

Section 4 Overview

This section pertains to the policy and procedures necessary when an out-of-home placement of a child is imminent or has occurred.

Chapter 19 Overview

This chapter describes additional procedures to use when there is an out-of-home placement of Native American (Indian) or refugee children.

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Memoranda History:

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19.1 Indian Child Welfare Act of 1978 (P.L. 95-608) – (ICWA)

A. Policy

The Indian Child Welfare Act (ICWA) of 1978, P.L. 95-608, is a federal law which regulates placement proceedings involving Indian children. It mandates preventive services before removal to protect the best interest of Indian children and to promote the stability and security of Indian families and tribes. The Children's Division complies with all mandates of the federal Indian Child Welfare Act, which includes preventing the unnecessary and arbitrary removal of Indian children from their families and tribes; placing an Indian child who must be removed in an available and safe home that reflects the unique values of American Indian culture; and adheres to the placement requirements of the Indian Child Welfare Act.

B. Procedure

1. Guidelines

- a. In any child protection or involuntary foster care proceeding or termination of parental rights, guardianship, pre-adoptive or adoptive proceeding in a state court where Children's Division knows or has reason to know an Indian child is involved, the Children's Service Worker (CSW) will make reasonable efforts to determine the identity and location of the child's Indian parents, custodian and/or tribe. Once there is an indication or suspicion that a child is American Indian/Alaskan Native, the case is to be handled as an ICWA case until ALL the Tribes notified respond that the child is neither a tribal member nor eligible for tribal membership. Be sure that the Tribe provides this ruling in writing, on Tribal letterhead, to the Children's Division office for the child's file. If the case is not likely to be ICWA, handle as a non-ICWA case.
- b. Once American Indian/Alaskan Native heritage has been identified, the Children's Division shall notify the identified tribe(s) and request assistance to provide the child and family with services.
- c. Under the laws of ICWA, child custody proceedings and foster care placements do not include a placement based on an act which, if committed by an adult, would be deemed a crime.
- d. ICWA is applicable to all termination of parental rights (TPR) proceedings whether those proceedings occur from a child protection or delinquency case or action. ICWA is not applicable to child custody proceedings between the child's parents or other caregivers.
- e. Children's Division may seek assistance from the Secretary of the Interior or his/her designees for information on the identity and location of the child's Indian parents, custodians and/or tribe. The office to be contacted for the Missouri region is:

Indian Child Welfare Services
Bureau of Indian Affairs
Muskogee Area Office
PO Box 8002
Muskogee, OK 74402
(918) 781-4613

f. Children's Division shall ensure that notification is provided to the Indian parents, custodian and/or tribe by certified mail with a return receipt requested, of the pending proceedings and of their right of intervention, either through direct notification or by providing information for the notification to the juvenile court.

g. Children's Division recognizes the child's Indian tribe has an interest, separate from a parent's interest, in any proceeding involving the child and that interest must be protected throughout the child custody proceeding. The child's Indian tribe has the right to intervene at any point in the proceedings and absent good cause to the contrary, may receive a transfer of jurisdiction of the case to the appropriate tribal court.

h. Every effort shall be made by the Children's Division to ensure when Indian children must be placed into alternative care that the placement reflects the true values of the child's Indian culture. Special preference is to be made to place the child with (in order of ICWA placement priority):

- 1) A member of the child's extended family;
- 2) A foster home licensed, approved, or specified by the Indian child's tribe.
- 3) An Indian foster home licensed or approved by an authorized non-Indian licensing or certifying authority;
- 4) Other members of the Indian child's tribe;
- 5) Other Indian families;
- 6) A non-Indian foster family may be used when an Indian family resource is not available and after diligent efforts have been made to locate an Indian family.

i. Voluntary consents for foster care or relinquishments must be made in writing and recorded before a court of competent jurisdiction and certified by the judge or the court.

j. The CSW must use **active efforts** to work towards preventing the placement of the child as well as towards reunification for the family.

"Active Efforts" are energetic efforts that show an active attempt to assist in alleviating the problems or issues that led to removal of the child from the family. Active efforts must also take into consideration the family's cultural norms and the tribe's resources. Requirements for a CSW's efforts to reunite an Indian/Native Alaskan family are greater than those for non-Indian families.

k. Children's Division shall be prepared for the court to review the Children's Division actions to ensure:

- 1) American Indian/Alaskan Native heritage was determined.
- 2) The tribe was notified of its right to intervene.
- 3) That a "qualified expert" determined that the child was likely to suffer emotional or physical harm if left at home and will testify to this in court. The Tribe is the best source for identifying qualified experts, and the Bureau of Indian Affairs may also assist as needed.
- 4) Children's Division has made active efforts to prevent placement.
- 5) Children's Division considered and preference was given to place the child with extended family members, an approved tribal home, Indian foster home, or an Indian-approved institution as noted in section "h".

An expert witness in Indian matters for child custody proceedings is qualified if either of the following criteria is met:

- 1) A member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices.
- 2) A lay or professional expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.
- 3) A qualified expert witness is not an expert on the ICWA, but an expert on the child's tribe.

There are several Indian Centers throughout the state that may assist the CSW in regards to services for Indian families, or for possible referral to a qualified expert witness:

American Indian Council
310 Armour Road, Suite 205
Kansas City, MO 64116
(816) 807-5917 or (816) 471-4898

American Indian Council
1017 Olive, Suite M-13
St. Louis, MO 63101
(314) 589-6653 or (314) 231-7923

Southwest Missouri Indian Center
543 S. Scenic Avenue
Springfield, MO 65802-4759
(417) 869-9550

2. Process

- a. During initial contact with the parent or custodian of the child, the Children's Service Worker (CSW) shall ask if the child has any American Indian or Alaskan Native heritage. The CSW will complete the Indian Ancestry Questionnaire, **CD-116**, to document that the child does or does not have Indian/Alaskan Native heritage. If it is found that the child has Indian/Alaskan Native heritage, the CSW shall then complete the ICWA Checklist, **CD-123**, to ensure ICWA compliance throughout the life of the case.
- b. Phone contact to the appropriate ICWA representative of the tribe, if known, shall be made within 48 hours of the child being taken into protective custody and the CSW learning of the child's Indian heritage.
- c. The appropriate written notification should follow, either directly by the CSW or by providing information to the juvenile court to make such notification. Written notification shall be made by certified mail with a return receipt requested.
- d. Notice shall be made by certified mail, concurrently with verbal notice, and no later than 48 hours to:
 - 1) The Tribe (if known);
 - 2) Parents or Indian custodian; and
 - 3) Appropriate Bureau of Indian Affairs office
- e. Children's Division should expect the ICWA director of the appropriate tribe to complete a referral to the appropriate tribal council for possible intervention or request to transfer jurisdiction to tribal court and the appropriate tribal social services office. Actual transfer of the child may occur upon determination that jurisdiction will transfer and receipt of the tribal court order covering jurisdiction of the child.

19.1.1 Definitions for Reference Specific to ICWA

Child Custody Proceeding: Any action removing an American Indian/Alaskan Native from his/her parent or Indian custodian for temporary placement in a foster home or institution where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

Termination of Parental Rights (TPR): Any action resulting in the legal termination of a parent-child relationship. No termination of parental rights can be ordered unless it is supported by evidence that is ***beyond a reasonable doubt***. This is a higher standard that required by Missouri law.

Indian: Any person who is a member of an Indian tribe, or who is an Alaskan Native and a member of the Regional Corporation as defined in Section 7 of the Alaska

Native Claims Settlement Act. This definition of an Indian voids any previous definition used prior to the ICWA settlement.

Indian Child: Any unmarried person under the age of 18 who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and/or is the biological child of a member of an Indian tribe. At the age of 18, upon application, the Indian child who was the subject of an adoption shall be informed by the presiding court of the child's tribal affiliation, if any. The child shall be given information regarding his/her biological parents, and any other information necessary to protect any rights allowed by the individual's tribal membership.

Indian Child's Tribe: The Indian tribe in which the child is a member or is eligible for membership. The tribal membership will be designated to that with which the child has the more significant contacts when the child's membership or eligibility for membership is with more than one tribe.

Indian Custodian: Any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

Indian Extended Family Member: Is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, to be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or a step-parent.

Indian Organization: Any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

Indian Parent: Any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoption under tribal law or custom. This definition does not include the unwed father where paternity has not been acknowledged or established. Federal statute states that a putative father of a child who is voluntarily relinquished by the mother must acknowledge paternity or his paternity must be established if his rights are to be respected in the custody proceedings. Since changes in case law since 1978 regarding putative father rights may effect this ICWA requirement, the CSW may contact the Division of Legal Services for further information.

Indian Tribal Court: A court with jurisdiction over child custody proceedings which is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

Indian Tribe: Any Indian tribe, band, nation or other group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including an Alaskan Native village.

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Section 4: Out-Of-Home Care
Chapter 19: Special Populations – American Indian and Alaskan Native
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19.2 Native American Child Services:

1. Review description of ICWA if Indian status has been indicated in any way.
2. Determine child's Indian status, if juvenile office does not, through use of resources and guidelines identified in 19.3 of this chapter.

NOTE: This is a critical step so that services and rights awarded to Indian children via the ICWA can be provided. Indian heritage and membership is frequently not apparent, so the child and the family should be engaged in careful questioning and discussion about the possibility of tribal membership through ancestral heritage.

3. Coordinate services with nearest available Indian social services ICWA program. There are three (3) in Missouri:

Heart of America Indian Center
600 W. 39th Street
Kansas City, MO 64111
Phone: 816-421-7608
Fax: 816-421-6493

Southwest Missouri Indian Center
543 South Scenic
Springfield, MO 65802
Phone: 417-869-9550
Fax: 417-869-0922

- a. If Indian centers are unable to provide services and child is clearly of Indian heritage, provide child welfare services with respect for Indian heritage and cultural beliefs and use of the ICWA requirements.
 - b. Assist foster family or other care facility to provide services recognizing child's Indian heritage and cultural beliefs.
4. Apply any ICWA requirements when providing services with the assistance of ICWA specialist, if available.
 5. Notify juvenile court of Indian status information in writing. A request must be made to the court for permission to release confidential information including copies of court orders if Indian tribal membership is established.

NOTE: As a Title II grantee, Indian centers are under obligation to protect confidential information about the child and his/her family.

6. When the juvenile court transfers jurisdiction of a child to the tribal court, cooperate with the tribal court by providing information, services and recommendations.

NOTE: Tribal courts have parity with juvenile/state courts when they have assumed jurisdiction of a child.

7. Apply legally mandated placement selection guidelines if placement is ordered by tribal or juvenile court:
 - a. Use Indian centers to determine if an Indian foster family or other Indian care facilities are available, as needed.
 - b. Use ACTS search to identify foster families accepting Indian children or other care facilities, if Indian centers are unable to provide out-of-home care services.
 - c. See Section 4.19.3.1.C for processing a voluntary relinquishment for adoption by an Indian parent.
8. Apply appropriate procedures in delivering out-of-home care services. This includes, but is not limited to:
 - a. Providing information to appropriate Indian center staff:
 - CA/N complaint (with reporter's name deleted) and social history of child and family including any forms on which such data is recorded;
 - Medical history including any forms on which such data is recorded;
 - Psychiatric, psychological, etc., evaluation reports; and/or
 - School reports, etc.
 - b. Including representative of Indian center in notification of FST meetings and court hearings.
9. Respond promptly to any orders of the juvenile court as it complies with the requirements of the ACT.
10. Record all activities every 30 days using guidelines for type of service activity.

NOTE: With Some Exceptions, Tribal Court Authority Transcends Juvenile Court Authority, If The Tribal Court Elects To Exercise Its Rights As Authorized In The ICWA. Refer Case Situations To Division Of Legal Services (DLS) If Assistance Or Clarification Is Needed.

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19.3 Determining Child's Indian Status

NOTE: Criteria such as a blood quantum (i.e., $\frac{1}{2}$ or $\frac{1}{4}$ Indian) frequently do not apply, although questioning in this area can lead to tribal identification and determination. Criteria for tribal membership/enrollment is determined by the specific tribe.

Determination should occur as quickly as possible in order to assure that rights and privileges of the ICWA are properly afforded to the child and the family. The juvenile office should take the responsibility for this determination. However, if the juvenile office does not assume this responsibility and the child and the family are receiving services from the Division, the worker should assume this responsibility.

The following guidelines will help in the important step of determining a child's Indian status:

1. Do you, your parents or your grandparents have any Indian blood? If so, do you know what tribe they may be related to? Do you know which state your Indian kin lived in?
2. Has anyone provided information that the child's or family's usual residence is on a reservation or in a predominantly Indian community?
3. Has a tribe or the Bureau of Indian Affairs indicated the child is a member or eligible for membership in a tribe?
4. Has anyone provided information that any child member of the family is under the jurisdiction of a tribal court?
5. An Indian child's status can be confirmed through any or all of the following activities:
 - a. Securing information from extended family members, when possible, that expands information given by child or parent;
 - b. Examining and copying, with permission, any documents the parent or child may have that provide proof of Indian status;
 - c. Correspondence with Bureau of Indian Affairs, identified tribe, Indian Service Agency, etc., which includes all identifying information of a child and his parents, possible tribal relationship and any other pertinent information. If a tribe is known, the address can be obtained from the Bureau of Indian Affairs area office. Also, an Indian center agency may have addresses for an Indian tribe:

d. Indian Centers serving Missouri are:

Heart of America Indian Center
600 W. 39th Street
Kansas City, MO 64111
Phone: 816-421-7608
Fax: 816-421-6493

Southwest Missouri Indian Center
543 South Scenic
Springfield, MO 65802
Phone: 417-869-9550
Fax: 417-869-0922

BIA Area Office:
Indian Child Welfare Services
Bureau of Indian Affairs
Muskogee Area Office
P.O. Box 8002
Muskogee, OK 74402
Phone: 918-781-4613

19.3.1 Out-of-Home Care Placement Mandates:

A. Foster Care and Pre-Adoptive Placement:

1. Criteria - This criteria is used when placing an Indian child in any type of out-of-home care:
 - a. Least restrictive setting which approximates a family and is appropriate to child's needs, and
 - b. Is within reasonable proximity to child's home while accommodating the child's needs.
2. Preference Order:
 - a. A member of the Indian child's family which includes extended family.
 - b. A foster home licensed, approved or specified by the Indian child's tribe or their designee which may be the nearest Indian social services program.
 - c. An Indian foster home licensed or approved by a non-Indian licensing authority.

- d. An institution for children approved by the Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

NOTE: Prior to considering an institution, a non-Indian licensed foster family may be deemed as suitable for the child's care, if appropriate, in meeting the child's needs (i.e., traditional foster family, youth with elevated needs foster family, etc.) This may be changed for "good cause" by the tribal court or the juvenile court.

B. Adoptive Placement Preference Order:

1. A member of the child's extended family unless the parent has requested anonymity be retained in any current or future placement.
2. Another member of the Indian child's tribe.
3. Other Indian families.

This order may be changed for "good cause" by the tribal court or the juvenile court.

C. Voluntarily releasing a child for adoption is as follows:

1. A birth parent registered on an Indian Tribal Role does have the right to place the child outside the preference order stipulated in the Act. However, certain procedures prescribed in the Act must be followed to the letter. These are:
 - a. The biological parent cannot sign voluntary relinquishments until the infant is at least ten (10) days old.
 - b. The relinquishment must be signed in a court proceeding. Having the forms witnessed by a judge outside of a formal proceeding is not satisfactory in meeting the requirements of the Act.
 - c. The relinquishing parent must sign an affidavit that he/she is aware of the Act and such affidavit must be made part of and recorded in the court's official record.
 - d. A certified copy of the court record must be sent to the Bureau of Indian Affairs.
2. Assisting the prospective adoptive family in such a placement plan:

- a. They should be informed about the legal requirements, particularly the application of the procedures even though the birth parent is choosing to go outside the preference order of the Act.
 - b. They should be informed that the birth parent can revoke the voluntary relinquishment of paternal rights any time up to finalization of the adoption and that if the procedures are not followed and the adoption is granted it is not valid and is subject to the parent demanding the child be returned at any time.
3. Worker's role with the court:
- a. The worker must follow the above requirements as they apply and facilitate the court's legal proceeding. Question should be raised with the juvenile court to obtain adequate instruction when handling a voluntary relinquishment and participating in the subsequent court proceedings if procedures are not clear.

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19.4 Procedures For Refugee And Cuban/Haitian Unaccompanied Minor Placement Program:

1. Receive referral from refugee designee/case manager program coordinator (RPC) in Central Office Family Support Division. The referral includes all information known about the child.
2. Determine whether the juvenile court will take jurisdiction of the child and whether an appropriate alternate care facility (foster, relative, or kinship family) only is potentially available for the child.

NOTE: No service can be provided if both of the above conditions are not met.

3. Report determination to RPC with the following information:
 - a. Date of placement or decision rejecting placement for the minor.
 - b. Date of jurisdiction hearing.
 - c. Name and address of placement.
4. Plan for service delivery.

Related Subject: Section 3: Delivery of Services/Intact Families

These children are not eligible for adoption services.

5. Complete family assessment and submit two (2) copies to RPC.

Related Subject: Section 4 Chapter 7 Begin Work With the Family/Child(ren)

NOTE: These families are to be licensed only for care of the specific unaccompanied minor.

6. Deliver needed services.
7. Comply with all ICPC requirements.

Related Subject: Section 4, Chapter 25 Interstate Placements

NOTE: Close adherence to ICPC requirements is vital as federal regulations require proof in order for the state to have program costs reimbursed.

8. Arrange for meeting cost of care using applicable funds:

Related Subject: Section 4, Chapter 11 Financial Support Planning

- a. Contact RPC for unusual circumstances.
9. Every six (6) months after placement, report progress to RPC (four (4) copies are needed) and to juvenile court having jurisdiction.
10. Terminate services if any of the following should occur:
 - a. Child leaves the state.
 - b. Child reaches majority age.
 - c. Child is reunited with an adult relative and further services are not needed or the family is not geographically available.
11. Report status immediately to RPC using form ORR-2.
12. Record all services every 30 days.

19.4.1 Program Requirements And Procedures:

A. Eligibility:

1. Cuban/Haitian Entrant Unaccompanied Minors:
 - a. Has not attained age 17;
 - b. Entered the United States without a parent or immediate adult relative (i.e., grandparent, aunt, uncle or adult sibling), or any adult who arrived having documentable evidence of custody of the minor;
 - c. Has no parents in the United States; and
 - d. Has been given the alien status of "Cuban/Haitian Entrant" by the Bureau of Immigration and Naturalization (INS).
2. Refugee Unaccompanied Minors:
 - a. Has not attained the age of 18;
 - b. Has no known immediate adult kin in the United States;
 - c. Has been lawfully admitted to the United States in parole status; and
 - d. Meets the general definition of alien status of INS.

B. Family assessment concerns specific to Unaccompanied Minor and Cuban/Haitian Entrant Placement Services:

1. How will the family handle the language barrier and what resources are available to assist in teaching English to the child.
2. What are the family's attitudes toward racial and ethnic differences (including food preferences).
3. What resources within the family and community are available to assist with the possible severe physical and emotional problems of the child (i.e., strange and unknown diseases).
4. What are the local community's attitudes toward racial, ethnic and religious differences and how will the family deal with community rejection if it occurs.
5. What community resources exist for appropriate education and job training, if applicable.
6. What Asian or Cuban/Haitian family support groups exist or could be developed in the community.
7. What is the family's attitude toward the national priority and effort to reunite refugee children with the natural family when possible.

C. Services:

1. Provision of legal responsibility.
2. Development and execution of a written service plan.
3. Meeting the cost of care.
4. Provision of a periodic case review (otherwise known as administrative review).
5. Provision of progress reports to the U.S. Office of Refugee Resettlement (ORR) through the refugee program coordinator (RPC) in central office regarding the child's status and services delivered.
6. Provision of financial assistance, medical care and support services.
7. Vocational and occupational training.
8. Cultural orientation, as necessary and appropriate.
9. English as a second language.

NOTE: Items 7, 8, and 9 must be authorized by ORR in order for the state to receive financial reimbursement.

D. Meeting the cost of alternate care and other services:

1. The federal government will reimburse the state for 100 percent of the costs associated with providing services to children under this program, including foster care maintenance payments, medical assistance, social services, and for administrative costs associated with these activities. This reimbursement under the Refugee Assistance Program (RAP) is separate and distinct from the state's normal allocation of federal funds.
2. For Cuban/Haitian Entrants in this program reimbursement can be provided on behalf of an unaccompanied minor until one (1) month after the minor attains 21 years of age, or if the court terminates jurisdiction at an earlier time, one (1) month past the date the court terminates jurisdiction.

E. Special Requirements:

1. Since all child placements through this program are received by the ICPC coordinator, the following groups define the sending state:
 - a. Cuban/Haitian Entrants - U.S. Office of Refugee Resettlement (ORR).
 - b. Refugee Unaccompanied Minors - private, voluntary resettlement agencies serving in the U.S. and foreign countries.
2. Out-of-State Unaccompanied Minors:
 - a. If a minor is in CD custody and becomes a runaway, contact RPC immediately. The RPC will work with the ICPC Coordinator in making appropriate arrangements for the child to remain in the other state or be returned to Missouri.
 - b. If a minor is not in CD custody and becomes a runaway, contact the RPC immediately. The RPC will work with the ICPC coordinator and Division of Youth Services (DYS) which administers the Interstate Compact on Juveniles (ICJ) in making the appropriate arrangements for the minor to remain in the other state or be returned to Missouri.
 - c. Runaway minors will remain the responsibility of the sending state unless an alternate placement and legal custody is established in the receiving state. Compact

procedures must be utilized in dealing with runaway minors.

- d. Missouri is the sending state since a Missouri court will have assumed jurisdiction in order for the child to have been placed in alternate care.

3. Relative Placements:

- a. For minors already in Missouri and placed with non-parental adult relative, the relative may initiate legal proceedings or ask CD to do so in their behalf.
- b. If the adult relative with whom the minor is placed cannot present a court order granting them custody within a 60-day period after placement, CD will assist in completing the proceedings in their behalf.

4. Cuban/Haitian Children Not Placed Through ORR:

- a. If a minor arrives in Missouri but has not been placed here by ORR through established procedures and has no legally responsible relative, report immediately to the RPC by telephone and confirming IOC. Emergency services may be provided, however, permanent service commitments must be approved by the RPC.
- b. The minor would be eligible for the same services as the minor who is placed through established procedures by ORR.

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19.5 U.S. Citizenship and Immigration Issues

In the course of conducting investigations/family assessment; providing family-centered services; or providing Family-Centered Out-of-Home Care, Children's Division staff may encounter families with various citizenship/immigration issues. This subsection presents policy and procedure for addressing citizenship/immigration issues for children entering out-of-home care including:

- Verification of the child's identity and citizenship/immigration status;
- The notification of foreign consulates/embassies when a child is determined to be a foreign national; and
- Developing treatment and permanency plans in the Family Support Team for undocumented immigrants that are in the best interest of the child.

19.5.1 Verifying Identity and Citizenship/Immigrant Status of Children in Out-of-Home Care

According to *Section 6036 of the Deficit Reduction Act of 2005 section 1903 of the Social Security Act* the worker is required to obtain documents establishing identity and citizenship/immigration status for new applicants and recipients for all categories of Medicaid. Citizenship/immigration status is also important when the Family Support Team is considering permanency goals and treatment plans for children in out-of-home care. Citizenship/Immigrant Status include:

- U.S. Citizens (Either born a citizen or naturalized)
- Foreign Nationals with Immigrant Visas (such as *lawful permanent residents (LPR) – Green Card*)
- Foreign Nations with Non-Immigrant Visa's (In the U.S. for a temporary stay)
- Undocumented Immigrants (Illegal Aliens)

For detailed instructions on documentation for identity and U.S. Citizenship, see related subject:

Related Subject: Section 4, Chapter 24.3.5.1 [Medicaid Eligibility Documentation of US Citizenship and Identity](#)

19.5.2 Verifying Citizenship/Immigrant Status for Adult Clients

Sometimes it is necessary to verify citizenship/immigration status of adults related to the case for the purpose of:

- Establishing the child's citizenship/immigration status based on the parents status;
- Determining citizenship/immigration status of parents or other relatives, and if appropriate, providing them resource information to pursue change of status;
- Determining the appropriateness of relative placement options based on status; or
- Using U.S. Citizenship and Immigration Services or U.S. Consulate resources to assist in diligent searches for parents or other relatives.

19.5.3 Notifying Consulate/Embassy when a Child is found to be a Foreign National

If it is determined that the child(ren) is a foreign national, the worker will determine whether the consulate of the child's country of origin should be notified that the child is in division custody. The consulate/embassy will not be contacted for every child found to be a foreign national. This decision is based on the following:

- **Mandatory Consular Notification** - Under the *Vienna Convention on Consular Relations* (VCCR) treaty or for countries with similar agreements with the United States, the division is required to notify the consulate/embassy of the child's country of origin when a child is taken in to protective custody.
- **Non-mandatory Consular Notification** – When an adult is detained, who is a foreign national from a country without a consular relations agreement, the consulate/embassy is only notified if the he or she requests it and the foreign national must be informed of his right to have his/her consulate/embassy notified. The decision to notify the consulate/embassy of a minor in which the division is the legal guardian is a more complex question. (See Non-Mandatory Consulate Notification)

Mandatory Consulate Notification

The United States Department of State maintains a list of countries where consular notification is mandatory. The list is located at:

http://www.travel.state.gov/law/consular/consular_737.html#notification

If the country of origin is found on the mandatory list, the worker will complete and fax a *CD-146 Consulate Notification Form*, to the listed Consulate/Embassy location (http://travel.state.gov/law/consular/consular_745.html#phone) nearest to the local division office. This listing provides the short-form name of the country, followed by telephone and fax numbers as currently available to the Department of State.

Once a consulate notification has been made the worker will cooperate with requests by the applicable Consulate to interview, visit and otherwise communicate with children in custody of the division who are nationals of their respective country.

Before the visit or interview is arranged, the worker will contact the child's court-appointed attorney or guardian ad litem regarding the requests. Visits and access by the applicable Consulate and should be consistent with the best interests of the child, or as ordered by the Court.

The worker may request from the Consulate:

- Assistance with obtaining official copies of birth certificates that are certified for authenticity;
- Names of appropriate agencies within the country that can assist in:
 - Identifying relatives or other placement options, and
 - Conducting necessary background checks and home studies.

Non-Mandatory Consulate Notification

For adults who are foreign nationals from countries in which an agreement does not exist, the foreign national must be informed of his right to have his/her consulate/embassy notified, however the consulate/embassy is only notified if the he or she requests it. The decision to notify the consulate/embassy of a minor in which the division is the legal guardian should be approved by the Circuit Manager. The Circuit Manager may consult with Division of Legal Services if necessary. This decision should be made with consideration of the following:

- The wishes of parents;
- Input from or other relatives of the child;
- The wishes of the child depending on the child's age and/or the child's capacity to understand the circumstances;
- Current circumstances in the country of origin; and
- Current relationship between the United States and the Country of Origin.

If the decision is made to notify the consulate, the worker will follow the procedure in the section above titled: *Mandatory Consulate Notification*.

19.5.4 Undocumented Immigrants in Out-of-Home Care

If the Children's Service Worker is unable to verify U.S. Citizenship/immigration status of a child who has entered Family-Centered Out-of-Home Care the worker will assume that the child is *an undocumented immigrant or an illegal alien*. The following complications can result for children in out-of-home care with undocumented immigrant status:

- Undocumented children of any age can be deported to their country of origin, even if they have been raised in the United States since infancy.
- Children who have legally entered and remained in this may be deported simply because their parents have been ordered deported. In such cases, the child may not have been aware of the parent's status nor received notice that the parent has been ordered deported; nonetheless, the child will still be at serious risk of deportation.
- Even children who have been adopted by United States citizens are subject to deportation if their status has not been legalized prior to leaving the legal custody of the State of Missouri.
- The process to apply for an alien registration card (green card) can be a lengthy and complex. If it is not completed before the child is released from custody the child may not be permitted to complete the process. Making the most appropriate permanency decisions for the child's as expediently as possible is critical.

If there is a question of the citizenship/immigration status of a child in out-of-home care, the Children's Service Worker shall go through regular supervisory channels to alert the *Division of Legal Services (DLS)* to assist in determining the appropriateness of and procedure for ensuring that the child obtains proper documentation.

19.5.5 Family Support Team (FST) - Permanency Plans for Undocumented Child(ren)

It is critical for the Family Support Team to address citizenship/immigration issues during the treatment planning and permanency goal process for children who are undocumented immigrants. The Children's Service Worker, the family, and other members of the family support team must evaluate whether it is more appropriate to assist the individual in seeking permanent residency, United States citizenship, or repatriation to the child's country of origin. This decision must ultimately be made with the child's best interests in mind based on the following considerations:

- Date of entry into the U.S. (the length of time in country and date of entry impact eligibility for benefits);

- Immigration status (impacts eligibility for legal residency);
- Cultural factors (such as language barriers; length of time in, and familiarity with this country; and degree of acculturation);
- Availability and quality of care in the U.S. versus the country of origin;
- Resources available to the individual (such as relatives willing and capable of providing assistance; government benefits; or community resources); and
- The child's wishes.
- The wishes of the child's parent(s), legal guardian(s) and or other relevant family members.
- The position of the child's country of origin and the United States Government.

The Family Support Team will determine the most appropriate treatment plan and permanency goal for the child. If the goal requires an adjustment of citizenship or immigration status, the Division of Legal Services will assist the worker to assure that the proper paperwork is filed and that the proper action steps are completed. Action steps may include:

- Completion of immigration forms,
- Locating a civil surgeon to complete a physical exam,
- Collecting vital records from other states or countries, and/or
- Locating a fingerprinting site authorized by USCIS.

NOTE: If a child in out-of-home care is an undocumented immigrant minor, repatriation to the child's country of origin may serve as a compelling reason not to file termination of parental rights.

Related Subject: Section 4, Chapter 7.2 [Family Support Team Meeting](#); and Section 4, Chapter 9.7.3 [Criteria for Compelling Reasons Determination for Not Filing TPR include, but are not limited to: Item C](#)

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Section 4: Out-of-Home Care
Chapter 19: Special Populations – Native American and Refugee
Subsection 5: U.S. Citizenship and Immigration Issues
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Related Links:

[United States Citizenship and Immigration Services \(USCIS\) Home Page](#)

[Kansas City Field Office.](#)

9747 NW Conant Avenue
Kansas City, MO 64153

[Saint Louis Field Office.](#)

Robert A. Young Federal Building
1222 Spruce Street
Saint Louis, MO 63103

[Overseas Office Locator](#) - Overseas Offices provide limited services to U.S. Citizens, permanent residents of the U.S. and certain other persons who are visiting or residing outside the United States who need assistance in immigration matters. These services include:

MEMORANDA HISTORY: CD10-54