



August 2016

FOSTER CARE

Most Tribes Do Not Anticipate Challenges with Case Goal Changes, but HHS Could Further Promote Guardianship Assistance

Accessible Version

GAO Highlights

Highlights of [GAO-16-625](#), a report to congressional requesters

Why GAO Did This Study

The Preventing Sex Trafficking and Strengthening Families Act, enacted in 2014, limited the use of APPLA as a case goal to children aged 16 and older. The Act made this provision effective 3 years after enactment for children under tribal responsibility. Some experts raised concerns that tribes may use the APPLA case goal to retain tribal connections for hard-to-place children, such as younger children with special needs. GAO was asked to explore tribes' views on these matters.

This report examines: (1) data comparing Indian and non-Indian children in foster care; (2) challenges selected tribal child welfare agencies may face in addressing changes to APPLA and establishing permanent homes for children in tribal foster care; and (3) HHS assistance to tribes in implementing the APPLA change and addressing any challenges to establishing permanent homes. GAO reviewed relevant federal laws, regulations, and HHS guidance; analyzed HHS's fiscal year 2014 data on child welfare agencies' foster care case plans; and interviewed officials from 36 tribes that receive federal child welfare funding from six states with high numbers of tribes receiving this funding. GAO also interviewed HHS officials and officials at six state child welfare agencies.

What GAO Recommends

GAO recommends that HHS explore the reasons for low tribal participation in the federal guardianship program and identify actions to increase tribal participation. HHS agreed with our recommendation.

View [GAO-16-625](#). For more information, contact Kay Brown at (202) 512-7215 or brownke@gao.gov.

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Most Tribes Do Not Anticipate Challenges with Case Goal Changes, but HHS Could Further Promote Guardianship Assistance

What GAO Found

To receive federal child welfare funding, state and tribal child welfare agencies must comply with certain requirements, including developing a permanency plan for the child that identifies how the child will exit the foster care system to a permanent home ("case goal"). If other case goals, such as reunifying with parents, adoption, or guardianship are not possible or appropriate, a child may be assigned "another planned permanent living arrangement" (APPLA) as a case goal. Unlike other case goals, children assigned an APPLA case goal are normally expected to remain in foster care until they reach adulthood, which could result in young children remaining in foster care for many years. Because available foster care data do not include a measure for the APPLA case goal, GAO used long-term foster care and emancipation as proxy measures for this case goal. These data show that in 2014 about 6.1 percent of Indian children had APPLA as a case goal, compared to 8.3 percent of non-Indian children. Of the approximately 1,200 Indian children who were assigned an APPLA case goal, 41 percent were younger than 16, while of the approximately 33,000 non-Indian children with this case goal, 23 percent were younger than 16. These data also show, on average, that Indian and non-Indian children with APPLA as a case goal moved among foster homes about the same number of times.

Most tribal officials GAO interviewed reported that they did not anticipate challenges in implementing the limitation on the use of APPLA to children age 16 and older, but many reported other challenges to establishing permanent homes for children in tribal foster care. Some organizations expressed the view that the APPLA age restriction would compel tribes to pursue other arrangements with non-Indian homes if they could not allow a child to remain in foster care with an Indian family. However, tribal officials GAO interviewed said that they rarely use APPLA and instead pursue reunification with family members or other case goals, such as guardianship. At the same time, tribal officials reported challenges with licensing foster family homes and resource constraints that may make establishing permanent homes—including guardianships—difficult.

The Department of Health and Human Services (HHS) has provided information on APPLA through a listserv and information memoranda and some assistance to tribes in establishing permanent homes for children in foster care. However, many tribes GAO interviewed indicated that they were not receiving Guardianship Assistance Program funds under title IV-E of the Social Security Act which provide support for children exiting foster care to relative guardianships. Guardianship can be a useful alternative to APPLA when reunification and adoption are not viable options. Of the 36 tribes that GAO contacted, 14 reported that they did not participate in the program because it was not included in their title IV-E tribal-state agreements or the tribe faced challenges at the state level, among other reasons. One of HHS's strategic goals is to work with tribes to increase their capacity to promote child safety, permanent homes, and well-being. By taking actions to support tribes' participation in the Guardianship Assistance Program, HHS could help them receive funds to help establish permanent homes for children in tribal foster care, including those who might be affected by the APPLA change.

Contents

Letter	1
Background	5
Data Show That the Use of APPLA Was Lower for Indian Children than Non-Indian Children and Children in Both Groups Had A Similar Number of Foster Care Placements	13
Most Selected Tribes Did Not Anticipate Challenges Implementing APPLA Changes, yet Some Reported Other Challenges in Establishing Permanency	19
HHS Has Provided Information and Some Assistance to Tribes on APPLA and on Establishing Permanent Homes, but Tribes Reported Low Participation in GAP	29
Conclusions	34
Recommendation for Executive Action	35
Agency Comments and Our Evaluation	35

Appendix I: Objectives, Scope, and Methodology	37
Appendix II: Comments from the Department of Health and Human Services	42
Appendix III: GAO Contact and Staff Acknowledgements	44
Appendix IV: Accessible Data	45
Agency Comment Letter	45
Data Tables	47

Tables	
Table 1: Case Goal Options under Title IV-E of the Social Security Act 6	
Table 2: Percentage of Indian and Non-Indian Children in Foster Care by Case Goal, as of September 30, 2014	14
Table 3: Number of Placements During Most Recent Stay in Foster Care by Race/Ethnicity and Case Goal, as of September 30, 2014	17
Data Tables for Figure 1: Use of Another Planned Permanent Living Arrangement (APPLA) Case Goal for Indian and Non-Indian Children in Foster Care, as of September 30, 2014	47
Data Tables for Figure 2: Ages of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living	

Arrangement (APPLA) Case Goal, as of September 30, 2014	47
Data Tables for Figure 3: Placement Settings of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) and Other Case Goals, as of September 30, 2014	48
Data Tables for Figure 4: Tribes Reporting Other Challenges to Establishing Permanency for Children in Tribal Foster Care	48
Data Tables for Figure 5: States Participating in the Title IV-E Guardianship Assistance Program (GAP) as of March 2016	49
Data Tables for Figure 6: Reported Participation by Selected Tribes in the Title IV-E Guardianship Assistance Program (GAP)	50

Figures

Figure 1: Use of Another Planned Permanent Living Arrangement (APPLA) Case Goal for Indian and Non-Indian Children in Foster Care, as of September 30, 2014	15
Figure 2: Ages of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) Case Goal, as of September 30, 2014	16
Figure 3: Placement Settings of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) and Other Case Goals, as of September 30, 2014	18
Figure 4: Tribes Reporting Other Challenges to Establishing Permanency for Children in Tribal Foster Care	23
Figure 5: States Participating in the Title IV-E Guardianship Assistance Program (GAP) as of March 2016	31
Figure 6: Reported Participation by Selected Tribes in the Title IV-E Guardianship Assistance Program (GAP)	32

Abbreviations

AI/AN	American Indian/Alaska Native
APPLA	another planned permanent living arrangement

ACF	Administration for Children and Families
AFCARS	Adoption and Foster Care Analysis and Reporting System
ASFA	Adoption and Safe Families Act of 1997
BIA	Bureau of Indian Affairs
CO	Colorado
FMAP	Federal Medical Assistance Percentage
GAP	Guardianship Assistance Program
HHS	Department of Health and Human Services
LTFC	Long-term foster care
MI	Michigan
OK	Oklahoma
TANF	Temporary Assistance for Needy Families

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August 8, 2016

The Honorable Orrin Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Kevin Brady
Chairman
The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
House of Representatives

The Honorable Vern Buchanan
Chairman
Subcommittee on Human Resources
Committee on Ways and Means
House of Representatives

The Honorable Kristi Noem
House of Representatives

To receive federal child welfare funds, states and tribes must meet certain requirements that promote the safety, permanency, and well-being of children in state or tribal foster care.¹ The Department of Health and Human Services (HHS) is responsible for overseeing states' and tribes' implementation of these and other federal requirements related to child welfare services. One requirement is that each child in foster care must have a case plan including, among other components, (1) a description of the type of home or institution in which the child is to be placed while in foster care—referred to in this report as their “placement setting”—and (2)

¹Permanency is a term used by professionals and experts in the child welfare field to refer to the goal of ensuring that children spend as little time as possible in foster care—that they are returned quickly to their families or are placed in another safe and permanent home.

a permanency plan for how the child will exit the foster care system, either by returning to their home or to an alternative permanent placement—referred to in this report as the child’s “case goal.” Since 1997, if other case goals (reunification with the child’s parents, adoption, legal guardianship, or placement with a fit and willing relative) are determined not to be in the best interests of a child, the court may designate “another planned permanent living arrangement” (APPLA) as the child’s case goal.² Frequently this occurs when these other case goals have been deemed to not be possible or appropriate. Child welfare experts expressed the view that APPLA is being used too frequently and children are remaining in foster care, particularly in group care arrangements, rather than exiting to a permanent, family-like setting. Unlike other case goals that involve a child exiting the foster care system, in practice, children assigned an APPLA case goal are normally expected to remain in foster care until they reach adulthood and are no longer eligible for services, known as aging out of foster care.

The Preventing Sex Trafficking and Strengthening Families Act, enacted in 2014, restricted the use of APPLA as a case goal to children aged 16 and older.³ According to some organizations that work on tribal child welfare issues, the APPLA age restriction might lead tribes to place some younger tribal children in settings with no tribal connections. These organizations noted that some tribes might be using the APPLA case goal to place younger children with serious special needs in family-based homes within the tribe when reunification or adoption is not available or appropriate, ensuring that the child retains their connection to their tribe and extended family. These organizations also said that without the option of an APPLA case goal for younger children, tribes might need to pursue case goals of adoption or guardianship—possibly with non-Indian homes—rather than allowing a child to be assigned APPLA and remain in foster care with an Indian family until aging out of foster care. The Act made the APPLA provision effective 3 years after enactment for children

²The Adoption and Safe Families Act of 1997 (ASFA) amended title IV-B and title IV-E of the Social Security Act, which provide federal child welfare funding for states and tribes. ASFA established APPLA as a case goal option under these programs and eliminated the previous option for a child to be “continued in foster care on a permanent or long-term basis” because of his or her special needs or circumstances. Pub. L. No. 105-89, § 302, 111 Stat. 2115, 2128-29 (amending 42 U.S.C. § 675(5)).

³Pub. L. No. 113-183, § 112, 128 Stat. 1919, 1926-28 (2014).

in foster care who are under the responsibility of an Indian tribe, allowing tribes to continue to use the APPLA case goal for children under age 16 until September 2017.⁴ You asked us to review how, if at all, the restriction on the use of APPLA may affect tribes' efforts to achieve permanency for children in their care.

This report examines (1) what available data show about Indian children in foster care compared to all other children in foster care; (2) the extent to which selected tribal child welfare agencies face challenges in addressing recent changes to APPLA and in establishing permanent homes for children in tribal foster care; and (3) the extent to which HHS has assisted tribal child welfare agencies in implementing the APPLA change and addressing any challenges to establishing permanent homes.

To determine what available data show about Indian children in foster care compared to all other children in foster care, we analyzed data on foster care case plans from HHS's Adoption and Foster Care Analysis and Reporting System (AFCARS) for fiscal year 2014, the most recent year for which data were available.⁵ Because AFCARS does not include a measure for the APPLA case goal, we used long-term foster care and

⁴The amendments to APPLA made by the Preventing Sex Trafficking and Strengthening Families Act generally took effect in September 2015, 1 year after enactment. However, the Act provides that "[i]n the case of children in foster care under the responsibility of an Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of a State)," the amendments shall not apply until September 2017, 3 years after enactment.

⁵For the purposes of our discussion of our analysis of HHS's AFCARS data, the term Indian refers to children identified as American Indian/Alaska Native in AFCARS.

emancipation as proxy measures for APPLA.⁶ Through interviews with HHS officials, documentation review, and electronic data testing, we found the data reliable for the purposes of this report. To obtain the perspectives of tribal officials, we conducted semi-structured interviews with tribal officials from 15 federally recognized tribes and convened six group interviews with representatives from 21 other federally recognized tribes. We selected the 15 tribes for individual interviews from six states that have high numbers of tribes receiving funding under title IV-E or title IV-B of the Social Security Act: Arizona, Michigan, Montana, New Mexico, Oklahoma, and Washington. The information obtained in our interviews is not generalizable to the population of federally recognized tribes, but it provides examples of tribes' experience using the APPLA case goal and their views on any challenges they may face when the changes go into effect. In addition, we reviewed relevant federal laws, regulations and HHS guidance. We also interviewed state child welfare officials from the six selected states, as well as officials from the Administration for Children and Families' (ACF) Children's Bureau at HHS; officials from the five HHS regional offices that cover our selected states; and the Center for Tribes, an HHS-funded technical assistance provider. See appendix I for more information on our scope and methodology, including a detailed description of the AFCARS data elements we analyzed.

⁶In this report, we use the term "case goal" to refer to "case plan goal" in AFCARS. The AFCARS regulations were issued before APPLA was added to the law, and the regulations do not include APPLA as a case goal option. See 45 C.F.R. pt. 1355, app. A. Data cited here refer to children who were reported to have case goals of "long-term foster care" or "emancipation." This approach has been used in prior analyses of APPLA using AFCARS data; for example, see Congressional Research Service, *Another Planned Permanent Living Arrangement (APPLA) as a Permanency Goal for Children in Foster Care*, (Washington, D.C.: Feb. 17, 2012). For purposes of AFCARS reporting, if the child will be in foster care until the age of 18 and has a connection with an adult, HHS instructs child welfare agencies to use the goal "emancipation" and if there is no adult with a permanent connection to the child, to use "long-term foster care." In February 2015, HHS published a proposed rule that would remove both case goals from AFCARS and add "planned permanent living arrangement" under the rule as proposed, and child welfare agencies would be instructed to select this case goal if the child is to remain in foster care until the agency's placement and care responsibility ends. Adoption and Foster Care Analysis Reporting System, 80 Fed. Reg. 7132 (Feb. 9, 2015). The comment period closed on April 10, 2015; in April 2016, HHS published a Supplemental Notice of Proposed Rulemaking and that comment period closed on May 9, 2016. 81 Fed. Reg. 20,283 (Apr. 7, 2016). See Appendix 1 for additional information.

We conducted this performance audit from June 2015 to August 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States.⁷ Federally recognized tribes and their members are eligible for programs and services the federal government provides to Indians because of their status as Indians.⁸

Federal Title IV-E and IV-B Funding for Tribal Child Welfare Programs

Eligible tribes and certain tribal entities have access to federal resources for child welfare programs under programs administered by HHS. Federal funding provided under titles IV-E and IV-B of the Social Security Act covers a portion of costs for states and participating tribes of operating their foster care, adoption assistance, and kinship guardianship assistance programs (title IV-E) and funding for child welfare services, such as parent support and counseling for children and families (title IV-B).⁹ Approximately 20,000 of the 415,000 children in foster care at the end of fiscal year 2014 were identified as American Indian or Alaska Native alone or American Indian or Alaska Native in combination with one or more races.

Title IV-E Funding

Title IV-E of the Social Security Act is the largest single federal source of child welfare funding, providing nearly \$7.5 billion in fiscal year 2015 to

⁷As of May 2016, there were 567 federally recognized tribes.

⁸For example, the Department of the Interior's Indian Affairs Programs—which includes programs administered by Interior's Bureau of Indian Affairs (BIA) and Bureau of Indian Education—provides services to federally recognized Indian tribes and their members.

⁹To participate, tribes or tribal entities must meet the eligibility criteria specific to each program. For example, Indian tribes and tribal organizations, as defined by the Indian Self-Determination and Education Assistance Act, and tribal consortia, are eligible to directly operate a title IV-E program.

child welfare agencies to support foster care and transitional independent living programs for eligible children, adoption assistance for children with special needs, and kinship guardianship assistance. Both states and tribes seeking to operate a title IV-E program must have an approved title IV-E plan.¹⁰ The title IV-E plan provides documentation that state or tribal law, regulations, and policies comply with program requirements. Among other things, the title IV-E program requires that states and tribes:

- make reasonable efforts, consistent with the health and safety of the child, to preserve and reunify families (1) prior to a child’s placement in foster care, to prevent the need for removing the child; and (2) to make it possible for the child to safely return home;
- prepare a written case plan for each child receiving foster care maintenance payments and ensure periodic court or administrative review of each such case; and,
- regularly hold a permanency hearing to determine the case goal for the child (to be held at least every 12 months) and make reasonable efforts to finalize the case goal—reunification, adoption, legal guardianship, placement with a fit and willing relative, or, where appropriate, another planned permanent living arrangement. Case goal options under title IV-E are shown in table 1.

Table 1: Case Goal Options under Title IV-E of the Social Security Act

Case goal	Description ^a
Return home (Reunification)	A plan for the child to be discharged from foster care to his or her parents or primary caretaker.
Adoption	A plan for the child to be discharged from foster care to the care and custody of adoptive parents through a legal adoption.
Legal guardianship	A plan for the child to be discharged from foster care to a legally established custody arrangement with an individual that is intended to be permanent. This could include permanent placement with a relative.
Placement with a fit and willing relative	A plan for the child to be discharged from foster care to live permanently with a fit and willing relative or relatives other than the ones from whom the child was removed.

¹⁰See 42 U.S.C. § 670 *et seq.* for the title IV-E program requirements.

Case goal	Description ^a
Another planned permanent living arrangement ^b	<p>A situation in which the child welfare agency maintains placement and care responsibility for, and supervision of the child, and places the child in a setting in which the child is expected to remain until adulthood. Examples of these “permanent” living arrangements include situations where</p> <ul style="list-style-type: none"> • foster parents have made a formal commitment to care for the child until adulthood; • the child is with relatives who plan to care for the child until adulthood; • the child is in a long-term care facility to meet special needs and will be transferred to an adult facility at the appropriate time; and • the child is an older adolescent in a stable group home and both the group home directors and the child have agreed that it will be the child’s placement until adulthood; or the child is in agency-supervised transitional living.

Source: GAO analysis of documentation from the Department of Health and Human Services (HHS). | GAO-16-625

Note: In this table, we use the term “case goal” to refer to a “permanency plan,” as that term is used in title IV-E, and a “case plan goal,” as that term is used in HHS’s Adoption and Foster Care Analysis and Reporting System (AFCARS). The AFCARS regulations were issued before “another planned permanent living arrangement” was added to federal law, and the regulations do not include that term. AFCARS currently includes the following case goal options: reunify with parents or principal caretaker(s), adoption, guardianship, live with other relatives, long-term foster care, and emancipation. HHS has proposed revisions to its AFCARS regulations, see 80 Fed. Reg. 7132 (Feb. 9, 2015) and 81 Fed. Reg. 20,283 (Apr. 7, 2016).

^aDescriptions based on documentation from HHS and AFCARS.

^bOnly in cases where the child welfare agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the other case goals.

Title IV-E funds reimburse participating states and tribes for a portion of their eligible costs of providing foster care, adoption assistance, or kinship guardianship assistance on behalf of eligible children¹¹:

- Title IV-E Foster Care Program: The title IV-E Foster Care Program provides federal funding for state and tribal title IV-E agencies to support out-of-home care for children until the children are safely returned home, placed permanently with adoptive families or placed in other planned arrangements for permanency. Federal funds are available for a portion of monthly maintenance payments for the daily care and supervision of eligible children; administrative costs to manage the program; training of staff and foster care providers;

¹¹Some states may also operate state-funded guardianship assistance programs. For example, in 2014 we reported that 16 of the states that had elected to adopt the federal kinship guardianship assistance program had previously operated a state funded program. See GAO, *Foster Care: HHS Needs to Improve Oversight of Fostering Connections Act Implementation*, GAO-14-347 (Washington, D.C.: May 29, 2014).

recruitment of foster parents; and costs related to the design, implementation and operation of a state-wide data collection system.¹²

- Title IV-E Adoption Assistance Program: The Adoption Assistance Program provides funds to state and tribal title IV-E agencies to facilitate the timely placement of children, whose special needs or circumstances would otherwise make placement with adoptive families difficult.¹³ Federal funds are available for a one-time payment to families to assist with the costs of adopting an eligible child, and for a portion of monthly subsidies to assist with the care of an eligible adopted child, as well as for certain administrative and other program costs.
- Title IV-E Guardianship Assistance Program: The Guardianship Assistance Program (GAP) is an optional program under title IV-E that provides funds to support the care of children discharged from foster care to legal guardianship who meet the program's eligibility

¹²Federal reimbursement for the title IV-E foster care program is generally limited to children removed from homes with very low incomes. Although states and tribes may provide foster care services to any child, they may generally only claim federal reimbursement for costs incurred serving children who meet title IV-E eligibility criteria. One of these criteria specifies that in order to receive a reimbursement, the child must have been removed from a home that would have qualified for cash assistance under the Aid to Families with Dependent Children program as of July 1996. Other eligibility criteria for title IV-E funded foster care require that (1) the child's removal and placement is in accordance with either a voluntary placement agreement or a judicial determination that continuation in the child's home would be contrary to the child's welfare and reasonable efforts were made to prevent the need for removal or that such efforts would be inappropriate; (2) the child's placement and care are the responsibility of the agency or tribe administering an HHS-approved foster care plan; and (3) the child has been placed in a foster family home or child-care institution that meets certain requirements. Also, in the case of voluntary placements, eligibility terminates 180 days after removal unless there is a judicial determination that continued placement is in the child's best interest. 42 U.S.C. § 672.

¹³In general, a child is eligible for title IV-E Adoption Assistance if the child meets the definition of a child with special needs and meets certain other eligibility criteria. The Fostering Connections to Success and Increasing Adoptions Act of 2008 made changes to the eligibility criteria, which are being phased in and will apply to all children by fiscal year 2018. See 42 U.S.C. § 673.

requirements.¹⁴ Under the program, state and tribal title IV-E agencies who opt to provide guardianship assistance payments to relatives who have assumed legal guardianship of eligible children receive partial reimbursement from the federal government for the cost of providing these payments. In general, eligible children include those who have been eligible for title IV-E foster care maintenance payments during at least a 6 consecutive month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as meeting the licensure requirements as a foster family home, among other criteria.¹⁵

The reimbursement rate varies by type of expense. The federal share of foster care maintenance payments, adoption assistance payments, and guardianship assistance payments is between 50 percent and 83 percent of costs, with higher federal support going to states and eligible tribes with lower per capita incomes.¹⁶ The federal share of training and administrative costs is 75 percent and 50 percent, respectively.

Eligible tribes may receive federal title IV-E funds either by (1) directly operating a foster care title IV-E program pursuant to an approved title IV-

¹⁴GAP was established by the Fostering Connections to Success and Increasing Adoptions Act of 2008. Pub .L. No. 110-351, § 101,122 Stat. 3949, 3950. States and tribes that choose to participate in title IV-E must participate in the Foster Care and Adoption Assistance programs; however, they may choose not to participate in GAP. As of March 2016, 33 states and 6 tribal title IV-E agencies have been given final approval to participate in GAP.

¹⁵See 42 U.S.C. § 673(d). Among other criteria, to be eligible for title IV-E GAP, a child must have been eligible for title IV-E foster care maintenance payments during at least a 6 consecutive month period during which the child resided in the home of the prospective relative guardian. One of the eligibility criteria for title IV-E foster care maintenance payments requires that the child be in a “foster family home,” which is defined to mean “a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing.” 42 U.S.C. § 672(c).

¹⁶42 U.S.C. §§ 674, 679c(d). The federal share of title IV-E assistance payments is calculated using the Federal Medical Assistance Percentage (FMAP), a match rate calculated annually for each state by HHS according to a formula specified in the Social Security Act, 42 U.S.C. § 1396d(b). Each tribe’s FMAP must be based on the per capita income of the tribe’s title IV-E service population after considering any tribally-submitted information on per capita income. However, no tribal FMAP may be lower than the FMAP of any state in which the tribe is located.

E plan; or (2) administering all or part of a title IV-E program on behalf of a state pursuant to a tribal-state agreement.

- Tribal-state agreements: Tribes may enter into cooperative agreements with their state child welfare agency to administer part of the state's title IV-E program. Through tribal-state agreements, title IV-E funds are generally passed through the state to the tribes. Whether tribes or states have responsibility for activities such as developing a case plan for the child's placement and care, or reviewing the case plan on a regular basis, can vary depending on the agreement. HHS considers the state to be the grantee for title IV-E funding and as a result, the state has ultimate responsibility for ensuring compliance with title IV-E program requirements.
- Direct title IV-E programs: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) authorized tribes to directly operate a title IV-E program and obtain federal reimbursement for eligible program costs pursuant to an approved title IV-E plan.¹⁷ As of October 2015, there were seven tribes approved to directly operate a title IV-E program. The provisions of title IV-E apply to tribes that operate their own programs in the same manner as they apply to states, with limited exceptions.¹⁸ HHS is responsible for oversight and monitoring of states and tribes that are approved to directly operate a title IV-E program.

Title IV-B Funding

Tribes also have access to federal funding provided under title IV-B, subparts 1 and 2 of the Social Security Act for various child welfare services—\$664 million in fiscal year 2015.¹⁹ These programs fund a range of child welfare services and activities generally aimed at preventing abuse and neglect; preserving and reunifying families; and promoting safety, permanency, and well-being of children in foster or adoptive placements. To receive title IV-B funding, states and tribes must submit a 5-year plan—the Child and Family Services Plan—that sets forth the vision and goals to be accomplished to improve the state's or tribe's

¹⁷Pub. L. No. 110-351, §§ 301-302, 122 Stat. 3949, 3962-73. Indian tribes and tribal organizations, as defined by the Indian Self-Determination and Education Assistance Act, and tribal consortia are eligible.

¹⁸42 U.S.C. § 679c.

¹⁹To participate, tribes must meet the eligibility criteria and other requirements for each program. See 42 U.S.C. § 621 *et seq.* (subpart 1) and 42 U.S.C. § 629 *et seq.* (subpart 2).

coordinated child and family service delivery system. It also includes, among other things, the state's or tribe's plans for use of funding from title IV-B. Tribes that receive title IV-B funding and operate foster care programs must also comply with certain title IV-E requirements, including those related to case goals. State and tribal title IV-B agencies must submit annual updates—Annual Progress and Service Reports—on the progress made toward accomplishing the goals and objectives in the Child and Family Services plan, which are reviewed by HHS regional office staff. Tribes must also be operating a program under title IV-B, subpart 1 to be eligible to directly administer a title IV-E program. The main mechanism for oversight of title IV-B tribal agencies is HHS's review of the tribe's Child and Family Service Plan and annual updates. This review is conducted by HHS regional office staff as part of the joint planning process.

In addition, tribes or families involved with tribal child welfare programs may receive other state or federal funding outside of titles IV-E or IV-B to support child welfare services, or they may be supported only through tribal funds.²⁰

Another Planned Permanent Living Arrangement as a Case Goal

The Adoption and Safe Families Act of 1997 (ASFA) added APPLA as an option for a child's case goal if none of the other case goals enumerated in the statute would be in the best interests of the child.²¹ In addition, ASFA removed language allowing a child to be "continued in foster care on a permanent or long-term basis" because of his or her special needs or circumstances. Under title IV-E, APPLA is permitted as a case goal in cases where the child welfare agency has documented to the court a "compelling reason" for determining that the other case goals would not be in the best interests of the child. The Preventing Sex Trafficking and

²⁰Other federal funding sources that may be available to tribal child welfare programs include title II of the Indian Child Welfare Act; title IV-A of the Social Security Act (Temporary Assistance for Needy Families); and Bureau of Indian Affairs (BIA) Social Services and Welfare Assistance Funds. See GAO, *Foster Care: HHS Needs to Improve the Consistency and Timeliness of Assistance to Tribes*, [GAO-15-273](#) (Washington, D.C.: Feb. 25, 2015).

²¹The statutory provision addressing permanency hearings and case goals is codified as amended at 42 U.S.C. § 675(5)(C)(i). Recipients of title IV-B, subpart 1 are also required to comply with this provision. 42 U.S.C. § 622(b)(8)(A)(ii).

Strengthening Families Act, enacted in 2014, restricted the use of APPLA as a case goal to children age 16 and older, although it delayed implementation for children in foster care under the responsibility of an Indian tribe.²² For older children with a case goal of APPLA, the Act places additional requirements on states and tribes.²³ Among other things, at each permanency hearing (to be held at least every 12 months), the child welfare agency is required to (1) document its intensive, ongoing, and unsuccessful efforts to return the child home or secure a placement with a relative, legal guardian, or adoptive parent; and (2) implement procedures to ensure that the court re-determines whether APPLA is the appropriate case goal for the child and asks the child about his or her desired permanency outcome.

HHS Assistance for Tribes on Titles IV-E and IV-B

ACF's Children's Bureau is responsible for providing program guidance under titles IV-B and IV-E to grantees. ACF is also responsible for providing technical assistance to tribes on title IV-B and IV-E program requirements through nine of its regional offices. In 2014, HHS consolidated its training and technical assistance provided to states and tribes. The Center for Tribes (the Center), one of the three centers in HHS's Child Welfare Capacity Building Collaborative, serves as a technical assistance resource for tribes.²⁴ All tribes that receive title IV-E or title IV-B funds are eligible to receive assistance from the Center. The Center also develops products that all tribes can access from the Children's Bureau website, including ones that have information on

²²According to HHS, the delayed effective date for the amendments to APPLA applies to: (1) tribes directly operating a title IV-E program; (2) tribes using title IV-B funds to operate a foster care program because title IV-B requires recipients to comply with certain title IV-E requirements, including the ones related to permanency hearings and case goals; and (3) tribes with placement and care responsibility of a child pursuant to an agreement with a state title IV-E agency.

²³Codified at 42 U.S.C. § 675a.

²⁴The Children's Bureau reorganized its technical assistance network in 2014 and established the Child Welfare Capacity Building Collaborative. The Collaborative is a partnership among three centers—the Center for States, Center for Tribes, and Center for Courts—that consolidates services that had previously been organized by topical area and geographic region. Prior to the formation of the Collaborative, the National Child Welfare Resource Center for Tribes provided training and technical assistance to tribes, including information and educational resources on kinship care, guardianship, and customary adoption, as well as child welfare program assessment.

practices such as customary adoption and family group decisionmaking. It also offers services to tribes that are tailored to their particular needs; tribes are responsible for requesting these services from the Center.

Data Show That the Use of APPLA Was Lower for Indian Children than Non-Indian Children and Children in Both Groups Had A Similar Number of Foster Care Placements

A Lower Percentage of Indian Children Had APPLA as a Case Goal Compared to Non-Indians, though a Higher Percentage of Indians Were Younger than 16

Available data from HHS show that a lower percentage of Indian children were assigned APPLA as a case goal at the end of fiscal year 2014 compared to non-Indian children.²⁵ According to AFCARS data, about 6.1 percent of Indian children were assigned APPLA as a case goal (approximately 1,200 children) compared to 8.3 percent of non-Indian children (approximately 33,000 children). The percentage of Indian and non-Indian children assigned other case goals also differed (see table 2).²⁶ However, in part because these children could be in either state or tribal foster care, these data cannot be used to identify children covered by the 3-year delay for the APPLA age restriction. While data on all children in foster care under the responsibility of a state agency are included in AFCARS, data on some children under the responsibility of a

²⁵In this section of the report, the term Indian refers to children identified as American Indian/Alaska Native in AFCARS.

²⁶For purposes of AFCARS reporting, a “case plan goal” is defined as the most recent case plan goal for the child based on the latest review of the child’s case plan—whether by a court review or an administrative review—or, if the child has been in care less than 6 months, the goal in the case record as determined by the caseworker.

tribal agency are not included in AFCARS.²⁷ In addition, children identified as Indian in AFCARS are not necessarily enrolled members of a federally-recognized tribe.

Table 2: Percentage of Indian and Non-Indian Children in Foster Care by Case Goal, as of September 30, 2014

	Component	Indian children (n=19,900)	Non-Indian children (n=395,229)
Case goal	Long-term foster care	4.1	3.6
	Emancipation	2.1	4.7
	Another Planned Permanent Living Arrangement (APPLA) (total)	6.1	8.3
	Reunification	55.8	52.6
	Living with other relatives	2.0	3.0
	Guardianship	3.6	3.6
	Adoption	22.4	24.1
	Other case goals (total)	83.8	83.2

Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

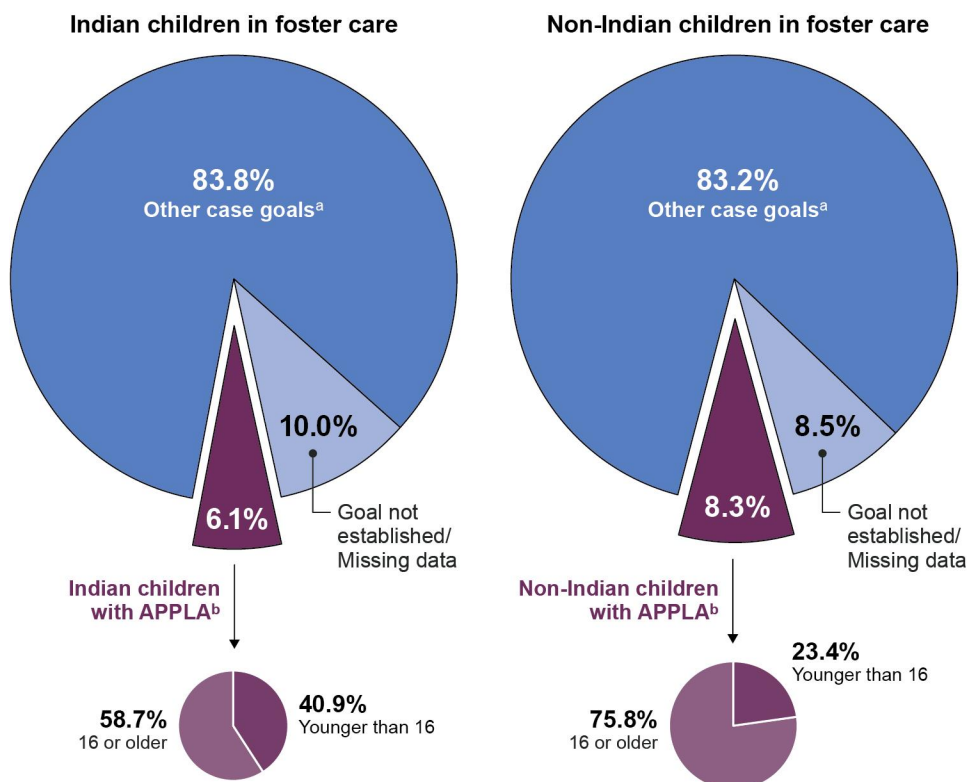
Note: The AFCARS regulations were issued before APPLA was added to federal law and the regulations do not include this term. Data cited here for APPLA refer to children who were reported to have case goals of “long-term foster care” or “emancipation.” Children for whom a case goal has not yet been established and children for whom case goal data are missing are not shown. Of the 19,900 children identified as Indian, 9,518 children were identified as Indian alone, while 10,382 children were identified as Indian and at least one other race/ethnicity, including those identified as Hispanic. The term Indian refers to children identified as American Indian/Alaska Native in AFCARS. The AFCARS regulations define “American Indian or Alaska Native” (AI/AN) as “a person having origins in

²⁷ State child welfare agencies are required to report data on all children in foster care for whom the agency has responsibility for placement, care, or supervision as well as certain data on children who are adopted. However, according to HHS officials, HHS does not require information to be reported in AFCARS on children in the care and placement responsibility of tribal foster care agencies that do not receive title IV-E funding. Officials from HHS told us that, as a result, AFCARS does not contain data on (1) children in foster care under the care and placement responsibility of tribes receiving only title IV-B funding; (2) foster children under the responsibility of tribes with a title IV-E tribal-state agreement but who are not title IV-E-eligible; or (3) foster children under the responsibility of tribes that do not receive any title IV-E or IV-B federal child welfare funding. According to HHS officials, they do not know how many children are in tribal foster care nationwide. Therefore, the number may represent an undercount of the number of Indian children in tribal foster care. See appendix 1 for additional information on what data are included in AFCARS.

any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.” According to AFCARS regulations, in general, a person’s race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Percentages may not sum to totals or 100 because of rounding.

While a slightly lower percentage of Indian children were assigned APPLA as a case goal than non-Indian children, a higher percentage of Indian children than non-Indian children who were assigned this case goal were younger than 16. Specifically, about 41 percent of Indian children with APPLA were younger than 16 (about 500 children), while about 23 percent of non-Indian children with this case goal were younger than 16 (about 7,500 children) (see fig. 1).

Figure 1: Use of Another Planned Permanent Living Arrangement (APPLA) Case Goal for Indian and Non-Indian Children in Foster Care, as of September 30, 2014



Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

Note: The term Indian refers to children identified as American Indian/Alaska Native in AFCARS. The AFCARS regulations were issued before APPLA was added to federal law, and the regulations do not include this term. Data cited here for APPLA refer to children who were reported to have case

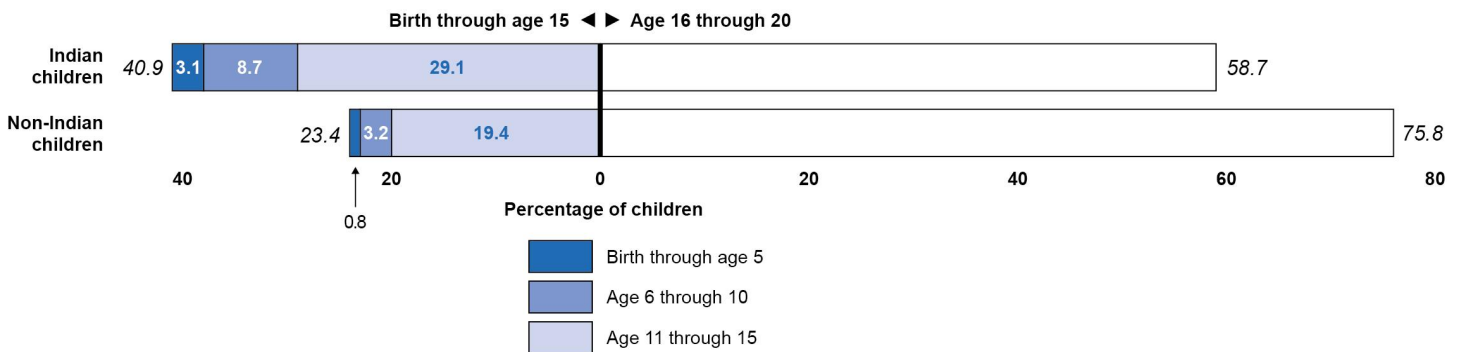
goals of “long-term foster care” or “emancipation.” Percentages may not sum to 100 because of rounding.

^aOther case goals include reunify with parents or principal caretaker(s), live with other relatives, guardianship, and adoption.

^bMissing or out of range age data, less than 1%, are not reflected in the APPLA age comparison. This percentage includes children with missing age data and children reported as age 21 or older.

Of Indian children assigned APPLA as a case goal, about 9 percent were ages 6 through 10, while 29 percent were ages 11 through 15, compared to approximately 3 percent and 19 percent of non-Indian children assigned APPLA, respectively. A much smaller percentage of both Indian and non-Indian children assigned this case goal were age 5 or younger (see fig. 2).²⁸

Figure 2: Ages of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) Case Goal, as of September 30, 2014



Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

Note: The term Indian refers to children identified as American Indian/Alaska Native in AFCARS. Children with missing age data and children reported as age 21 or older are not reflected in the figure. The AFCARS regulations were issued before APPLA was added to federal law, and the regulations do not include this term. Data cited here for APPLA refer to children who are reported to have case goals of “long-term foster care” or “emancipation.” Percentages may not sum to 100 or totals because of rounding.

²⁸The provision restricting the use of APPLA to children age 16 years and older was not in effect when the fiscal year 2014 AFCARS data were submitted. The amendments to APPLA made by the Preventing Sex Trafficking and Strengthening Families Act generally took effect in September 2015, 1 year after enactment. However, the Act provides that “[i]n the case of children in foster care under the responsibility of an Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of a State),” the amendments shall not apply until September 2017, 3 years after enactment.

Indian and Non-Indian Children with APPLA as a Case Goal Had a Similar Number of Placements while in Foster Care, but a Lower Percentage of Indian Children Were Placed in Institutional Care

On average, Indian and non-Indian children with APPLA as a case goal moved among foster care homes about the same number of times (see table 3).²⁹ Both Indian and non-Indian children who were assigned APPLA as a case goal had an average of about six different placements during their most recent stay in foster care. In contrast, both Indian and non-Indian children who were assigned other case goals had an average of around three placements. In AFCARS the number of placements is defined as the number of places the child has lived, including the current setting, during the current removal episode and does not include the number of places a child may have lived during a previous episode in foster care or trial home visits.

Table 3: Number of Placements During Most Recent Stay in Foster Care by Race/Ethnicity and Case Goal, as of September 30, 2014

		Indian children				Non-Indian children			
		Another Planned Permanent Living Arrangement (APPLA) ^a	Other case goals ^b	Case goal not established	Missing	Another Planned Permanent Living Arrangement (APPLA) ^a	Other case goals ^b	Case goal not established	Missing
Placements during most recent stay in foster care	Average	6.4	2.9	1.6	1.9	6.3	2.6	1.7	1.8
	Median	5	2	1	1	4	2	1	1

Source: GAO analysis of 2014 Adoption and Foster Care Analysis and Reporting System (AFCARS) data | GAO-16-625

^aThe term Indian refers to children identified as American Indian/Alaska Native in AFCARS. The AFCARS regulations were issued before APPLA was added to federal law and the regulations do not include this term. Data cited here for APPLA refer to children who were reported to have case goals of “long-term foster care” or “emancipation.”

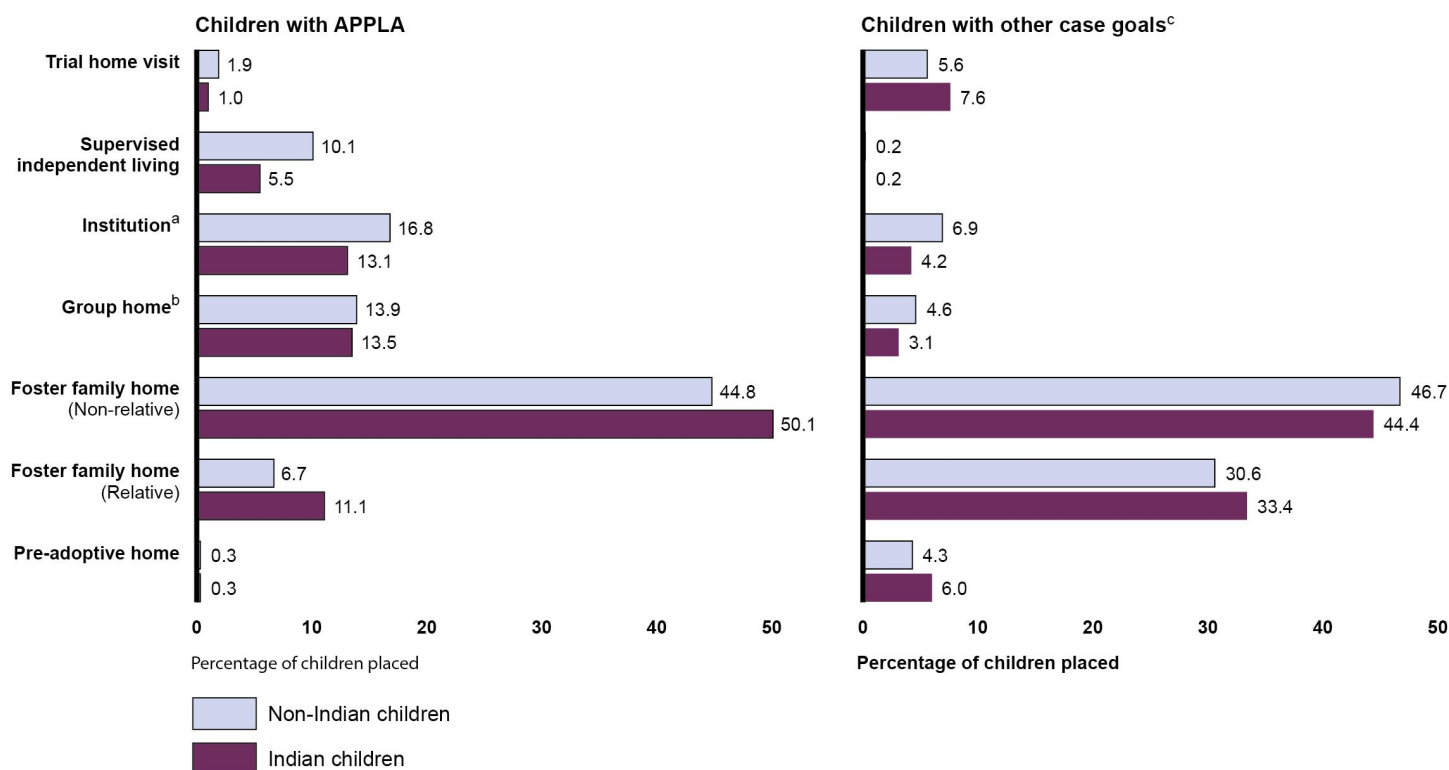
^bOther case goals include reunify with parents or principal caretaker(s), live with other relatives, guardianship, and adoption.

Our analysis shows that a higher percentage of all children with APPLA as a case goal were placed in either institutions or group homes (about 30 percent) than children with other case goals (between 7 and 11 percent). However, some differences exist between Indian and non-Indian

²⁹According to AFCARS guidance, placement occurs after removal and is the physical setting in which a child resides while in foster care. A new placement setting results when the foster care setting changes (for example, when a child moves from one foster family home to another or to a group home or institution).

children with APPLA. Although Indian and non-Indian children with APPLA moved among foster homes about the same number of times, a slightly lower percentage of Indian than non-Indian children with APPLA as a case goal were placed in institutional care. While 13.1 percent of Indian children with this case goal were placed in institutional care, 16.8 percent of non-Indian children with APPLA were placed in institutions. Some additional differences exist between the percentage of Indian and non-Indian children placed in group homes, but these differences were small (13.5 percent of Indian compared to 13.9 percent of non-Indians). Data also showed that a higher percentage of Indian children with APPLA were placed in family-style foster homes, either with relatives or non-relatives, than non-Indian children with APPLA (see fig. 3).

Figure 3: Placement Settings of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) and Other Case Goals, as of September 30, 2014



Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

Note: The term Indian refers to children identified as American Indian/Alaska Native in AFCARS. Children with missing data on placement setting or case goal, or who have run away from the foster care setting are not represented in the figure. The AFCARS regulations were issued before APPLA was added to federal law, and the regulations do not include this term. Data cited here for APPLA refer to children who were reported to have case goals of “long-term foster care” or “emancipation.”

^aIn AFCARS, institution is defined as a child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: child care institutions; residential treatment facilities; and maternity homes.

^bIn AFCARS, group home is defined as a licensed or approved home providing 24-hour care for children in a small group setting that generally has from 7 to 12 children.

^cOther case goals include reunify with parents or principal caretaker(s), live with other relatives, guardianship, and adoption.

Most Selected Tribes Did Not Anticipate Challenges Implementing APPLA Changes, yet Some Reported Other Challenges in Establishing Permanency

Most Selected Tribes We Interviewed Did Not Anticipate Challenges in Limiting APPLA to Older Children and Reported Using APPLA Infrequently

Most tribal officials we interviewed reported that they did not anticipate challenges associated with limiting the use of the APPLA case goal to children aged 16 and older. Specifically, officials from 27 of 32 tribes said they did not anticipate that the restriction would pose challenges for their foster care programs.³⁰ Tribal officials we interviewed also did not anticipate challenges with implementing the related provisions in the Preventing Sex Trafficking and Strengthening Families Act that introduced additional case review requirements for foster children to whom the APPLA case goal is assigned.

Of the 27 tribes that said they did not anticipate challenges with limiting the use of the APPLA case goal to children aged 16 and older, 17 tribes told us they use APPLA as a case goal for some children under tribal

³⁰Officials from 32 of the 36 tribes we spoke with in individual and group interviews shared their perspectives on the potential impact of the APPLA restriction on their tribal foster care programs; officials from 4 tribes did not state whether or not they anticipated challenges.

custody.³¹ However, these tribes told us that they assign APPLA rarely and only after determining that other case goals, such as reunification, adoption, or guardianship—which are required to be considered before APPLA is used—were not possible or appropriate.³² Tribal officials reported that most children in their foster care programs are initially assigned reunification as a case goal and are often reunified with their parents. These officials told us that if they determine that reunification is not possible, they will assign adoption or guardianship as a case goal, depending on the specific case.³³ However, some tribal officials also noted certain instances in which these case goals were not possible or appropriate and that they had determined that APPLA was the most appropriate goal. These examples included:

- Older children—Officials from 8 tribes said they use APPLA as a case goal either primarily or exclusively for older children or teenagers in foster care. Tribes reported that it was often more difficult to achieve permanency for older children due to a number of challenges, such as a lack of services tailored to older children or greater difficulty in recruiting adoptive families. Some tribes reported that they use APPLA as a last resort when they cannot find a permanent home for older children in foster care; officials told us that they use APPLA to

³¹Many tribes we interviewed used different terminology to refer to case goals that can be considered “another planned permanent living arrangement,” such as long-term foster care (LTFC), emancipation, or independent living. They further told us that in the case of LTFC, emancipation, and independent living, the respective child is expected to age out of foster care, and such case goals are only assigned when reunification, adoption, guardianship, or living with a relative were not possible or appropriate. HHS officials told us that some tribes and states may use different terminology to refer to similar case goals, and that HHS focuses on the characteristics of case goals and whether they are consistent with statute rather than the specific terminology used.

³²For example, 5 of the 17 tribes that reported using APPLA as a case goal told us that no more than five children under tribal custody are assigned APPLA at any given time.

³³Several tribal officials we contacted said that they engage in concurrent planning as part of their permanency planning practices. According to HHS, concurrent planning is an approach that seeks to eliminate delays in attaining permanent families for children in the foster care system. Concurrent planning involves considering all reasonable options for permanency at the earliest possible point following a child’s entry into foster care and concurrently pursuing those options that will best serve the child’s needs. Typically the primary plan is reunification with the child’s family of origin. In concurrent planning, an alternative case goal (e.g., adoption) is pursued at the same time rather than being pursued sequentially after reunification has been ruled out.

allow the child to continue to receive foster care maintenance payments while preparing to age out of the system. The challenges facing older children in foster care in general are well-documented.³⁴

- Children who do not want to be adopted or placed into guardianships—Officials from 5 tribes reported assigning APPLA as a case goal in cases in which older foster children indicated that they did not want to be adopted or placed into guardianships.³⁵ For example, 1 tribe reported assigning APPLA in the case of two children who were under age 16 for whom reunification was unlikely, but who did not want to be adopted. According to tribal officials, the children were initially placed in a family-like foster care home, briefly transferred to a residential facility, and ultimately placed in an independent living arrangement.
- Children with severe health issues—Officials from 4 tribes reported using APPLA as a case goal primarily for foster children with significant mental, behavioral, or physical health issues. For example, officials from one tribe told us that they sometimes assign APPLA as a case goal while providing additional services to help foster children through a crisis due to behavioral or mental health issues. These cases could include foster children who might need to stay in residential care for a certain amount of time. These tribal officials told us that APPLA is sometimes used for children who are placed in therapeutic foster homes where they receive specialized care.³⁶ Some other tribes reported that they believe this case goal could be, in some cases, an appropriate case goal for younger children who need long-term, intensive medical treatment in therapeutic foster homes or residential facilities. Another tribe told us the tribe has recently experienced an influx of tribal children entering the child welfare

³⁴Karen W. Tao, Kristin J. Ward, Kirk O'Brien, Paul Di Lorenzo, Susan Kelly, "Improving Permanency: Caseworker Perspectives of Older Children in Another Planned Permanent Living Arrangement," *Child & Adolescent Social Work Journal*, vol. 30 no. 3 (2013).

³⁵HHS's regulations provide that one example of a "compelling reason" for assigning APPLA is in the case of an older teen who specifically requests that emancipation be established as his or her case goal. See 45 C.F.R. § 1356.21(h)(3)(i).

³⁶Therapeutic foster home generally refers to a model of care that attempts to provide elements of traditional foster care with clinical treatment of a child's serious emotional, behavioral, and medical problems in a specialized foster home. Under this model, foster parents are given special training to address the needs of youth with major mental health challenges and children often receive intensive in-home services.

system who have a number of significant health issues due to prenatal exposure to drugs, for whom APPLA could be the most appropriate case goal.

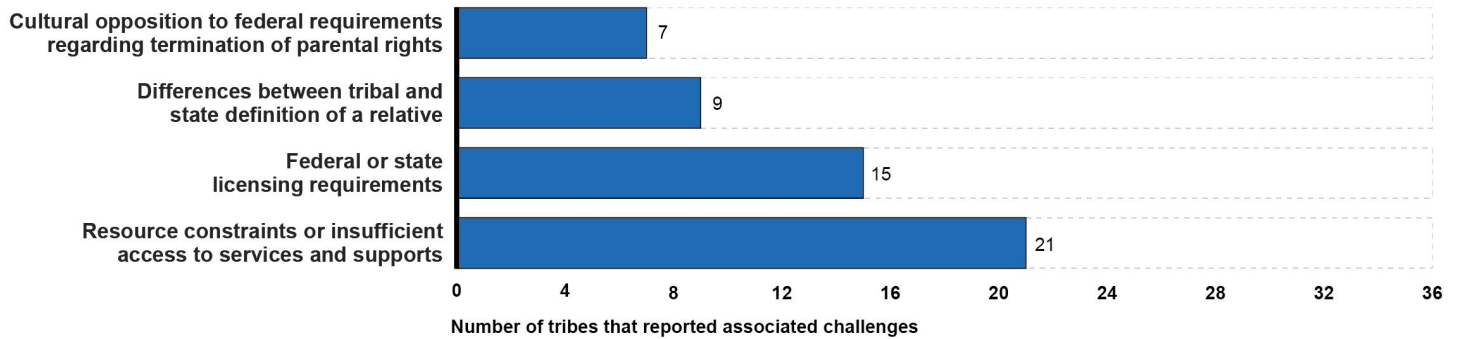
Some tribes we contacted—5 of 32—said they anticipated that the APPLA change would present challenges for their foster care programs. Of these tribes, two reported using the APPLA case goal extensively for children in tribal foster care. One tribe reported that the majority of children in foster care under their custody, most of whom are younger than 16, are assigned long-term foster care as a case goal. A tribal official told us that while some of these children are in family-like foster homes, most move around between residential facilities based on their behavioral needs or that have specific age or gender restrictions. This official noted that the tribe was concerned about the impact of the APPLA age restriction given the number of their children in long-term foster care arrangements. However, this official said that tribal officials had not discussed the restriction in detail with their tribal attorney, given the 3-year delayed implementation period. The second tribe told us that of the approximately 50 children under tribal custody, the majority are assigned long-term foster care and are placed in stable, family-like foster care homes in the care of extended family members. The tribal official we spoke with said that when the APPLA restriction takes effect, they will have to pursue guardianships for children younger than 16 who had previously been assigned an APPLA case goal. However, the official said that the tribe has faced challenges establishing guardianships. She told us that guardianships limit families' ability to access other resources, such as educational and training vouchers in some cases³⁷, and that the tribe has a number of foster families who would participate in guardianship arrangements but do not want to be licensed for a variety of reasons.

³⁷The John H. Chafee Foster Care Independence Program provides Educational and Training Vouchers, funded by the federal government and administered by the states, to eligible current and former foster children to help pay for a postsecondary education or training program. The program is intended to help children who are likely to remain in foster care until age 18 and youth who have aged out of foster care. Youth who have been adopted or enter kinship guardianship from foster care are eligible for vouchers; however, the statute restricts eligibility to those youth who are adopted or enter kinship guardianship at age 16 or older. As a result, there may be instances in which children who entered kinship guardianship arrangements prior to age 16 would not be eligible to receive vouchers.

Many Tribes We Interviewed Reported Other Challenges in the Course of Establishing Permanency

While most tribes we contacted did not anticipate challenges in limiting the use of APPLA as a case goal to older children in foster care, many tribal officials reported other challenges that made finding permanent homes for children under tribal custody difficult. Specifically, tribes reported facing challenges regarding cultural opposition to termination of parental rights and differences between state and tribal definition of a relative; licensing requirements; and resource constraints (see fig. 4).³⁸ Each of these challenges potentially limits the use of adoption, living with a relative, and guardianship as alternative case goals for younger children who have been assigned APPLA when the age limitation on APPLA takes effect.

Figure 4: Tribes Reporting Other Challenges to Establishing Permanency for Children in Tribal Foster Care



Source: GAO individual and group interviews with 36 selected tribes. | GAO-16-625

Termination of Parental Rights

Several tribes we contacted reported that the federal foster care requirements related to termination of parental rights were in conflict with their cultural values and presented challenges to their efforts to establish permanency for children in foster care.³⁹ Specifically, 7 tribes we spoke

³⁸We have previously reported that Indian tribes developing title IV-E programs faced a number of challenges establishing their programs and adopting certain program requirements due to resource constraints and tribal cultural values. See [GAO-15-273](#).

³⁹Termination of parental rights is a legal process that severs the legal parent-child relationship. Title IV-E requires that in specified circumstances, including once a child has been in foster care for 15 out of the most recent 22 months, the child welfare agency must file a petition to terminate the parental rights of the child's parents and begin the adoption process, subject to certain exceptions. 42 U.S.C. § 675(5)(E).

with reported that termination of parental rights is not acceptable in their tribal culture. We previously reported that tribes developing title IV-E plans encountered challenges associated with incorporating required language on termination of parental rights into their tribal codes or policies, which made it difficult to obtain internal approval and successfully complete the title IV-E plan.⁴⁰ HHS officials acknowledged that termination of parental rights may not align with Indian tribes' cultural values and in April 2015, HHS updated its Child Welfare Policy Manual to modify its interpretation of the statute to clarify that tribal title IV-E agencies may develop an alternative to termination of parental rights, such as a modification of parental rights, so long as the alternative satisfies other applicable requirements.⁴¹ Several tribes we interviewed practice tribal customary adoptions, which, unlike traditional adoptions, modify but do not terminate parental rights and also maintain family connections.⁴² Of the 29 tribes that discussed their use of customary adoption, 9 tribes reported using such adoptions, 12 tribes reported that they did not, and 8 tribes reported that they did not practice customary adoptions currently but might pursue them in the future. HHS officials told us that they support customary adoption as a culturally-appropriate method of achieving permanency for children. According to HHS officials, families that adopt a child through customary adoption are eligible for title IV-E adoption subsidies.

Definition of a Relative

Several tribal officials we contacted told us that another challenge facing their foster care programs were state definitions of who is considered a "relative" for purposes of foster care; these definitions can contradict tribes' cultural traditions. Specifically, officials from 9 tribes we spoke with

⁴⁰See [GAO-15-273](#).

⁴¹ HHS has also modified its Child Welfare Policy Manual to allow for more flexibility with respect to termination of parental rights when determining a child's eligibility for adoption assistance. See *Child Welfare Policy Manual*, 9.2 Question #3 and #12 and Part III of *Tribal Title IV-E Program Considerations, Technical Assistance Document* available at: <http://www.acf.hhs.gov/programs/cb/resource/tribal-considerations>.

⁴²Some tribes prefer tribal customary adoptions that align with the customs, laws, or traditions of the child's tribe. Unlike traditional adoptions, customary adoptions modify parental rights, but do not terminate them, and also maintain family connections. According to HHS, tribal customary adoption is recognized by state law in California and included as part of some title IV-E tribal-state agreements in Minnesota, Oregon, Montana, South Dakota, and Washington.

in individual and group interviews said their tribes broadly defined the term relative and that the tribe's definition was not always compatible with state definitions. For tribes administering title IV-E on behalf of the state pursuant to a tribal-state agreement, this difference could affect tribes' use of the case goal of "placement with a fit and willing relative" or whether tribal guardianships with relatives would qualify for GAP payments under a state's definition of "relative." For example, officials from one tribe told us that tribal children are born into an extensive clan system and that a tribal member's "extended family" is very large, and their clan affiliation is a permanent and necessary component to their identity. Another tribe reported that nearly all of their children in foster care are placed with individuals who are considered to be relatives under the tribe's broad definition, which encompasses not only blood relatives but also fictive kin—tribal members who may not be blood related but who have a close relationship with the child. Tribal officials told us that they believed federal title IV-E requirements did not provide for such a broader definition of "relative" and that some tribal members who would be considered relatives under the tribe's definition may not qualify for certain services, such as GAP. According to HHS policy, there is no federal definition of "relative" for the purpose of the title IV-E GAP. Tribes that administer title IV-E on behalf of the state pursuant to a tribal-state agreement generally follow the state title IV-E plan.⁴³ HHS officials acknowledged that tribes frequently define "relative" differently than states. However, in some cases, a state's definition of a relative could be more restrictive than a tribe's, and this narrower definition could be included in the tribe's title IV-E agreement with the state. According to HHS, tribes approved to directly operate a title IV-E program have discretion to define the term relative for the purposes of the title IV-E GAP. HHS officials told us that HHS will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal

⁴³According to HHS officials, one area where there is flexibility for tribes is within foster family home licensing requirements.

familial ties or a plan that more broadly includes tribal kin, extended family and friends, or other “fictive kin”.⁴⁴

Licensing Requirements

More than one-third of tribes we contacted—15 of 36 tribes—told us that satisfying federal and state licensing requirements often made it more difficult to license potential foster care homes and in some cases also prevented tribes from establishing potential permanent placements for their children.⁴⁵ For example, in order to be eligible for GAP payments, a child must have resided with a licensed relative foster caretaker for at least 6 continuous months. Several tribal officials we interviewed said that licensing requirements regarding the number of family members living in a home, the size of the home, or the availability of separate bedrooms presented challenges when attempting to license potential foster homes, given the prevalence of multi-generational homes in tribal communities. An official from one tribe also told us that background checks conducted as part of the licensing process will sometimes disqualify otherwise suitable relatives from becoming licensed and therefore a possible permanent caregiver.⁴⁶ For example, some tribal officials noted that an otherwise qualified relative may not pass a background check because of a past drug offense. Participants in a 2011 survey by the National Child Welfare Resource Center for Tribes reported that substance abuse not only contributed to difficulties some families had when they tried to reunify

⁴⁴See ACF Program Instruction ACYF-CB-PL-10-11 (July 9, 2010). According to HHS officials, HHS provides a definition of relative only for one program, Aid to Families with Dependent Children, which has since been superseded by the Temporary Assistance for Needy Families (TANF) block grant program, but may be used for determining the eligibility of certain children for title IV-E foster care and adoption assistance.

⁴⁵State or tribal title IV-E plans are required to provide for an authority that shall be responsible for establishing and maintaining standards for foster family homes and child care institutions “which are reasonably in accord with recommended standards of national organizations concerned with standards for the institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and which shall permit use of the reasonable and prudent parenting standard.” These standards are required to be applied to any foster family home or child care institution receiving funds under titles IV-E or IV-B. 42 U.S.C. § 671(a)(10).

⁴⁶State or tribal title IV-E plans are required to provide procedures for criminal records checks, including fingerprint-based checks of national crime information databases, for any prospective foster parent, adoptive parent, or relative guardian and any other adult living in the home before the foster or adoptive parent may be finally approved for placement or before a GAP payment may be made. 42 U.S.C. § 671(a)(20).

with their children but also created challenges in finding suitable foster homes.⁴⁷

However, other tribes we interviewed reported that they have been able to incorporate some flexibility into their tribal licensing requirements to address licensing challenges or account for other circumstances unique to tribal communities. For example, some tribes we interviewed said that their tribe's licensing requirements provide more flexibility with regard to the size of a home or the number of bedrooms available. The Fostering Connections Act authorized states to waive, on a case-by-case basis, non-safety licensing standards for relative foster family homes and gave states discretion to determine what constitutes a non-safety standard.⁴⁸ According to HHS officials, tribes approved to directly operate title IV-E programs are allowed to define and waive non-safety standards for relative foster family homes, as are states.⁴⁹ However, some officials we spoke with from tribes approved to directly operate title IV-E programs were not aware that they were able to waive non-safety licensing standards. In addition, two of the six states we reviewed for our study—Michigan and New Mexico—were not among those that reported in 2014 allowing waivers of non-safety licensing standards for relative foster family homes and defining such standards in state law, regulations, or agency policy, while four states—Arizona, Montana, Oklahoma, and Washington—reported in 2014 that they did allow such waivers. According to HHS, tribes operating programs under title IV-E tribal-state agreements are bound by the terms in those agreements, which could include licensing requirements. HHS officials we spoke with said that tribes have not expressed to them any questions or concerns about challenges they have experienced with non-safety licensing standards.

⁴⁷National Child Welfare Resource Center for Tribes, *Findings from the National Needs Assessment of American Indian/Alaska Native Child Welfare Programs* (West Hollywood, CA: July, 2011). The results of this study may not be representative of the population of all tribes.

⁴⁸Codified at 42 U.S.C. § 671(a)(10)(D).

⁴⁹42 U.S.C. § 679c(b). According to a survey conducted for a 2014 GAO report, 43 states reported that they allowed waivers of non-safety licensing standards for relative foster family homes, up from 33 prior to the enactment of the Fostering Connections Act. Most states that allowed these waivers reported that they defined "non-safety" or listed specific standards that may be waived in state law, regulation, or agency policy. See [GAO-14-347](#).

Resource Constraints

More than half of tribes we spoke with—21 of 36 tribes—told us that resource constraints presented challenges for their foster care programs and for establishing permanency for children under their custody.⁵⁰ These constraints include a lack of foster care homes, limited availability of needed services, and limited financial support for permanent guardianships. Officials from 7 tribes reported that a significant challenge for their programs is a shortage of licensed foster care homes, particularly those that are willing and capable of caring for children with special needs. Similarly, officials from 4 tribes told us that they had limited access to therapeutic foster homes or inpatient care facilities because their tribes were located in rural areas far from these homes and facilities or because these resources were already being used by state foster care programs. Tribal officials also reported that the financial assistance available to foster care providers or permanent caregivers for children in foster care is often insufficient to fully cover all of the associated costs. Officials from one tribe reported that the majority of tribal members struggle to make ends meet and feed members of their current households. While the tribe offers financial assistance to foster families, tribal officials said that amount is insufficient to fully cover the costs of fostering a child. In addition, several tribes told us that tribal foster care programs generally do not have access to the range of services available to states, such as independent living services that can help children in foster care transition to permanency or resources and services for children with special needs. HHS officials we spoke with acknowledged that there is great demand among tribes for resources for these high-needs children. Some tribal officials also told us that families entering into guardianships did not receive any financial assistance, such as title IV-E GAP, which, according to tribal officials, made it more difficult to establish permanency through guardianships.

⁵⁰In our prior work on tribal efforts to establish title IV-E programs, we reported that child welfare experts and officials from tribes that initially expressed an interest in title IV-E said resource constraints hindered tribes' ability to implement title IV-E. Experts we interviewed said it is difficult for tribes to establish title IV-E programs because they often have fewer resources than states, their staff are balancing multiple responsibilities, or there is limited funding to address these needs. These constraints prevented some tribes that initially expressed an interest in the program from moving forward to develop a title IV-E plan. See [GAO-15-273](#).

HHS Has Provided Information and Some Assistance to Tribes on APPLA and on Establishing Permanent Homes, but Tribes Reported Low Participation in GAP

HHS has provided information and some assistance to tribes on implementing the change to APPLA, including policy guidance and technical assistance through HHS regional offices, and some support for establishing permanency for children in tribal foster care. Despite reporting resource constraints, however, most tribes we interviewed reported that they did not participate in title IV-E GAP to receive federal funding to support their use of guardianship as a permanent placement. Without greater tribal participation in GAP, tribes may not be receiving available funding that could help them encourage the use of and support guardianship, particularly for older children or those with special needs for whom finding permanent placements may be difficult.

HHS Has Provided Information to Tribes on Changes to APPLA and Technical Assistance to Develop Permanency Options

The Children's Bureau has sent guidance to regional offices, state child welfare agencies, and tribal organizations concerning the provisions in the Preventing Sex Trafficking and Strengthening Families Act, including the change to the APPLA case goal. For example, the Children's Bureau used a listserv to disseminate program instructions and information memoranda on changes related to the Act.⁵¹ Staff in the five regions that serve the tribes we interviewed told us that they discussed the guidance with their respective tribal child welfare agencies. Staff in three of these regions reported that because of frequent changes in tribal staff, they maintain an up-to-date listserv of tribal social services directors, who will be responsible for implementing the APPLA change. They used the listserv to disseminate guidance, including program instructions and information memoranda about the change in APPLA. Some tribal officials told us that they were aware of the APPLA change and had received information from HHS, while others were uncertain whether they had received information, and some in our group interviews did not specify whether they had received it.

The regional offices and the Center for Tribes also provide technical assistance to tribes that can include help in implementing the APPLA

⁵¹See HHS Information Memorandum 14-03 (October 2014), Program Instruction 14-06 (November 2014), Program Instruction 15-04 (April 2015), and Program Instruction 15-07 (June 2015).

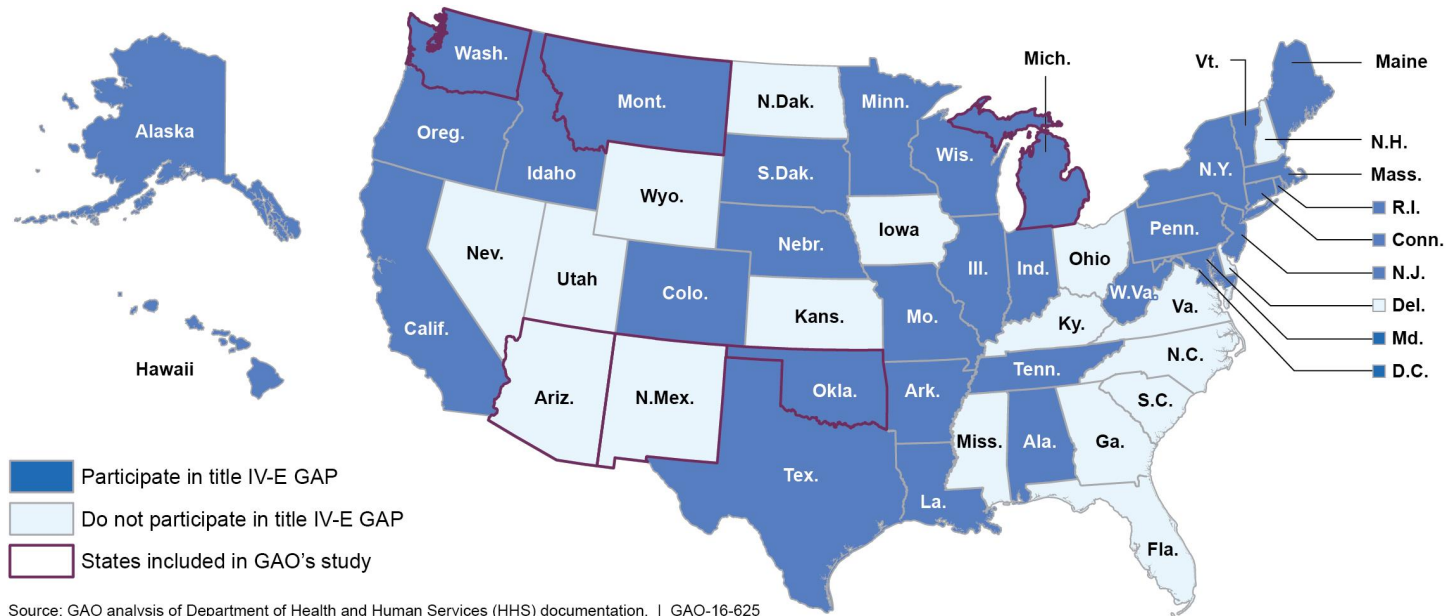
change and developing other permanency options. Staff in the five regional offices reported that as part of the joint planning process for assisting tribes with developing their 5-year title IV-B plans, regional officials worked with the tribes on how the tribes could address the change in APPLA. An official with the Center for Tribes told us that as of March 2016, one tribe had requested assistance with incorporating all of the elements of the Preventing Sex Trafficking and Strengthening Families Act into their policies and procedures. In addition, officials from one regional office and the Center told us that they help tribes with developing other permanency options such as kinship guardianship (which may be supported by title IV-E GAP) and customary adoption. One regional official reported helping tribes develop provisions on customary adoption that could be added to their tribal code. A Center official also said that they have received inquiries about GAP and have had requests for assistance with customary adoption and licensing.

Most Tribes We Interviewed Reported They Did Not Participate in Title IV-E GAP

Despite the resource constraints reported by many of the tribes we interviewed, most tribal officials we spoke with that use guardianship as a case goal reported that their tribes do not participate in title IV-E GAP, which provides federal funding for a portion of assistance payments paid to relative guardians on behalf of eligible children. Of the 27 tribes that reported using guardianship as a case goal, 20 tribes reported that they do not participate in GAP and do not receive federal funding to support those guardianships.⁵² Of these 20 tribes, 6 do not participate because they are located in states that do not offer the program. According to HHS officials, tribes in states that do not offer GAP would need to directly operate a title IV-E program in order to receive federal guardianship assistance. As of March 2016, 33 states and 6 tribes had been approved to operate GAP, according to HHS (see fig. 5).

⁵²Seven tribes said they participate in the program.

Figure 5: States Participating in the Title IV-E Guardianship Assistance Program (GAP) as of March 2016



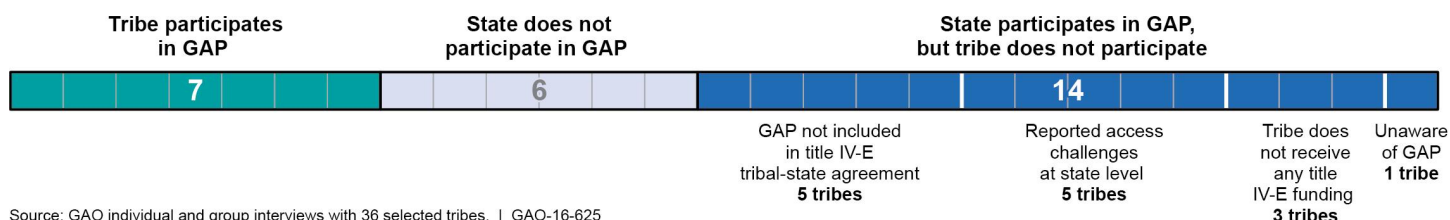
Source: GAO analysis of Department of Health and Human Services (HHS) documentation. | GAO-16-625

However, 14 tribes who use guardianship as a case goal are in states that offer GAP, but tribal officials told us they did not participate in GAP for several reasons. Officials from 5 tribes reported that because GAP was not included as an option in their title IV-E tribal-state agreements, families with guardianship arrangements do not receive GAP payments. Officials from 3 other tribes said they did not receive title IV-E funding so their tribes were not eligible for GAP payments.⁵³ Officials from an additional 5 tribes told us that they did not participate due to access challenges at the state level, such as age restrictions or difficulty meeting state requirements. For example, in one state, according to tribal officials, a child must be 12 years old before a guardianship would be approved. Finally, officials from 1 tribe said that they were unaware of title IV-E GAP (see fig. 6). Given that tribes cited different reasons for not participating in

⁵³HHS officials confirmed that if a tribe does not receive title IV-E funding—either by directly operating a direct program or via a title IV-E tribal-state agreement—then the tribe would not have access to title IV-E GAP funding. However, officials noted that those tribes may have access to other kinship guardianship subsidies, such as through state funds.

GAP, HHS, states, and tribes may need to take different actions to address those reasons. In addition, there may be other reasons why tribes that we did not interview may not be participating in GAP.

Figure 6: Reported Participation by Selected Tribes in the Title IV-E Guardianship Assistance Program (GAP)



Source: GAO individual and group interviews with 36 selected tribes. | GAO-16-625

Note: Officials from 27 of the 36 selected tribes reported using guardianship as a case goal. Officials from 9 tribes did not discuss their use of guardianship as a case goal.

HHS officials said that because the program provides additional support for foster children’s transition to permanency, participating in title IV-E GAP and providing tribes GAP payments is in a state’s interest. However, we previously reported that some states opted not to participate in GAP because of limited funding for the state’s portion of the GAP payment to relative guardians.⁵⁴ HHS officials told us that they were not aware of any instances in which a state participated in GAP but did not provide access to tribes through title IV-E agreements. However, officials also noted that HHS generally does not have information on the contents of title IV-E tribal-state agreements, as these agreements are not required to be submitted as part of a state’s title IV-E plan. Officials said that it is the responsibility of tribes and states to discuss GAP and whether to include the program in their IV-E agreements. They noted that Title IV-E calls on states to negotiate in good faith with tribes to develop a tribal-state agreement to administer the IV-E program, including GAP assistance payments.⁵⁵ They also told us that the lack of guardianship funding to tribes means that tribes may be forced to rely on long-term foster care to fund permanent placements.

ACF’s strategic plan provides a basis for the Children’s Bureau to support tribes’ participation in GAP. As part of its overarching goal to support

⁵⁴See [GAO-14-347](#).

⁵⁵42 U.S.C. § 671(a)(32).

underserved and underrepresented populations, ACF's 2015-2016 strategic plan includes a goal for working with tribes to increase their capacity to promote child safety, permanency, and well-being. It also includes a goal to promote and facilitate improved tribal-state relations and policy at the regional and state levels to improve outcomes for Indian children. In addition, federal standards for internal control state that an agency's management system should assure that monitoring is performed continually as part of agency operations. Without more awareness by HHS on why tribes may not be participating in GAP, including why some tribal-state agreements do not include GAP as an option for tribes, some tribes that could benefit from GAP may not participate in the program. The limited participation in GAP among the tribes selected for our study suggests that tribes may not be making use of available financial support for guardianships that could assist them in establishing permanency for their children and preventing them from remaining in long-term foster care. In 2012, a collaborative project of six child welfare organizations identified title IV-E GAP as one method of helping child welfare agencies establish permanency for children in foster care, particularly for older or other children for whom finding permanent placements may be difficult.⁵⁶ Several states surveyed by the project mentioned that they were targeting, although not exclusively, special groups of children through GAP, including children with the APPLA case goal. The project report noted that financial assistance for guardians raising children who were in foster care is an essential component of the

⁵⁶According to this 2012 Children's Defense Fund report, states and tribes directly operating a IV-E program may opt to extend IV-E guardianship assistance until age 19, 20 or 21 for certain youth who were age 16 or older when their guardianship assistance agreement became effective, including youth who are completing high school or an equivalent program, those enrolled in a post-secondary or vocational education program, youth working or preparing for work, and youth with medical conditions that prevent them from doing any of these activities. The report found that some states continued guardianship assistance to age 19 for children expected to graduate by that time. In addition, the report found that, at the time, 18 states and D.C. extended title IV-E GAP to age 21 for youth who have disabilities, are engaged in school, or working or preparing for work. See Children's Defense Fund et al., *Making It Work: Using the Guardianship Assistance Program (GAP) to Close the Permanency Gap for Youth in Foster Care* (Washington, D.C.: October, 2012).

supports relatives need to offer these children permanent families.⁵⁷ By taking steps that might increase tribal participation in GAP, HHS could better support tribes' efforts to find secure and stable homes for their children in foster care.

Conclusions

Changes made by the Preventing Sex Trafficking and Strengthening Families Act to the use of the APPLA case goal were expected by child welfare advocates to help ensure permanent adult connections for older children. While most tribal officials we spoke with did not consider the restriction on the use of APPLA to older children as a challenge, more than half noted that they faced resource constraints—including limited financial resources—which affect their ability to find permanent placements for children under their care. In 2008, title IV-E GAP was established to provide federal dollars to assist states and tribes with payments to relatives who are willing to provide permanent homes for children. However, most tribes we interviewed were not participating in the program. Some reported that their tribal-state title IV-E agreements did not include access to GAP while other tribes faced access challenges at the state level. Others did not receive any title IV-E funding or were unaware of the program, and tribes may have additional reasons for not participating. Guardianship arrangements can be a useful case goal to pursue in situations where reunification is not possible and adoption conflicts with tribal cultural values. GAP could help tribes by providing the financial assistance that tribal relatives need in order to provide a home for a child in their care. When the APPLA restriction takes effect, it can also provide an alternative to APPLA for those tribes trying to place a younger child who has special needs and requires more resources for care and for whom other permanency goals are not viable. As our analysis of the fiscal year 2014 AFCARS data indicated, some of these younger children may now be in institutional care and may need placement in a family setting if they are assigned a new case goal instead of APPLA. In addition, the program can provide needed resources for

⁵⁷The report states that title IV-E GAP can benefit individual children by, among other factors, increasing stability and continuity for foster youth, allowing for permanency without requiring termination of parental rights for children who have relationships with parents who cannot care for them, and preventing children from remaining in foster care when reunification and adoption are not appropriate case goals. See Children's Defense Fund et al., *Making It Work*.

relatives willing to provide a stable home for children over the age of 16 who might otherwise be assigned APPLA. Without greater tribal participation in title IV-E GAP, some tribes may not have critical financial support to help children exit foster care to homes with relatives. By taking steps to increase participation in GAP, HHS could better support tribes' efforts to care for their children.

Recommendation for Executive Action

To help improve tribes' ability to maintain safe, stable, and permanent care for children, the Secretary of Health and Human Services should direct the Children's Bureau to explore the reasons for low tribal participation and identify actions to increase this participation in the title IV-E Guardianship Assistance Program.

Agency Comments and Our Evaluation

We provided a draft of this report to HHS for review and comment. HHS provided written comments that are reproduced in appendix II. HHS also provided technical comments that we incorporated, as appropriate.

HHS concurred with our recommendation that the Children's Bureau explore the reasons for low tribal participation and identify actions to increase participation in the title IV-E GAP. HHS noted that some tribal-state agreements might predate 2008, when GAP was established. HHS also said that regional office staff participate annually in joint planning for the title IV-B and IV-E programs with their respective states and tribes and that participation in GAP is a topic covered in joint planning activities. In addition, HHS said that regional office staff are available to assist states and tribes with discussions about GAP participation when tribal-state agreements are renegotiated and that technical assistance is available to tribes, if needed. According to HHS, the agency plans to add information to the Children's Bureau website about direct federal funding for tribal title IV-E agencies and about tribal-state partnership agreements and plans to distribute issue briefs on GAP and best practices for tribal-state agreements.

We agree that HHS has the planning process, technical assistance resources, and regional staff in place to discuss GAP participation with title IV-E state and tribal agency officials. However, our review found that tribal participation in GAP remains low, which suggests that HHS needs to identify actions to increase participation in this program. We believe that the additional actions HHS plans to take—providing information on the Children's Bureau website about direct funding and distributing issue briefs on GAP and best practices for tribal-state partnerships and

agreements—could support tribes’ participation in GAP either by helping tribes to directly operate a title IV-E program or to negotiate a tribal-state agreement that includes a provision for GAP participation. Because some tribes reported challenges at the state level to participating in GAP and several tribes reported that the state where they are located does not participate in the program, we encourage HHS to engage title IV-E state agency officials in discussions about tribal participation in GAP during the annual review of the their title IV-E state plan. As HHS noted in its response, regional office staff are a resource to states and tribes as they renegotiate agreements to help them explore participation in GAP. Through such discussions, HHS could identify ways that regional office staff might help state agencies resolve any challenges to GAP participation that tribes experience at the state level. HHS has taken several steps over the past few years to help tribes with their title IV-E programs, including hiring a tribal coordinator to facilitate communication between regional offices and tribal title IV-E agencies. Taking additional steps to ensure that tribes have the opportunity to participate in GAP could go a long way toward helping tribes gain more resources for children under their care and better support tribes’ efforts to care for children exiting foster care to permanent homes.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of the Department of Health and Human Services, and other interested parties. We will also make copies available to others on request. In addition, the report will be available at no charge on GAO’s website at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-7215 or brownke@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs can be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

Kay E. Brown

Kay E. Brown
Director
Education, Workforce, and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

This report examines: (1) what available data show about Indian children in foster care compared to all other children in foster care; (2) the extent to which selected tribal child welfare agencies face challenges in addressing recent changes to APPLA and in establishing permanent homes for children in tribal foster care; and (3) the extent to which HHS has assisted tribal child welfare agencies in implementing the APPLA change and addressing any challenges to establishing permanent homes.

To determine what available data show about Indian children in foster care compared to all other children in foster care, we analyzed relevant national data on foster care case plans from HHS's Adoption and Foster Care Analysis and Reporting System (AFCARS) for fiscal year 2014, the most recent year for which data are available. Through AFCARS, state title IV-E agencies are required to report to HHS semi-annually data on (1) all children in foster care for whom the agency has responsibility for placement, care, or supervision, and (2) all adopted children who were placed by the agency or for whom the agency is providing adoption assistance, care, or services. HHS in 2012 issued regulations that generally apply the same requirements for data collection and reporting to tribal title IV-E agencies.¹ AFCARS contains information on placement settings, case plans, and length of time in foster care, among other information.² Currently, AFCARS provides the following options for reporting the child's most recent "case plan goal" (referred to in this report as a "case goal"):

- reunify with parent(s) or principal caretaker(s);
- live with other relative(s);
- adoption;
- guardianship;
- long-term foster care;

¹See 45 C.F.R. § 1355.40 and 45 C.F.R pt. 1355, app. A - B. See also Tribal Child Welfare, 77 Fed. Reg. 896 (Jan. 6, 2012).

²There are 66 specific data elements that must be reported for each child in foster care and 37 specific adoption elements. Data elements include demographic characteristics of children and their foster, adoptive, and/or biological parents; certain removal and placement setting details for a child in foster care; reasons for a child's discharge from foster care; and sources of federal assistance for the child, among others.

- emancipation; and
- not yet established

Options for reporting the child's current placement setting in foster care include:

- pre-adoptive home;
- foster family home (relative);
- foster family home (non-relative);
- group home;
- institution;
- supervised independent living;
- runaway; and
- trial home visit.

Specifically, we reviewed AFCARS data for the 415,129 children who were in foster care on the last day of the fiscal year. Our analysis included a number of key data elements, including sex, whether the child was an American Indian/Alaska Native, number of placement settings during current foster care episode, current placement setting, case goal, and length of stay of latest removal episode.³ For the purposes of our data analysis discussion, we used the term Indian for children identified as American Indian/Alaska Native in AFCARS. Because the fiscal year 2014 AFCARS dataset does not have a measure for the APPLA case goal, we used long-term foster care and emancipation as proxy measures for APPLA.⁴ The AFCARS regulations were first issued in 1993, and HHS

³Additional analysis variables included the length of stay in the current placement setting, length of stay in foster care, all episodes, in foster care at the end of the fiscal year, age at the end of fiscal year, and whether parental rights have been terminated.

⁴These data elements were established in regulation before Adoption and Safe Families Act of 1997 struck the statutory language in title IV-E regarding "foster care on a permanent or long-term basis" and added APPLA as an option. For purposes of AFCARS reporting, in the case of children with APPLA as a case goal, HHS advises that "emancipation" should be selected if the child will be in foster care until the age of 18, no other goal is currently applicable, and the child has a permanent connection with an adult. If the first two conditions are met but the child does not have a permanent connection to an adult, the case goal should be "long-term foster care." Accordingly, as discussed with HHS officials, we used long-term foster care and emancipation as proxy measures for APPLA in our analysis.

published a proposed rule in February 2015 to revise AFCARS to, among other things, incorporate statutory changes made since then.⁵

AFCARS contains data on children under the responsibility of tribal title IV-E agencies operating under tribal-state title IV-E agreements but does not yet contain data for the 7 tribes approved to directly operate title IV-E programs. Therefore, some children under the responsibility of tribal title IV-E agencies—and covered by the 3-year delayed implementation period for the APPLA restriction—are not represented in AFCARS. Data for certain other children under the care and custody of tribal child welfare agencies are not submitted into AFCARS.⁶ In addition, while AFCARS provides data on most children in foster care in the United States, there are several limitations to using the data available to study Indian children in foster care, particularly those under the care and placement responsibility of Indian tribes. In general, in AFCARS a person's race is determined by how they define themselves or by how others define them; in the case of young children, parents determine the race of the child. In AFCARS, "American Indian or Alaska Native" (AI/AN) is defined as "a person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment." Children identified as Indian in AFCARS are not necessarily enrolled members of a federally-recognized tribe or eligible for enrollment.⁷

Before deciding to use the data provided by HHS, we conducted a data reliability assessment. We assessed the reliability of the data file that HHS provided by (1) performing electronic data testing for obvious errors

⁵Adoption and Foster Care Analysis Reporting System, 80 Fed. Reg. 7132 (Feb. 9, 2015). The comment period closed on April 10, 2015. In April 2016, HHS published a Supplemental Notice of Proposed Rulemaking that proposed to require additional data elements related to the Indian Child Welfare Act of 1978 (ICWA). In that notice, HHS stated that it will consider the public comments on both proposals and issue one final AFCARS rule. 81 Fed. Reg. 20,283 (Apr. 7, 2016).

⁶Officials from HHS told us that AFCARS does not contain data on (1) children in foster care under the care and placement responsibility of tribes receiving only title IV-B funding; (2) foster children under the responsibility of tribes with a title IV-E tribal-state agreement, but who are not title IV-E-eligible; or (3) foster children under the responsibility of tribes that do not receive any title IV-E or IV-B federal child welfare funding.

⁷As of May 4, 2016, there were 567 federally recognized tribes. 81 Fed.Reg. 26826 (May 4, 2016)

in accuracy and completeness, (2) reviewing existing information about the data and the system that produced the data, and (3) interviewing agency officials and child welfare experts knowledgeable about these data. We determined that the data were sufficiently reliable for the purposes of this report.

To obtain the perspectives of tribal officials, we conducted semi-structured interviews (2 in person and 13 by telephone) with tribal child welfare officials from 15 federally recognized tribes and held six group interviews with representatives from 21 other federally recognized tribes. We selected the 15 tribes for individual interviews from six states that have high numbers of tribes receiving title IV-E or title IV-B funding: Arizona, Michigan, Montana, New Mexico, Oklahoma, and Washington. Tribes in these states were selected to achieve variation in tribal population under age 21 and type of title IV funding—via a direct title IV-E program, a title IV-E tribal-state agreement, or a title IV-B program only. We conducted one telephone group interview and convened five in-person group interviews with officials from 21 additional tribes who were assembled for regional or national meetings at the following venues:

- Session convened by Casey Family Programs prior to a tribal consultation session with the Administration for Children and Families, Washington, D.C., September 2015.
- Oklahoma Indian Child Welfare Association Conference, Norman, OK, November 2015 - two discussion groups.
- Casey Family Programs National Title IV-E Summit, Denver, CO, December 2015.
- Michigan Quarterly Tribal-State Partnership meeting, Lansing, MI, January 2016.

All tribes in attendance at these events were invited to participate in our group interviews. In total, our tribal interviewees included representatives of 6 tribes that were approved to operate a title IV-E program directly through HHS; representatives of 15 tribes that received title IV-E funding through a tribal-state agreement as well as title IV-B funding; and representatives of 13 tribes that received title IV-B funding only.⁸ The information obtained in our interviews is not generalizable to the

⁸Two tribes that participated did not specify whether they receive title IV-E or IV-B funding.

population of federally recognized tribes, but provides examples of tribes' experience using the APPLA case goal and any challenges they may face establishing permanency for children in their care when the changes go into effect.

In addition, in the report we use qualifiers, such as "some" and "several" in some cases to quantify responses from tribal officials across our individual and group interviews with officials from 36 tribes in total. These qualifiers are defined as follows:

- "Most" more than 18 tribes
- "Many" represents 11-17
- "Several" represents 6-10
- "Some" represents 2-5

We also reviewed relevant federal laws, regulations and HHS guidance to states and tribes. In addition, we interviewed state child welfare officials from the six selected states, as well as officials from the Administration on Children and Families' (ACF) Children's Bureau at HHS; officials from five of HHS's regional offices that work with the states where the selected tribes were located; and the Center for Tribes, an HHS-funded technical assistance provider.⁹

⁹Of the 10 regional offices that HHS operates, nine provide technical assistance to federally recognized tribes.

Appendix II: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

JUL 14 2016

Kay Brown
Director, Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Brown:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*Foster Care: Most Tribes Do Not Anticipate Challenges with Case Goal Changes, but HHS Could Further Promote Guardianship Assistance*" (GAO-16-625).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in black ink that reads "Jim R. Esquea".

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED: FOSTER CARE: MOST TRIBES DO NOT ANTICIPATE CHALLENGES WITH CASE GOAL CHANGES, BUT HHS COULD FURTHER PROMOTE GUARDIANSHIP ASSISTANCE (GAO-16-625)

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

GAO Recommendation

To help improve tribes' ability to maintain safe, stable, and permanent care for children, the Secretary of HHS should direct the Children's Bureau to explore the reasons for low tribal participation and identify actions to increase this participation in the title IV-E Guardianship Assistance Program.

HHS Response

HHS concurs with the recommendation, and our current approach to working with grantees is responsive to this recommendation. We suspect that the Tribal participation in the Guardianship Assistance Program (GAP) is a reflection of the age of State/Tribal agreements in that the agreements predate the existence of GAP and the resources available to support participation in GAP.

HHS Regional Office personnel participate annually in joint planning over the title IV-B and IV-E programs with their respective states and tribes to assess the current status of programming and practice. Joint planning provides the Regional staff the opportunity to make suggestions for improving programming and for taking advantage of Federal options that exist for optimizing program performance and achieving outcomes. Tribal participation in the GAP program and the barriers and benefits to such participation through State/Tribal agreements is a topic that is covered in routine joint planning with States and Tribes. Regional Office personnel are also a resource to States and Tribes as agreements are renegotiated and updated to explore GAP for inclusion.

Technical assistance is available to States and Tribes as needed to facilitate Tribal participation in GAP when identified through the joint planning process.

We also intend to improve the recently created [Tribes landing page](#) on the Children's Bureau's website by including a section on tribal child welfare systems with links to direct federal funding and tribal-state partnership and agreements. We also intend to distribute issue briefs on GAP and best practices for tribal-state partnership and agreements.

Appendix III: GAO Contact and Staff Acknowledgements

GAO Contact

Kay E. Brown, Director, (202) 512-7215 or brownke@gao.gov.

Staff Acknowledgements

In addition to the contact named above, Elizabeth Morrison (Assistant Director), Sara Edmondson (Analyst-in-Charge), Kelly Snow, and Kate Blumenreich made key contributions to this report. Also contributing to this report were Ed Bodine, James Bennett, David Chrisinger, Sarah Cornetto, Jean McSween, and Daren Sweeney.

Appendix IV: Accessible Data

Agency Comment Letter

Text of Appendix II:
Comments from the
Department of Health and
Human Services

Page 1

DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation

Washington, DC 20201

JUL 14 2016

Kay Brown

Director, Education, Workforce, and Income Security Issues

U.S. Government Accountability Office

441 G Street NW

Washington, DC 20548

Dear Ms. Brown:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "Foster Care: Most Tribes Do Not Anticipate Challenges with Case Goal Changes, but HHS Could Further Promote Guardianship Assistance" (GAO-16-625).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Jim R. Esquea

Assistant Secretary for Legislation

Attachment

Page 2

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED: FOSTER CARE: MOST TRIBES DO NOT ANTICIPATE CHALLENGES WITH CASE GOAL CHANGES, BUT HHS COULD FURTHER PROMOTE GUARDIANSHIP ASSISTANCE (GAO-16-625)

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

GAO Recommendation

To help improve tribes' ability to maintain safe, stable, and permanent care for children, the Secretary of HHS should direct the Children's Bureau to explore the reasons for low tribal participation and identify actions to increase this participation in the title IV-E Guardianship Assistance Program.

HHS Response

HHS concurs with the recommendation, and our current approach to working with grantees is responsive to this recommendation. We suspect that the Tribal participation in the Guardianship Assistance Program (GAP) is a reflection of the age of State/Tribal agreements in that the agreements predate the existence of GAP and the resources available to support participation in GAP.

HHS Regional Office personnel participate annually in joint planning over the title IV-B and IV-E programs with their respective states and tribes to assess the current status of programming and practice. Joint planning provides the Regional staff the opportunity to make suggestions for improving programming and for taking advantage of Federal options that exist for optimizing program performance and achieving outcomes. Tribal participation in the GAP program and the barriers and benefits to such participation through State/Tribal agreements is a topic that is covered in routine joint planning with States and Tribes. Regional Office personnel

are also a resource to States and Tribes as agreements are renegotiated and updated to explore GAP for inclusion.

Technical assistance is available to States and Tribes as needed to facilitate Tribal participation in GAP when identified through the joint planning process.

We also intend to improve the recently created Tribes landing page on the Children's Bureau's website by including a section on tribal child welfare systems with links to direct federal funding and tribal-state partnership and agreements. We also intend to distribute issue briefs on GAP and best practices for tribal-state partnership and agreements.

Data Tables

Data Tables for Figure 1: Use of Another Planned Permanent Living Arrangement (APPLA) Case Goal for Indian and Non-Indian Children in Foster Care, as of September 30, 2014

	Other case goals ^a	Goal not established or Missing data	Indian children with APPLA ^b
Indian children in foster care	83.8%	10.0%	6.1%
Non-Indian children in foster care	83.2%	8.5%	8.3%

	Younger than 16	16 or older
Indian children in foster care	40.9%	58.7%
Non-Indian children in foster care	23.4%	75.8%

Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

Data Tables for Figure 2: Ages of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) Case Goal, as of September 30, 2014

	Birth through age 5	Age 6 through 10	Age 11 through 15	Age 16 through 20
Indian children	3.1	8.7	29.1	58.7
Non-Indian children	0.8	3.2	19.4	75.8

Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

Data Tables for Figure 3: Placement Settings of Indian and Non-Indian Children in Foster Care with Another Planned Permanent Living Arrangement (APPLA) and Other Case Goals, as of September 30, 2014

	Children with APPLA		Children with other case goals ^c	
	Non-Indian children	Indian children	Non-Indian children	Indian children
Trial home visit	1.9	1	5.6	7.6
Supervised independent living	10.1	5.5	0.2	0.2
Institution ^a	16.8	13.1	6.9	4.2
Group home ^b	13.9	13.5	4.6	3.1
Foster family home (Non-relative)	44.8	50.1	46.7	44.4
Foster family home (Relative)	6.7	11.1	30.6	33.4
Pre-adoptive home	0.3	0.3	4.3	6

Source: GAO analysis of Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS) fiscal year 2014 data. | GAO-16-625

Data Tables for Figure 4: Tribes Reporting Other Challenges to Establishing Permanency for Children in Tribal Foster Care

Challenges	Number of the 36 tribes that reported associated challenges
Cultural opposition to federal requirements regarding termination of parental rights	7
Differences between tribal and state definition of a relative	9
Federal or state licensing requirements	15
Resource constraints or insufficient access to services and supports	21

Source: GAO individual and group interviews with 36 selected tribes. | GAO-16-625

Data Tables for Figure 5: States Participating in the Title IV-E Guardianship Assistance Program (GAP) as of March 2016

Participate in title IV-E GAP	Do not participate in title IV-E GAP
Alabama	Arizona*
Alaska	Delaware
Arkansas	Florida
California	Georgia
Colorado	Iowa
Connecticut	Kansas
District of Columbia	Kentucky
Hawaii	Mississippi
Idaho	Nevada
Illinois	New Hampshire
Indiana	New Mexico*
Louisiana	N. Carolina
Maine	N. Dakota
Maryland	Ohio
Massachusetts	S. Carolina
Michigan*	Utah
Minnesota	Virginia
Missouri	Wyoming
Montana*	
Nebraska	
New Jersey	
New York	
Oklahoma*	
Oregon	
Pennsylvania	
Rhode Island	
S. Dakota	
Tennessee	
Texas	
Vermont	
Washington*	
W. Virginia	
Wisconsin	

Source: GAO analysis of Department of Health and Human Services (HHS) documentation. | GAO-16-625

*States included in GAO's study

Data Tables for Figure 6: Reported Participation by Selected Tribes in the Title IV-E Guardianship Assistance Program (GAP)

Tribe participates in GAP	State does not participate in GAP	State participates in GAP, but tribe does not participate
7	6	14

Of the 14 states that participates in GAP, but tribe does not participate...

- 5 tribes: GAP not included in title IV-E tribal-state agreement
- 5 tribes: Reported access challenges at state level
- 3 tribes: Tribe does not receive any title IV-E funding
- 1 tribe: Unaware of GAP

Source: GAO individual and group interviews with 36 selected tribes. | GAO-16-625

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