ORANGE COUNTY SOCIAL SERVICES AGENCY
CFS OPERATIONS MANUAL

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Tribal Customary Adoption

Purpose

To provide guidelines for conducting a Tribal Customary Adoption (TCA).

Approved

This policy was approved by Gary Taylor, Director of CFS, on March 10, 2011. *Signature on file*.

Background

In an effort to meet the permanency needs of Indian children, consistent with tribal culture, California enacted Assembly Bill 1325. This statute adds TCA to state law as a permanency option for a child who is a dependent of the Juvenile Court and eligible under the Indian Child Welfare Act (ICWA). It defines TCA as an adoption which occurs in keeping with the customs, laws, and/or traditions of a child's tribe and is intended to be a seamless integration into the current process of conventional adoption. Aligned with Orange County Children and Family Services' (CFS) existing concurrent planning policies, it allows, at the tribe's discretion, for TCA to be included as an alternative permanent plan for family reunification throughout the dependency case.

CFS may be involved in the TCA process either as the agency conducting the home study and/or as the case manager for the child's placement, care, and service needs. When acting as a case manager, CFS will coordinate the completion of the TCA with the tribe and the tribal designee.

Legal Mandates

Assembly Bill (AB) 1325, Chapter 287, Statutes of 2009.

AB 2417, Chapter 467, Statutes of 2010.

Health and Safety Code (HSC) § 1522.1 details the requirements for a Child Abuse Central Index (CACI) clearance of the prospective adoptive parent.

HSC §§ 1522(g)(1)(A)(i) and 1522(g)(1)(B) lists criminal offenses that will not be granted an exemption.

Penal Code § 11140 prohibits the dissemination of state criminal records to those not expressly authorized by statute to receive those records.

Welfare and Institutions Code (WIC) § 294 describes the notice requirements for a WIC § 366.26 hearing where TCA is the permanency option.

WIC § 358.1 allows at the disposition phase of the dependency hearing for the tribe to indicate TCA as an appropriate permanent plan should family reunification fail.

WIC § 361.31(e) mandates that input of the Indian child (when of sufficient age) or the parent, be considered in placement decisions.

WIC § 366.24(c)(1)(B) details the standards to be used when the tribe conducts its own home study.

WIC § 366.24(c)(2) mandates that a state and federal criminal background check be done on the adoptive applicant(s) and all other individuals over eighteen years residing in the household.

WIC § 366.24(c)(3) states that final approval of the tribal customary adoptive placement cannot occur until the required state and federal background clearances are performed.

WIC § 366.24(9) describes the information that must be conveyed to the TCA applicants upon adoptive placement of the Indian child.

WIC § 366.24(c)(10) discusses the nature of the Tribal Customary Adoption Order (TCAO).

WIC § 366.24(d) outlines the limitations on disclosure and confidentiality of information related to a TCA.

WIC § 366.26(e)(3) describes the set aside procedure for a TCA.

WIC § 366.24 summarizes the requirements for a TCA.

WIC § 16122 states that only licensed California adoption agencies can claim Private Adoption Assistance Reimbursement Program (PAARP) payment.

WIC § 16508.1 details the termination of parental rights and the recommendation of adoption as a permanent plan for a child in foster care for a specified period of time.

California Code of Regulations (CCR) Title 22, Division 2, § 35127.1 details the requirements for the written assessment of the child.

CCR Title 22, Division 2, § 35127.2 lists the documents, reports, and authorizations required for the assessment of the child.

CCR Title 22, Division 2, § 35127.3 describes services for children accepted for adoption planning.

CCR Title 22, Division 2, §§ 35179–35183.1 details the requirements for a conventional full, abbreviated, and updated home study.

CCR Title 22, Division 2, § 35195 details the information to be provided on the *Psychosocial and Medical History of Child (AD512)* prior to adoptive placement.

CCR Title 22, Division 2, § 35197 describes the requirements for an adoptive placement.

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CCR Title 22, Division 2, § 35201 outlines the requirements for the adoptive placement agreement.

CCR Title 22, Division 2, § 35203 describes the requirements for the supervision of a TCA placement.

CCR Title 22, Division 2, § 35207 provides guidance on the termination of a TCA placement.

All County Letter (ACL) 10-17 provides overview of TCA process.

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ACL 10-47 provides detailed direction regarding the implementation of AB 1325.

Definitions

Tribal Customary Adoption means adoption by and through the tribal custom, traditions, or law of the Indian child's tribe. Termination of parental rights (TPR) is not required to effect a tribal customary adoption.

Consultation with the child's tribe means and includes discussion and communication between CFS and the authorized representative of the child's tribe regarding the case plan, the child's placement, and the appropriate permanent plan for the child, including whether or not a TCA would be appropriate.

Full Faith and Credit means the recognition, acceptance, and enforcement of the laws, orders, and judgments of another jurisdiction; specifically, the recognition by one state of another state's legal decisions.

Set Aside describes a finalized adoption where the child shows evidence of a developmental disability or mental illness as a result of conditions existing before the adoption to the extent that the child cannot be adopted and of which condition the adoptive parent had no knowledge or notice before the adoption was finalized. The adoptive family may file a petition setting forth the facts with the Juvenile Court that granted the adoption petition in an attempt to set aside or dissolve the existing adoption order.

Tribal Designee includes a licensed county adoption agency, the California Department of Social Services (CDSS) when it is acting as an adoption agency in counties not served by a county adoption agency, or a California-licensed adoption agency. The tribal designee must be an entity authorized to request a search of the CACI and, if necessary, a check of any other state's child abuse and neglect registry, and authorized to request a search for state or federal level criminal offender records information through the Department of Justice (DOJ).

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Overview

TCA is considered an agency adoption which occurs in keeping with the customs, laws, and traditions of an Indian child's tribe.

TCA differs from conventional adoption of an Indian child in that:

• Parental rights must remain intact
• It cannot be recommended, selected, facilitated, or finalized without consultation with the Indian child's tribe

TCA only applies to children who are dependents of a California Juvenile Court who are enrolled or eligible under ICWA in cases involving federally recognized tribes on whom parents' rights have not been terminated. TCA does not apply to:

• Independent or intercountry adoption
• An Indian child who is a Probation ward
• An Indian child who has been voluntarily relinquished

Note: For definition of an Indian child, refer to "Definitions" section of CFS P&P Indian Child Welfare Act (G-0309).

TCA Adoption Home Study Process

A TCA home study differs from a conventional home study in terms of process and content.

A. **Tribal Designee:**
The Indian child's tribe may either conduct their own home study or designate an adoption agency, such as CFS Adoption program, to conduct the home study. An agency identified by the tribe is not obligated to be a designee.

Note: Tribal designees do not include agencies the tribe may use when the tribe conducts its own home study.

The Indian tribe must provide a written request to the adoption agency designating the agency to conduct the home study of the applicant. The request must come from a tribal representative who is authorized to act on behalf of the tribe.

1. Where the tribe has formally intervened, the authorized representative would be identified in the tribe's *Notice of Designation of Tribal Representative and Notice of Intervention (ICWA 040)*.

2. Where the tribe has not intervened, a formal designation of a tribal representative for purposes of the TCA process from the Tribal Chairperson will be requested.

Tribal designees will be responsible for:

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• Consulting with the Indian child's tribe
• Completing the TCA home study using the prevailing social and cultural standards of the tribe including accepting the adoption application and providing all required information to the applicant(s)
• Recommending approval or denial of the adoptive applicant(s) to the tribe
• Conducting California Department of Justice(DOJ) and Federal Bureau of Investigations (FBI) criminal background clearances
• Conducting Child Abuse Central Index (CACI) and out-of-state child abuse and neglect registry checks

Depending on whether CFS Adoption program or a private agency is designated, additional responsibilities may include:

• Supervision of the adoptive placement
• Termination of the adoptive placement
• Completing the final Court report
• The immediate filing of the final Court report

B. **Consultation with the Tribe:**
Consultation with the child's tribe, as defined in the "Definitions" section of this P&P, between all involved CFS SSWs and the tribe, is an essential part of the TCA process and will begin as soon as the child is declared ICWA eligible. Once the Indian child's tribe is known, even prior to the tribe intervening in the case, the assigned SSW will inform the Indian child's tribe that TCA is a permanency option and the tribe may inform CFS verbally or in writing of their interest in pursuing TCA. For additional information, refer to the "Concurrent Planning" Policy section of CFS P&P Indian Child Welfare Act (G-0309).

Consultation may begin as early as the Dispositional hearing and will continue throughout the entirety of the dependency process as long as TCA is the child's permanent plan.

Consultation is an ongoing partnership with the tribe that requires their inclusion and, on many occasions, approval of decisions made regarding the TCA process.

Consultation with the Indian child's tribe includes:

• Verbal and written communication
• In person meetings
• Team Decision Making (TDM) meetings
• Family Group Decision Making (FGDM) meetings

If selected as the tribal designee, CFS Adoption program will contact the tribal representative to obtain the following information to assist in clarifying particular issues for the child or adoptive applicant(s):

• Tribal customs
• Laws
• Traditions
• Ceremonies/events
• Geography
• Significant history

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Note: Some of this information may be sensitive in nature and not shared freely by the Indian child's tribe.

CFS Adoption program will consult with the child's tribe prior to initiating the adoption process. Consultation with the child's tribe is necessary to obtain the following:

• The tribe's recommendation for TCA as the permanent plan
• Written confirmation as to who the tribe is designating to complete the home study. Written confirmation must be obtained prior to accepting an application to adopt and prior to beginning the assessment of the adoptive applicant

C. **Home Study:**
A TCA home study is an evaluation of the background, safety, and health information of the adoptive applicant's home. Whether completed by the tribe or a tribal designee, it includes the biological, psychological, and social factors of the adoptive applicant(s) and an assessment of the commitment, capability, and suitability of the applicant(s) to meet the child's needs.

Note: When the tribe conducts their own home study, other than the standards identified above, the tribe has substantial latitude in the actual structure of the tribal home study.

A TCA home study completed by a designee may be full, abbreviated, or updated.

1. Standards when a tribe designates CFS Adoption program to conduct the home study:
A TCA **full** adoption home study will be completed in accordance with CFS P&P Adoption Full Assessment (C-0102) and will include the following additional requirements:

   a. An indication on the adoption application that the home study is for purposes of a TCA.

   b. A section on identifying information which includes information about the applicant(s) tribal membership or affiliation (if applicable).

   c. Determination of the applicant's commitment and capability to meet the needs of an Indian child will include the willingness to learn and incorporate the prevailing social and cultural standards of the Indian child's tribe into family life.

   d. The applicant's understanding of the TCA process including, but not limited to:

      • The explanation of CFS Adoption program as designee
      • Consultation with the Indian child's tribe
      • The written approval process

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e. The applicant's understanding of the concept of a Tribal Customary Adoption Order (TCAO) including, but not limited to, modification of the child's relationship to the adoptive parent(s) and birth parent(s) and Indian custodian.

f. The applicant's cultural competence as to the child's tribe, especially customs, traditions, and laws relevant to the child's development.

When the tribe has selected TCA, and the applicant has already completed a full conventional adoption home study, CFS Adoption program will update the home study by incorporating all requisite elements of an updated TCA home study as stated above.

An **abbreviated** TCA home study will be completed in accordance with the requirements of CCR Title 22, Division 2, § 35183, and the aforementioned additional requirements for a full home study.

An **abbreviated** home study may be conducted if the adoptive applicant has completed a TCA or conventional agency adoption (including the additions for a full home study detailed above) within the last five years.

There are no additional requirements for **updating** a TCA home study.

2. Standards when the tribe conducts it's own home study:
At a minimum, pursuant to WIC § 366.24(c)(1)(B), the home study will include:

• An evaluation of the background, safety, and health information of the adoptive home
• An assessment of the biological, psychological, and social factors of the prospective adoptive parent(s)
• An assessment of the commitment, capability, and suitability of the prospective adoptive parent(s) to meet the child's needs

D. **Criminal Background Clearances:**
Home studies require criminal background clearances on all applicants and any other individuals age 18 years or older residing in the prospective adoptive home (unless subsequent arrest notification is still in effect from a prior home study).

Background clearances will include:

• State criminal history
• Federal criminal history
• State child abuse and neglect history through CACI
• Out-of-state child abuse and neglect history from each state the individual has lived in the preceding five years
• Subsequent arrest notification pending the Court order granting adoption

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The agency with placement and care responsibility over the child (CFS Adoption program in most cases) will be responsible for ensuring that all necessary criminal and child abuse and neglect clearances of the adoptive applicant are completed.

Refer to Attachment 7—Parties Subject to Live Scan Clearances of CFS P&P Live Scan Fingerprinting (B-0115) for guidelines regarding parties subject to Live Scan.

Pursuant to WIC § 366.24(c)(3), a tribe cannot grant final approval of the home study without receipt and review of these clearances by the tribal designee.

If the tribe chooses a designee other than one with placement and care responsibility to conduct the home study, the designee will be responsible for conducting state and federal criminal background clearances and a CACI clearance, pursuant to HSC § 1522.1, on the prospective adoptive parents and any persons over 18 years of age residing in the household.

If the tribe conducts its own home study, CFS Adoption program will obtain the necessary criminal background and child abuse and neglect report information for the purpose of adoption.

A home study may be denied due to:

• Criminal or child abuse history

–and/or–

• Other concerns identified during the home study process

When a home study is not approved as a result of factors other than criminal or child abuse history, the tribe and tribal designee will follow the guidelines set forth in the “TCA Home Study Approval” policy section below.

E. **Additional Issues:**

1. When the tribe conducts their own home study and CFS Adoption program approves or denies the applicant(s) based on the background clearance, CFS Adoption program is responsible for informing the tribe of this decision in writing.

   Note: Current statute does not expressly authorize release of criminal and CACI clearances to tribal authorities.

2. Pursuant to WIC 366.24(c), if CFS Adoption program denies the applicant based on a criminal background clearance, that applicant may make a written request to CFS Adoption program for a copy of the applicant’s state or federal level criminal offender record information search response. Once the applicant receives that copy, the applicant may provide, at their discretion, a copy for the tribe to review.

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3. A home study cannot be approved where the applicant or an adult residing in the applicant's home has a conviction as detailed in HSC § 1522(g)(1)(A)(i), §1522(g)(1)(B), or for physical assault, battery, or a drug-related offense within the last five years.

For additional information regarding criminal background clearances applicable to the adoption process, refer to:

- CFS P&P Live Scan Fingerprinting (B-0115)
- CFS P&P Clearances—Relative Assessment (K-0101)
- CFS P&P Foster Home Licensing (K-0604)

F. **TCA Home Study Approval:**
When CFS Adoption program completes the TCA home study, CFS Adoption program will make a recommendation to the tribe regarding approval or disapproval of the adoptive applicant's TCA home study.

If CFS Adoption program's recommendation does not correspond to the tribe's decision, CFS Adoption program, the tribe, and any other pertinent individual will discuss the recommendation and the issues of the applicant's case.

If CFS Adoption program recommends approval and the tribe disagrees, TCA with the applicant can no longer be the permanent plan, as the tribe cannot be ordered to do a TCA.

If the CFS Adoptions program recommends denial and the tribe approves the applicant, the tribe may continue with preparation of the Tribal Customary Adoption Order.

G. **Grievance Review Process:**
When CFS Adoptions program recommends denial of an adoptive applicant's TCA home study, the adoptive applicant has the right to request a grievance review hearing per CFS P&P Adoption Application—Denial and Grievance (C-0101).

When a tribe denies a TCA home study completed by CFS Adoption program, the tribe may, pursuant to its own laws and customs, provide a grievance procedure.

TCA Court Process

TCA is intended to be integrated into the current dependency process.

A. **Overview of Impact of TCA on the Dependency Process:**

1. Consultation with the Indian child's tribe is required.

2. TPR is not required for adoption placement to occur.

3. Consent from the Indian parent or Indian custodian is not required to recommend TCA at the WIC § 366.26 hearing.

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4. The consent of a child age 12 years or older is not required for a TCA. However, the wishes of the child are still an important and appropriate factor for the Court to consider when determining whether TCA is an appropriate permanent plan for the child.

5. The child's Indian tribe does not have to formally intervene in the judicial process in order to indicate TCA as a permanency option.

6. The tribe is not required to choose TCA as a permanency option.

7. If the Indian child has been in foster care 15 of the last 22 months and TCA has been recommended, TPR is not required.

8. Since TPR is not required in a TCA, the dependency process is not delayed by appeals of TPR.

9. The testimony of a qualified expert witness is not required at the WIC § 366.26 hearing where TCA is selected because parental rights are not terminated.

10. Post adoption contact agreements are no longer required. The child's tribe will modify parental rights and establish post-adoption parental and sibling visits in the TCAO.

11. If legal guardianship is the current permanent plan, Orange County CFS ,in consultation with the Indian child's tribe and pursuant to WIC § 366.3(c), may request the Court to vacate previous orders and find that TCA is the most appropriate permanent plan for the child.

12. If the TPR has already occurred but the adoption has not finalized, pursuant to WIC § 366.26(i)(2), Court has the discretion to reinstate parental rights and order a new hearing to determine if TCA is the most appropriate permanent plan for the child.

B. **Noticing of WIC § 366.26 Hearing:**
If TCA is selected as the permanent option by the child's tribe, notice for the WIC § 366.26 hearing to the parents may be made by first class mail to the parent's usual place of residence or business.

C. **WIC § 366.26 Hearing:**
At the time of the WIC § 366.26 hearing, Court may adopt TCA as the permanent placement plan for the Indian child. In that event, the Court will:

1. Continue the WIC § 366.26 hearing for a period not to exceed 120 days and direct the tribe to complete a TCAO.

2. Order the tribe to file the TCAO no less than 20 days prior to the date of the continued WIC § 366.26 hearing.

3. Have discretion to grant an additional continuance to the tribe for filing a TCAO up to, but not exceeding, 60 days.

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If the tribe does not file the TCAO within the allotted time, the Court has the discretion to make new orders to determine the best permanent plan for the child. In this case, CFS Adoption program will use the current standards and procedures governing the permanency planning process.

D. **Addendum Court Report to the WIC § 366.26 Hearing:**
The addendum Court report, filed for the continued WIC § 366.26 hearing, will include information regarding any concerns related to the TCA and a recommendation made by CFS Adoption program about whether TCA is in the best interest of the child.

Possible issues to be addressed are:

1. CFS believes the child would be at risk if placed with the applicant(s), CFS will include the facts that led CFS to not recommend approval of the applicant in the addendum Court report.

2. Continued suitability of TCA as the appropriate permanent plan for the child.

3. The recommendation for approval or denial of the prospective TCA applicant(s). This is contingent on the completion of the home study. If the home study is not complete, this will be indicated in the addendum Court report.

4. CFS Adoption program is not expected to recommend approval of an applicant when the home study is not complete or CFS Adoption program has not reviewed the home study.

5. The outcome of the full state and federal level adoption specific background checks.

6. Any pertinent information gathered during the TCA process including the TCAO.

7. Any updates regarding the TCA that CFS Adoption program deems necessary to report to the Court.

8. Any concerns that CFS Adoption program has with the TCAO.

Note: CFS Adoptions program will request a copy of the approved or denied TCA home study and TCAO from the tribe. The request will be made to the tribal representative or the Tribal Chairperson.

The agency with placement and care responsibility (in most cases CFS Adoption program) will submit the addendum to the WIC § 366.26 hearing no less than seven days prior to the continued hearing.

E. **Tribal Customary Adoption Order (TCAO):**
The TCAO is an order completed by the child's tribe that represents the legal framework for the modified relationships of the parent and child. Pursuant to WIC § 366.24(c)(10), the TCAO must address the following issues:

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• The legal relationship, responsibilities, and privileges between the child and the adoptive applicant(s)
• The modification of the legal relationship of the birth parents or Indian custodian and the child after the TCA is finalized
• Contact between the birth parents or Indian custodians and the child
• Responsibilities of the birth parents or Indian custodians
• The child's legal relationship with the tribe
• The rights of inheritance of the child

The tribe will be able to specify anything else it deems appropriate per its laws and customs except for orders pertaining to child support obligations of the birth parent(s) or Indian custodian.

It is presumed that any parental rights or obligations not specified in the TCAO will vest with the tribal customary adoptive parents.

The child's tribe is responsible for facilitating the TCAO. The tribe is not required to disclose customs or ceremonies used during the process.

If problems later develop in the execution of the TCAO, pursuant to WIC § 366.26(i)(2), the parties must make a good faith effort to resolve the dispute prior to seeking judicial intervention.

They may use either tribal or alternative dispute resolution services to address the problem, but failure to comply with the TCAO does not undo the TCA. The parties may return to the Court that granted full faith and credit to the TCAO to address the issues if dispute resolution fails.

The information contained in the TCAO will be documented in the adoption case file and Child Welfare Services/Case Management System (CWS/CMS).

F. **Full Faith and Credit:**
Full faith and credit is a federal concept regarding when and how different sovereigns enforce each other's Court orders. Within the context of a TCA, the Court enforces the tribe's TCAO and the child would be eligible for adoptive placement and finalization. The Court will not afford full faith and credit to the tribe's TCAO when:

• It violates a generally accepted public policy of California (e.g., placement with a registered sex offender)
• Fraud
• The entity issuing the order had no authority to do so
• Due process was not provided
• The order offends a strongly held public policy such as when two states have differing statutes on who can be legally married

Note: The assigned SSW will consult with County Counsel if there are concerns regarding the validity of the TCAO.

Full faith and credit is afforded to the TCAO at the continued WIC § 366.26 hearing. After full faith and credit is given the TCAO by the dependency Court, the following can occur:

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• The Indian child becomes eligible for adoptive placement
• The TCA placement agreement can be executed and signed
• The *Adoption Assistance Agreement* (*AD 4320*) can be executed and signed
• Supervision of the TCA placement can begin
• The prospective TCA parent(s) can file the petition for adoption
• Once the petition is filed, the Court can set a hearing to finalize the adoption
• At the finalization hearing, the Court issues the final decree of adoption
• The Court orders dependency terminated

If Court does not issue full faith and credit to the TCAO, the tribe and other parties to the adoption (e.g., tribal designee, birth parents, prospective adoptive parents, CFS Adoptions) must seek to resolve the issue. If the parties fail to find resolution, the Court may find that TCA is no longer appropriate for the Indian child. The Court then has the discretion to order a new hearing to determine an alternative permanent plan for the Indian child.

G. **Adoption Finalization:**
Once the adoption petition is filed with Court and a finalization hearing is set, the process of adoption finalization occurs as detailed in CFS P&P Adoption Finalization (C-0401). The only differences in the adoption finalization process for a TCA are:

• Documentation related to the child being legally freed is excluded
• *Adoption of an Indian Child (Adopt-220)* is completed and attached to *Adoption Request (Adopt-200)*

Adoptive Placement

Adoptive placement is impacted by the TCA process, starting with the assessment of the child.

A. **Assessment of Child's Suitability for TCA:**
A written assessment of the child is an integral part of the presentation made to the prospective adoptive parent either prior to placement or at adoptive placement signing. The written assessment will include:

1. Additions to Current Presentation:

a. Identification:

• The Indian child's tribal membership or tribal affiliation
• Siblings with tribal membership or tribal affiliation

b. Family History:
The tribe's cultural definition of family will be used when:

• Describing the amount and nature of contact between the child and the parents and other members of the extended family since the child was placed in out-of-home care
• Reviewing whether the child would benefit from contact with members of his or her extended family once the TCA is finalized

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c. Religion and/or Cultural Background:
The assessment will include a stated religious or cultural background preference indicated by the tribe or tribes and the Indian child, unless the Indian child's age or physical, emotional, or other conditions preclude a meaningful response.

2. Exclusions to Current Presentation:

a. Analysis of Likelihood that Child Will Be Adopted:
Exclude "If parental rights are terminated."

b. Results of Psychological Evaluation:

• Exclude the list of abnormal and symptomatic illnesses used to determine if a child's behavior warrants an evaluation as detailed in the CCR, Title 22, Division 2, § 35127.1(b)(9)(A)(2)
• CFS Adoptions program is expected to consult with the child's tribe and base the need of a psychological evaluation on the child's behavior relative to the prevailing cultural and social standard of the child's tribe

B. **Documents Required for Child Assessment:**
In addition to the documents specified in CCR, Title 22, Division 2, § 35127.2, a written statement will also be obtained from the Indian child's tribe to pursue TCA for the Indian child. This statement will include whether the tribe or the tribe's designee will conduct the home study.

C. **Services for the Child(ren):**
CFS Adoption program will collaborate with the child's tribe in providing services to the child(ren) who are accepted for adoption planning.

D. **TCA Placement:**
CFS Adoption program may not place a child for TCA unless a written presentation report, using *Psychosocial and Medical History of Child (AD 512),* is presented to and acknowledged in writing by the prospective TCA parent(s). Pursuant to WIC § 366.24(9), the report on the child's background must contain all known diagnostic information, including the following:

• Current medical reports on the child
• Psychological evaluations
• Scholastic Information
• Developmental history
• Medical background on child's biological parents (if available)

TCA parent(s) will be afforded the same opportunity as any current adoptive parent(s) to maintain the Indian child's original birth certificate or have it amended. Refer to CFS P&P Birth Certificates: Foster Child (D-0401) for additional information on amended birth certificates.

Similar to a conventional adoptive placement, if CFS Adoption program, in consultation with the tribe, has reason to remove the child, the placement may be terminated. CCR Title 22, Division 2, § 35207 provides additional guidance on the termination of a TCA placement.

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For additional information on adoption placements, refer to CFS P&P Adoptive Placement (C-0702).

E. **Supervision of TCA Placement:**
The agency with care and placement responsibility (usually CFS Adoption program) will supervise the adoptive placement for a period of six months in accordance with CCR, Title 22, Division 2, § 35203.

Miscellaneous Issues

TCA also impacts case management in several areas.

A. **Adoption Assistance Program (AAP) Benefits:**
Children who are the subject of a TCA are eligible for AAP benefits. Refer to CFS P&P Adoption Assistance Program (AAP) (C-0501) for guidance on accessing AAP benefits.

Reimbursement for nonrecurring adoption expenses is also allowed under TCA. For additional information, refer to CFS P&P Reimbursement of Nonrecurring Adoption Expenses (C-0502).

B. **Private Agency Adoption Reimbursement Program (PAARP):**
Licensed private adoption agencies can claim PAARP reimbursement for TCA. If a tribal agency is selected to conduct the home study, they must be licensed as a California adoption agency in order to be eligible for PAARP reimbursement. The same process and forms are used for TCA PAARP reimbursement as for a conventional adoption.

If a tribe conducts their own home study and selects a tribal agency that is not licensed as a California adoption agency, that tribal agency is not eligible for TCA PAARP reimbursement pursuant to WIC §16122.

C. **Disclosure and Confidentiality:**
Due to the collaborative nature of TCA, when the child's tribe designates TCA as the permanent plan, information must be shared between the tribe and the tribe's designee in order to accomplish completion of the home study. The primary limitation on sharing of information between the designee and the tribe involves the prohibition against release of criminal or child abuse history directly to the tribe.

The following additional confidentiality limits apply to TCA:

1. The petition, agreement, order, report to the Court, and any power of attorney filed in a TCA is only open to inspection by the parties to the proceeding except upon written authority of the Presiding Judge of the Juvenile Court.

2. Information will not be released that would identify persons who receive or have received TCA services.

3. Upon written authorization for the release of specified information by the subject of that information, CFS Adoptions program may share information regarding the adoptive parents or birth parents with other social service agencies or licensed adoption agencies.

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4. Not withstanding any other law, CFS Adoption program may share information regarding the TCA if it is believed that the child's welfare will be promoted by such a disclosure.

5. CFS Adoptions program may share adoption case records including identifying information for research purposes provided the research does not result in the disclosure of the identity of the child or the parties to the TCA.

Refer to CFS P&P Adoption Case Record Confidentiality (C-0302) for additional information regarding adoption confidentiality.

D. **Interstate Compact on the Placement of Children (ICPC):**
ICPC does apply to TCA for an Indian child who is a dependent in California placed with a tribe out-of-state. For an out-of-state tribe that chooses to conduct their own home study, the tribe may use their own procedures as long as they use the minimum home study standards detailed previously in this policy. However, the receiving state where the child is placed is not required to complete a TCA placement or finalize an adoption without termination of parental rights.

ICPC does not apply to TCA for a dependent of another state placed in California.

For additional information on ICPC requirements, refer to CFS P&P Interstate Compact on the Placement of Children (ICPC) (K-0502).

E. **Set Aside:**
Pursuant to WIC § 366.26 (e) (3), a finalized TCA may be set aside within five years of the date of finalization. In contrast to a conventional set aside, the adoption worker conducting the investigation needs to consult with the child's tribe as part of the investigative set aside report to develop a plan for the child. This recommended plan will be part of the report to the Court.

F. **Documentation:**
All information received, provided to, or discussed with the child's tribe will be documented in court reports, service and adoption case files, and CWS/CMS.

Any case in which TCA is considered as a permanency option (regardless of whether or not TCA was actually selected as the permanency plan) will be identified with a TCA Special Projects code in CWS/CMS. For direction, refer to CWS/CMS Data Entry Standards—Tribal Customary Adoptions–Special Project Code.

CWS/CMS also requires a TPR date before information regarding an adoptive placement can be entered. Given that TCA does not involve TPR, the date that the TCAO was afforded full faith and credit will be used instead.

TCA is not currently available in CWS/CMS and, therefore, Adoption or Adoption with Sibling(s) will be selected when formulating the case plan.

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REFERENCES

Attachments and CWS/CMS Data Entry Standards

Hyperlinks are provided below to access attachments to this P&P and any CWS/CMS Data Entry Standards that are referenced.

• CWS/CMS Data Entry Standards—Tribal Customary Adoptions–Special Project Code

Hyperlinks

Users accessing this document by computer may create a direct connection to the following references by clicking on them.

• CFS P&P Adoption Full Assessment (C-0102)
• CFS P&P Adoption Finalization (C-0401)
• CFS P&P Indian Child Welfare Act (G-0309)
• CFS P&P Adoption Assistance Program (AAP) (C-0501)
• CFS P&P Reimbursement of Nonrecurring Adoption Expenses (C-0502)
• CFS P&P Adoption Application—Denial and Grievance (C-0101)
• CFS P&P Birth Certificates: Foster Child (D-0401)
• CFS P&P Adoption Case Record Confidentiality (C-0302)
• CFS P&P Live Scan Fingerprinting (B-0115)
• CFS P&P Clearances—Relative Assessment (K-0101)
• CFS P&P Foster Home Licensing (K-0604)
• CFS P&P Adoptive Placement (C-0702)
• CFS P&P Interstate Compact on the Placement of Children (ICPC) (K-0502)

Other Sources

Other printed references include the following:

None.

REQUIRED FORMS

Online Forms

Required forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
Adoption of an Indian Child	Adopt-220
Adoption Request	Adopt-200
Adoption Assistance Agreement	AD 4320
Psychosocial and Medical History of Child	AD 512

Hard Copy Forms

Forms listed below must be completed in hard copy (including multi-copy NCR forms). ***For reference purposes only,*** links are provided to view these hard copy forms, where available.

Form Name	Form Number
None.	

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CWS/CMS Forms

The following required forms may **only** be obtained in CWS/CMS. ***For reference purposes only,*** links are provided to view these CWS/CMS forms, where available.

Form Name	Form Number
Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child	ICWA-040

Brochures

Brochures to distribute in conjunction with this procedure include:

Brochure Name	Brochure Number
None.	

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