthcoming).

- 4) Ongoing supervisor schedules a meeting with all court parties (to include ongoing SWCM AND Adoption SWCM) to inform all parties of the Department's permanency recommendation of TCA. If biological parents are involved at the time the team agrees to pursue TCA, the ongoing SWCM and/or Adoption SWCM will work with the Tribe to obtain any parental signatures requested by the Tribe (to be pursued throughout if not practical at this time).

All participants are encouraged to review Tribal Customary Adoption process in HHS manual [18-F\(1\), Adoption Permanent Placement Procedures.](#)

- 5) The State requests permanency hearing be set in juvenile court.
- 6) Ongoing SWCM refers family for adoptive home study if not already done. Ongoing SWCM begins preparing the case file for transfer to the adoption team by using the *Transfer to Adoptions Transfer Checklist and Discussion Guide* form 470-5721, as the Adoption SWCM will make sure the necessary paperwork is done to determine subsidy eligibility. Adoption SWCM has a discussion with the Tribe (early) to confirm the Tribe will have all required paperwork for future filing in Tribal court (i.e., appropriate language for adoption petition regarding subsidy, biometrics, 180-day placement requirement, etc.). Verify if the State will take an adoptive home study request without a termination order. Reach out to the Interstate Compact on the Placement of Children (ICPC) with questions.
- 7) The permanency hearing is held in juvenile court and the juvenile court adopts HHS's recommendation pursuant to Iowa Code Section 232.104(2)(d)(2) that guardianship and custody of the child transfer to HHS as a suitable person for the purpose of establishing a TCA with the Tribe. Juvenile court also grants concurrent jurisdiction to the identified Tribal court for purposes of establishing a TCA.
- 8) Once the permanency order is filed transferring guardianship to HHS for purposes of effectuating Tribal customary adoption, the ongoing SWCM schedules staffing with ongoing supervisor, Adoption SWCM and Adoption supervisor to provide relevant updated information in preparation to officially transfer case. If the prospective adoptive family has a completed adoptive home study, this staffing may serve as the selection staffing. Case transfer will occur no later than 30 days after the receipt of the order that identifies Tribal customary adoption as the permanency goal, but not before the file is ready.
- 9) If adoption selection staffing has not yet occurred, Adoption SWCM may schedule a single-family selection staffing. (Note: an approved adoptive home study must be in place before selection can occur. If selection occurred in step 8, skip this step)
- 10) The person that will file the petition for adoption in Tribal court (Tribal attorney/official or designee, hereinafter Tribal designee) is identified (this person may be a Tribal representative, attorney, or a pro se party). Adoption SWCM works

with this individual to ensure they have everything necessary to file in Tribal court so Tribal court knows concurrent jurisdiction has been requested/granted.

- 11) Adoption SWCM meets prospective family and child(ren) and works with adoptive family to sign all needed paperwork (placement agreement/subsidy paperwork). This step cannot occur prior to permanency order establishing TCA as goal but must occur prior to the petition to adopt being filed in Tribal court, as the petition needs to include language regarding whether the family has applied for adoption subsidy and what the child may or may not qualify for. HHS management (Social Work Administrator SWA or higher) approves placement paperwork and provides consent for adoption. For Adoption SWCM's instructions on data entry for pre-subsidy in FACS, contact CWIS Help Desk for assistance with TCA FACS entries.
- 12) Adoption SWCM works with the Tribal designee to determine what is needed in the adoption packet and then sends the adoption packet, including the Adoption Subsidy Agreement and any additional documentation requested by the Tribal designee, to the Tribal designee. Tribal designee will inform Adoption SWCM of the Tribal court's requirements for upcoming hearing in Tribal court (i.e., attendance, testimony, and/or presentation of the case).
- 13) Items to consider at this step: will the Tribal court require documentation/testimony that TCA is sought in lieu of a termination of parental rights; will the Tribal court require documentation/testimony regarding guardian's consent for adoption; is language regarding an amendment to birth certificate(s) required; is the subsidy agreement required, and/or is Tribe willing to provide HHS with the Tribal home study and cultural plan?
- 14) Tribal designee communicates with the prospective adoptive family and then files the Tribal Customary Adoption Petition and any related paperwork. Both the petition to adopt and the final decree must include subsidy language.

Suggested language for the petition: "The petitioners have applied to Iowa Department of Health and Human Services for Adoption Subsidy and the child [is/is not] eligible for Adoption Subsidy or Future Needs Subsidy."

Suggested language for the Adoption Decree: "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the adoption of the child shall be a subsidized adoption according to the agreement of the Iowa Department of Health and Human Services and Petitioners now on file, to provide for the future and special needs of the child, pursuant to Iowa Code Section 600.17."

- 15) The filing party in Tribal court will notify Adoption SWCM of the date of Adoption hearing in Tribal court.
- 16) Tribal court sets/holds court hearing to finalize Tribal customary adoption and issues final Tribal Customary Adoption Decree/Order. Adoptive family or their attorney fills out Adoption Abstract/Report which will need to be certified by the

Tribal court that is issuing the adoption. The Adoption Abstract/Report form must be obtained from the state clerk of court's office where the child was born.

Adoptive family or their attorney sends a certified copy of the Adoption Abstract to the Vital Records Department in the state where the child was born.

- 17) Tribal designee sends copy of Tribal Customary Adoption petition and decree/order to the Adoption SWCM and assigned assistant county attorney or assistant attorney general representing the State (State's Attorney). For parties who are pro se, they will be in contact with their Adoption SWCM and the Adoption SWCM will provide to the State's Attorney.

- 18) State's Attorney files:

- a) Application and Notice of Request for Registration of the certified Tribal Customary Adoption Decree/Order and
- b) Proposed Order Determining Request for Registration of a Tribal Customary Adoption Order: Determination of Objection and Notice of Registration
- c) Motion to Continue (only necessary if the next hearing is scheduled prior to the 20-day notice)

SWCM will need to work with their local court officials and/or their county attorney to obtain proper versions of these documents. Each county has their own version of these documents.

- 19) Upon the filing of these pleadings, the court issues an order setting the matter for review after 20 days. Adoption SWCM notifies adoptive family of date of this review hearing to allow the opportunity for them to attend the final hearing in Iowa Juvenile Court if they so choose.

If, after 20 days, there are no objections, the Iowa Court enters the Order Determining Request for Registration of Tribal Customary Adoption Decree/Order.

When this order is issued, the county clerk will certify the Registration of the Tribal Customary Adoption Order.

The Order Determining Request for Registration is confirmed as a matter of law. If there is a cultural agreement or stipulation that is part of the Tribal Customary Adoption Decree/Order, it is now an enforceable order under Iowa law.

Once we have the information below, the adoption is considered FINAL. The juvenile court may then terminate jurisdiction and close the CINA case.

- a) TCA from Tribal Court
- b) Juvenile Court Order Registering TCA
- c) The clerk's certification

Policies and procedures related to adoption finalization should be completed. The adoption subsidy case (if child/children are eligible) is transferred to adoption subsidy worker.

Many of these steps will be occurring concurrently and depending on the circumstances, not necessarily in this sequential order.

Process will vary by Tribe, and deference is given to the Tribe/Tribal court.

Each TCA case is unique and will have its own set of specific circumstances that will need to be addressed. The HHS Help Desk and policy staff are able to assist throughout the TCA process. If you need assistance or support, please contact the HHS Help Desk.