

NATIONAL STANDARDS

CHILD WELFARE PROGRAM

SOCIAL DEVELOPMENT DIRECTORATE

INDIAN AND INUIT AFFAIRS PROGRAM

DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS

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INTRODUCTIONA) BACKGROUND

Until the post war era Indians were considered by both the federal and provincial governments to be wards of the federal government. In the area of Child Welfare, because of the legal issue discussed in section D. 2) (a) DIAND made every effort to purchase from the province required Child Welfare services. In a few provinces, where conflict over legislation and payment existed, statutory services were provided only in emergencies leaving to DIAND the responsibility to provide non-statutory and prevention programs. Over the years, DIAND did provide limited resources for non-statutory services but always on the understanding that these were provided on humanitarian grounds and because of Provincial reluctance or refusal to provide comprehensive service on reserve as per their authority and responsibility.

DIAND's current thrust is toward Tripartite agreements. Provincial legislation, programs and standards, combined with full Indian involvement and federal funding will ensure appropriate Child Welfare services on reserve, thus eliminating the existing limited direct involvement in service delivery.

B) THE NEED FOR STANDARDS

The Department of Indian and Northern Affairs is accountable to Parliament through the Minister for funds appropriated to it and therefore must establish certain standards for their use:

- (a) to set forth the rights and responsibilities of Indian people in respect to child welfare services relevant to their circumstances;
- (b) to establish the parameters of the Child Welfare Program and its relationship to other programs and services;

- (c) to ensure fair and equitable treatment of applicants and recipients of child welfare services;
- (d) to provide a systematic approach to administration;
- (e) to provide direction and support to administrators to ensure that child welfare services are provided to those and only to those persons for whom it is intended;
- (f) to establish a reliable system of gathering data to assist in interpreting the needs of Indians in order to obtain program funds and to provide assurance that funds are expended properly;
- (g) to provide standards against which the Child Care Program may be evaluated for efficiency and effectiveness.

II OVERVIEW OF CHILD WELFARE PROGRAM

A. DEFINITION AND OBJECTIVE

Child Welfare is a broad range of services and activities whose purpose is to nurture wholesome individual and family functioning. Some of these services and activities are statutory, i.e. require specific legal authority to function. A majority of child welfare services are non-statutory in nature, are amenable to local community involvement and control, and form an integral part of comprehensive child welfare services.

Primary Objectives

The primary objectives of Child Welfare are as follows:

1. To assure the provision of services that maximize the ability and capacity of Indian families to remain together and to support the needs of Indian children in their parental homes.
2. To reduce the incidence of Indian child abuse and neglect.
3. To reduce the number of Indian children in public care.
4. To effect, whenever possible, the return of Indian children to their families and to Indian communities.

B. DESCRIPTION OF SERVICES PROVIDED

1) Statutory Services

Provincial legislation stresses the importance of, and often prescribes, the use of a wide range of programs and services in order to nurture the development of family relationships and to prevent the neglect and abuse of children.

In Canada, under provincial Child Welfare legislation, a child is in need of protection when any of the following circumstances exist:

- an orphan or a child deserted by his parents is not being properly cared for by anyone;
- a child who cannot be cared for by his parents because they are sick, infirm, incompetent, in prison, etc.;
- a child whose life, physical/mental health or morals may be endangered by the conduct of his parents;
- a child born out of wedlock and whose mother is unable or unwilling to care for him;
- a child whose behaviour, conditions, environment or association is injurious to himself or others;
- a child who requires medical, surgical or other remedial care or treatment and whose parents neglect, refuse or are unable to provide for such treatment or care.

The above circumstances are not all inclusive and vary from province to province.

(a) Services to Children in Need of Protection

When a provincially accredited child welfare agency receives a report that a child is in need of protection, Child Welfare legislation requires that the agency take certain actions:

- investigate to assess the situation;
- provide, where they exist, family support services such as homemaker

services, day care programs or casework;

- refer to other community resources.
- remove the child to a place of safety if the family environment constitutes a serious danger to his health and well-being, with the consent of parents or by apprehension and court action. If a child is apprehended a court hearing is convened and wardship may be granted to the province on a temporary or permanent basis.

(b) Services to Children in Care of Child Welfare Agencies

When a child has been committed to care of a child welfare agency by a court or admitted to care by voluntary parental agreement, the child welfare agency becomes responsible for providing Protection, supervision and treatment suitable to the individual needs of the child who had to be removed from the parental home. This entails recruitment, selection, development and placement in approved facilities such as foster homes, group homes and institutions.

While the child is in placement, the child caring agency should provide counselling to parents and the child, hopefully leading to a resolution of problems and the reunion of the child with his family.

When the return of a child is not possible, the court must make a disposition and the child caring agency must make long-term plans for the child.

(c) Adoption Services

A child who has been legally released for adoption and is able to accept a new family may be placed with a family carefully selected to meet the needs of the child and the family. Upon application and receipt of relevant reports, the court may make an order for the adopting parents to assume parental rights and responsibilities for the child. This entails the need for recruitment, selection and development of adoption resources.

(d) Services to Children Born out of Wedlock

Provides for counselling and referral services (financial, medical, adoption, maternity homes) to assist the mother and father make plans for their future and that of the unborn or newly born child. Also provides for the establishment of paternity and the securing of maintenance of the child either by agreement or by court order.

2) Non-Statutory Services

Many Services provided under provincial laws and described as statutory are also made available to the general population as a prevention program. Children and families

going through difficulties can avail themselves of these services. They are usually comprised of:

- counselling and referral services to families
- services to mothers and to children born out of Wedlock
- placement of Children by agreement with parents
- maintenance of children in care



- day care, funding, drop -in-center, funding,
- home-maker, funding

Where provincial child welfare services are made available to Indian reserves, the above services are not differentiated from statutory services and DIAND reimburses the provincial agencies on the same basis as Statutory services.

Where provincial child welfare services are not fully available and no agreement exists or where only statutory services are offered in "life and death" situations, DIAND is in a situation where it is forced to provide or arrange with Bands or Tribal Councils for the provision of limited non-statutory services. With the signing of a master child welfare agreement such as the one in Manitoba, the situation should be rectified. Under this arrangement, provincial services are provided by Indian people with full Indian involvement and participation.

C. CHILD WELFARE POLICY

Five fundamental policy assertions are central to both an understanding of and to the successful implementation of the Child Welfare policy. DIAND will:

- 1) Ensure that provincial child welfare programs and services are extended to all reserve communities and to individuals and families residing on reserves, Crown lands and unorganized territories.
- 2) Ensure that child welfare services available to Indian people are adequate and appropriate to the needs of Indian communities, families, and children, and are comparable in level to those available to other citizens.

- 3) Encourage, promote and facilitate Indian participation in the negotiation of child welfare agreements and in the design, delivery and monitoring of child welfare services.
- 4) Fund, as negotiated, and within the context of a clear agreement, the costs of child welfare services provided to residents of Indian communities.
- 5) Where necessary and as an interim measure, bridge gaps in child welfare services which result from provincial and territorial reluctance or failure to deliver the full range of services to Indian communities in various areas of the country to the extent of limited departmental resources and expertise and provincial legislation.

As statutory Child Welfare services are governed by provincial legislation, standards are determined by:

- content of Provincial legislation and court interpretations
- relevant provincial child welfare policies and regulations
- relevant provincial programs

Because DIAND's role is in the purchase of services provided under provincial auspices, service standards are limited to the following criteria which should be built into all service agreements:

- Child Welfare services available to Indian people must be adequate and appropriate to the need of Indian communities, families and children and must be comparable to those available to other citizens.
- Indian participation in the negotiation of child welfare agreements and in the design, delivery and monitoring of Child Welfare Services.

- A major emphasis in the hiring and training of Indian paraprofessionals and professionals in the field of Child Welfare, and the development of overall Indian capacity to administer and deliver services.

D. MANDATE AND AUTHORITY

1) Mandate

Canada, because of its special relationship to Indian people, has the responsibility, through the Minister of DIAND, to ensure that Indian children and parents have access to provincial Child Welfare services. DIAND's mandate in the area of Child Welfare can thus be seen as a moral responsibility rather than a mandate devolving from any specific legislation.

2) Authority

(a) Legal Base

Section 92(7) of the British North America Act states that provincial governments are responsible for welfare services which includes protection and care of children.

Section 91(4) of the British North America Act empowers Canada to enact legislation in respect to Indians and Indian lands. Canada has not exercised this discretionary power in respect to legislation governing the protection and care of Indian children. Accordingly, Section 88 of the Indian Act makes Indian people residing on or apart from reserves subject to provincial child welfare laws of general application unless and to the extent that such laws conflict with the Indian Act and treaties.

This interpretation of jurisdiction has been upheld in a number of court decisions.

Even though legal authority for service delivery is well established, many provinces refuse to provide services to Indian people residing on reserves for various reasons. Some provincial governments feel that DIAND should also have service delivery responsibility. Some Indian groups concur with this concept. In order to protect Indian children, DIAND has accepted interim financial responsibility for services on reserve but not the delivery responsibility.

For these reasons DIAND obtained authority for funding of services on reserves.

(b) Operating Authorities Granted to DIAND

The Joint Committees of the Senate and the House of Commons in 1946-48 and again in 1959-61 urged increasing involvement by Provinces in the provision of services to Indian people. In response, extension of basic provincial social and child welfare services became the stated policy of Indian Affairs.

Funding authorities granted to Indian Affairs in respect of social services to Indian people and having direct implication for the Child Welfare Program are:

Treasury Board Minute 547716 of March 17, 1960 (authority in principle to negotiate agreements with provinces for extension of welfare services to reserves).

Order in Council PC 1965-11/2135 of December 1, 1965 (authority to enter into cost sharing agreements with Provinces for the extension of welfare programs to Indian people).

Order in Council PC 1972-1017 of May 16, 1972 (approval for agreements with the Provinces with enabling federal funding of 100% of the costs of welfare services on-Reserve and 50% of the cost of services off reserve - (Canada Assistance Plan)).

Treasury Board Minute 725973 of April 1, 1974 (authority to transfer program delivery to Indian bands).

Treasury Board Minute 781354 of February 19, 1982 (authority for Manitoba Child Welfare Agreement).

(c) Absence of National Coverage

Comprehensive agreements are not currently in place in New Brunswick, Saskatchewan, Alberta and British Columbia. Efforts are underway to negotiate these agreements within standards and will reflect an increased cost within the Child Welfare budget.

Where formal agreements are not in place, there is a "gentlemen's" agreement that DIAND will pay for Indian Children from reserves placed by the provinces. The per/diem rates charged by provinces usually cover maintenance and supervision (Alberta per diem covers maintenance only).

Agreements in Nova Scotia, Prince Edward Island, Quebec and Ontario will be reviewed to reflect standards.

Refer to Program Circular G-1.

E. Relationship to Other Government/Department Services

Because of both the mandate and the legal base previously described, Intergovernmental and Interdepartmental relationships became the major

elements through which service standards, control, monitoring and evaluation can be established.

Interdepartmental relationships specifically related to C.A.P. within Health and Welfare, are essential in determining the level of cost sharing with the provinces. C.A.P. does provide program definition of items shareable by Canada. These same definitions can be utilized in Tripartite negotiations.

Intergovernmental relations become essential in determining service standard monitoring and evaluation mechanisms. The Provinces have the program, legal responsibility and expertise required to put in place appropriate Child Welfare services.

Only proper involvement with Indian people themselves will ensure Indian participation and the appropriateness of services.

To a significant degree, the entire development in the field of Child Welfare will depend on the efforts and resources committed to intergovernmental and interdepartmental relations and consultation with Indian groups.

III NATIONAL PROGRAM STANDARDS

A. SERVICE DELIVERY SYSTEM

1) Federal

Because there is no federal Indian Child Welfare Act and because the Department is not an accredited child welfare agency, it has no legal authority for the direct delivery of Child Welfare services. The question of federal standards with respect to service delivery, therefore, is not applicable. However, where child welfare services are not provided by the province to Indian communities, employees of Indian Affairs and band staff provide non-statutory services in emergency situations without the force of law (legal sanction). Until the question of jurisdiction and responsibility for the provision of services is settled between the federal and provincial governments, the situation will remain unclear and the emergency involvement of federal and Band employees in non-statutory matters will remain unmandated.

2) Provincial

Until the recent patriation of the Canadian constitution, the BNA Act provided that provincial governments were responsible for welfare which includes the protection and care of children. The Indian Act states that Indian people residing on and off reserve are subject to provincial child welfare laws of general application. The Department has therefore taken the position that it is responsible for ensuring that Indian children and families have access to adequate and appropriate provincial child welfare services and that Indian people are involved in the negotiation of child welfare agreements and in the design, delivery and monitoring of child welfare services.

Standards of service delivery are therefore determined by provincial family and children's services acts and adopted as basic standards for purposes of federal service purchase on behalf of Indian people who reside on reserve.

3) Band/District Councils

General dissatisfaction by Indian people with provincial services to children and their families reserves has prompted new initiatives directed toward greater responsibility and involvement of Bands and Tribal Councils in the design and delivery of their own services.

The Department's recently affirmed policy of promoting the extension of provincial child welfare services through the negotiation of tripartite agreements will see the adoption of more effective service delivery standards and control mechanisms.

Until such agreements are concluded in all provinces, the Department's Child Welfare Program will remain largely a payment activity i.e. purchasing services on behalf of Indian people and the Department's control capacity will be limited to administrative areas.

B. ADMINISTRATION

In respect to Child Welfare services being purchased on behalf of Indian people by a third party, the department's only control can be found in the administrative area where the department has standards for: the negotiation process, the content of agreements, monitoring of the agreement, and evaluation.

1) Indian Child Welfare Agreements Guidelines for Negotiation, Administration, Monitoring and Evaluation

Formal agreements are necessary for channelling, controlling, administering and



monitoring all Child Welfare Services to Indian people.

These agreements may be entered into by Canada and provinces and bands or organizations established by Indian bands pursuant to the appropriate provincial Child Welfare Legislation.

In addition, all agreements will need to meet the detailed requirements of Indian Affairs as set out herein and must not be inconsistent with the Child Welfare legislation of the province in question.

The following guidelines apply, without exception, to the negotiation and administration of all Child Welfare Agreements:

(a) Negotiation Process

It is essential that Indian Bands and Communities understand the implication of entering into agreements. A process consistent with the following should be maintained:

(i) Preparation of information in regard to:

- purpose of Child Welfare
- options available to bands
- community Involvement and Commitment required
- setting up and purposes of Child Welfare Committees or equivalent mechanisms facilitating community involvement

(ii) Scheduling of at least one band council and public meeting to deliver the above package and receive feedback.

- (iii) Appointment of a local Child Welfare Committee or equivalent mechanism.
- (iv) Training of committee members.
- (v) Negotiation of agreement.
- (vi) Further public meetings to advise communities of content of agreement, once reached, and accept feedback and approval of communities.

(b) Community Environmental Assessment

All negotiations will be based on identified local needs and resources.

(c) Content of Agreements

(i) Services

- identify and provide a detailed description of specific services to be provided, including identification of locus of responsibility.

(ii) Mode of Service Delivery

- identify the supplier(s) of Services and their working relationship to Band authorities, DIAND and the Province or Territory.

(iii) Operating Objectives and Priorities

- provide a clear statement of operating objectives, priorities, annual priorities and targets.

(iv) Operating Policies and Procedures

- provide a clear description and documentation of operating

policies and procedures for planning, administration and delivery of services, for staff training, supervision and appraisal and for the evaluation of service effectiveness and efficiency.

(v) Level of Funding

- pre-determine and itemize total annual expenditures for each cost element, personnel, direct variable overhead, training of paraprofessionals and child maintenance with stipulation of non-transferability of funds. Expenditures will be based on pre-established criteria such as ratio of paraprofessionals to population served and on current provincial and Band salary scales. Under no circumstances will services be funded beyond the approved budget.

(vi) Staffing

- provide a clear statement of standards providing for number, level of competence and deployment of personnel to ensure compliance with prescribed standards;
- provide job descriptions for both paraprofessionals and professionals, including reporting relationship to Council, committee, DIAND and Province or Territory;
- provide a method of staff performance evaluation.

(vii) Maintenance of Records

- describe the required records (financial and administrative, service delivery and client) and provisions for their maintenance, summarization and use in evaluation, consistent with the concept of confidentiality of personal information;
- meet current requirements for Data Base and information systems (see "Information System and Case Recording");
- observe prevailing DIAND Guideline for financial record and contributions.

Reporting of Results

- state clearly the financial and operating results to be reported on including reporting dates and deadlines.

Accountability for Results

- state clearly the accountability relationships and responsibilities for services and funding.

Review and Evaluation

- indicate clearly the method of review and evaluation of services including provisions for frequency.

2) Departmental Approval Procedures

Each new agreement shall be negotiated by the Regional Office of Indian Affairs and shall be approved by the Regional Director-General and by the Headquarters' Director-General,

Education and Social Development and A.D.M. Indian and Inuit Affairs. Intergovernmental Affairs Branch and Legal Services should also review each agreement when appropriate.

Within the negotiation process DIAND will insure that the costs are relevant to the provincial standards, and when agreement is reached, the appropriate formula is kept as the method of resourcing.

3) Eligibility Criteria

Child Welfare services will be provided and paid for if the following eligibility criteria are met:

- Need: this is defined in Child Welfare legislation within the definitions of Neglect and/or child in need of Protection.
- Residency: DIAND will only accept financial responsibility for residents on reserves, Crown Land and Unorganized Territory.
- Status: Reimbursement for assistance and services purchased is for those items provided to Indian people as defined in the Indian Act and to certain groups of non-Indians, as specified in TBM's 547716 and 547716-1. (For a description of circumstances when a child may be considered to be in need of protection see pages 3 and 4.).

4) Departmental Monitoring and Evaluation

The Regional Office of DIAND shall monitor each agreement and schedule regular reviews and evaluations as provided for in the tripartite agreement.

ANNUAL REPORT

An annual report on child welfare progress shall be prepared by the Regional Director-General for submission to the Assistant Deputy Minister, Indian and Inuit Affairs Program no later than 3 months after the end of each fiscal year.

5) Mandatory Nature of Statutory Services

The only elements of control within DIAND are found within the administrative standards. All other elements are based on outside demands such as the legal nature of services and provincial standards related to identified needs in Indian communities. Once these elements have been incorporated into an agreement, DIAND must insure appropriate levels of funding as agreed to. Based on this, Child Welfare Services are considered mandatory. The service component and services purchased are controllable in the sense that once an agreement on budget is reached expenditures must stay within approved budget. The maintenance element of the service is not controllable in the sense that when a child is found to be neglected, the child welfare agency has no choice but to make placement arrangements.

6) Program Manual

The department shall produce and distribute a national child welfare program manual containing operational guidelines to be used by staff as a guide to the child welfare program.

a) Format and Content

The program manual shall provide the following information:

- philosophy and goals;
- the rights, responsibilities, and

- expectations for each group;
- policies and procedures;
- administrative structure and decision making policies;
- record keeping requirements, including facsimilies of required forms with instructions;
- special information applicable to particular groups and appropriate "how to" instructions.

b) Utilization of Manual and Guidelines.

- The department shall provide each regional and district office that has a child care responsibility with appropriate program manuals and operational guidelines.
- The department shall develop a distribution control and update system to ensure that revisions to the program manual and guide materials are prepared and distributed in a timely manner.
- Program manuals and operational guideline material shall be reviewed in their entirety at least once every fiscal year and revisions made as needed.

7) Information System and Case Recording

Where it provides direct service to children and their families, the department shall, based on provincial guidelines and standards, develop and implement the following:

- a case recording system to ensure that necessary information about each applicant to the service provided and the outcome of service is maintained and that the quality meets departmental standards.

- a system of safeguards to ensure confidentiality of all information kept about each individual involved.

(a) Case Record System

Where it handles cases, the department shall maintain case records which are sufficiently detailed, well written, and organized to serve the following purposes:

- service planning and case management;
- documentation of services provided;
- assessment of client changes and circumstantial changes which may affect the service delivery process.

(b) Data System

A data collection, storage, and retrieval system shall be developed and utilized by the department to collect analyze and feedback data relating to child care services. The department shall compile quarterly and annual reports and statistics.

(c) Uses of Data

The data shall be analyzed and used to:

- provide direct services staff and their supervisors with data needed for case management purposes;
- provide department administration with information about the extent to which particular services have been used and the costs of various service delivery activities;
- provide information about the child care program and the characteristics of program clients;
- identify needs for changes in



- policies and procedures;
- identify anomalies;
- identify research needs;
- estimate the need for additional or different resources;
- fulfill national reporting requirements.

(d) Access to Information

The department shall identify the conditions under which individuals shall have access to information which is retained by the department.

C. FUNDING

1) Resourcing Standards

Resource requirements for Child Welfare Services are usually classified into three major categories: Placement, Services, Related External Services.

Placement: this category covers the cost related to children in care and would include such elements as:

- Care
- Maintenance
- Supervision
- Treatment

These elements for foster care are established in provincial rate structures. Group Homes and Institutional care will vary and are dependent on the levels of services rendered and the budget of the particular facility. These budgets are all based on provincial administration standards.

DIAND has no say in the establishment of the cost element and the department will pay actual costs based on established per/diem.

Service: this element refers to staff salaries, their travel, accommodations, employee benefits and administrative costs. Different methods have been utilized to establish this portion of costs.

- The overall cost of operating an agency and giving services have been prorated according to the number of children in care and then established as a per diem. This is then incorporated with the per diem for placement thus giving a comprehensive per diem rate in placement and services. The related external services would also be part of this comprehensive rate.
- The most recent approach has been to identify the number of staff required based on current provincial standards adjusted to those special needs of Indian communities. Provincial salary schedules are usually applied as well as the provincial averages for such costs as travel, employee benefits and administrative overhead.

#### Related Services

Supportive family services such as Day Care and Home Maker are statutory requirements when they form part of the plan to deal with protective requirements. These services are provided by independent agencies. The cost is usually reflected in the per/diem costs charged by these organizations. In some cases, their cost will be incorporated within a comprehensive per/diem rate.

The above three elements are reflected within the data base and information systems and they will be utilized in the forecasting exercise.

#### 2) Canada Assistance Plan for the Delineation of Acceptable Services to be Funded

Indian people are citizens of Canada and of the province, territory, municipal district or

municipality in which they reside. As citizens, they pay all ordinary taxes and are expected to discharge responsibilities comparable to non-Indian persons in the communities in which they reside. Accordingly, when in need, they should be able to establish eligibility for services and benefits administered and funded by the community in which they reside if they meet eligibility requirements established for other citizens in comparable circumstances.

Acceptance of the federal government determination of federal and provincial government funding and service boundaries and responsibilities to Indian people remains contentious and is not endorsed by several provincial governments.

The Canada Assistance Act, (C.A.P.) 1966, is federal legislation which provides for agreements between Canada and the provinces for cost sharing assistance and services to people in need and to eliminate residency as a condition of eligibility for assistance. All provinces have signed agreements under Part I of the Canada Assistance Act but no provincial government has signed an agreement under Part II - Services to Indians.

The Indian and Inuit Affairs Program has used the definitions, concepts and methodology expressed in C.A.P. as the basis for the design of its social assistance and service programs to Indian people and for delineating its responsibilities for administering and funding assistance and services to Indian people residing apart from reserves and Crown lands.

It has become the accepted practice of the Indian and Inuit Affairs Program to administer and to fund only social services which could be cost-shared by federal and provincial government under C.A.P.

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3) Costing Element

As discussed in the Resourcing Standards, the costing of statutory Child Welfare services are identified in our Data Base and information systems as follows:

- Comprehensive per diem rate,
- Maintenance Cost,
- Service Cost,
- Related External Services.

As part of a signed agreement, there might be a training element. This is usually listed separately and is based on negotiation and is not a recurring cost: It is specific in amounts, and time frame. This cost is reported separately in the Data Base and Information systems. Authority for such costs is usually granted by Treasury Board as part of the authority to sign a particular agreement.