Why GAO Did This Study

Title IV-E of the Social Security Act provides federal support for foster care and adoption assistance programs. Since 2008, 5 tribes have been approved to operate their own title IV-E foster care programs, although more than 80 tribes initially expressed an interest in doing so. HHS provides development grants and technical assistance to tribes interested in establishing a title IV-E program. GAO was asked to review tribes’ experiences with title IV-E.

This report examines (1) obstacles facing tribes interested in directly operating a title IV-E program and (2) the assistance HHS has provided. GAO interviewed officials from 17 tribes, 11 of which were currently developing title IV-E programs. These tribes were selected to achieve variation in progress toward developing a title IV-E program, size of the tribe, and HHS region. While this information is non-generalizable, it provides examples of tribes’ experiences with the program. GAO also interviewed HHS and Bureau of Indian Affairs officials, and child welfare experts.

What GAO Found

Indian tribes developing title IV-E foster care programs faced resource constraints and reported challenges adopting some program requirements. According to GAO’s interviews with tribal and Department of Health and Human Services (HHS) officials, the resource constraints faced by tribes include limited numbers of staff and staff turnover. While the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) allows tribes to administer a title IV-E foster care program, it generally did not modify title IV-E’s requirements for tribes. By contrast, some other programs administered by HHS offer tribes additional flexibilities, provided they are consistent with the objectives of the program. Given tribes’ resource constraints and cultural values, adopting some title IV-E requirements has been difficult. For example, officials from 6 of 11 tribes developing title IV-E programs that GAO interviewed said that the requirement to electronically submit case-level data on all children in foster care was challenging. In addition, 7 of these 11 tribal officials reported that incorporating termination of parental rights—which severs the legal parent-child relationship in certain circumstances—into their tribal codes was challenging because it conflicts with their cultural values. HHS recognizes that termination of parental rights may not be part of an Indian tribe’s traditional beliefs; however according to the agency it lacks the statutory authority to provide a general exemption for tribal children from the requirement.

HHS provided assistance to tribes interested in directly operating a title IV-E program through its regional offices, headquarters office, and technical assistance providers. Eight of the 11 tribes GAO spoke with reported using HHS-funded technical assistance providers, including a tribally-focused center that was established after the enactment of the Fostering Connections Act. However, GAO found that there are no procedures in place to ensure that the guidance provided by HHS regional staff is consistent across offices or that the review of tribes’ draft IV-E plans is timely. To operate a title IV-E program, HHS must approve a tribe’s title IV-E plan, ensuring that it complies with program requirements. HHS does not provide its staff or tribes with examples of tribal codes or regulations that would satisfy title IV-E requirements. Regional staff may use their discretion to determine what is allowable in a tribe’s plan. HHS officials said they do not provide examples because each tribe is unique and examples for one tribe may not be appropriate for all tribes. However, officials from 6 of 11 tribes GAO interviewed said that they received conflicting guidance from HHS officials, some of them from the same HHS office. Officials from one tribe said that participating in title IV-E peer-to-peer consultations with other tribes—an activity encouraged and sponsored by HHS—can be frustrating because regional offices have provided tribes with different information. HHS officials said that inconsistencies often resulted from differing tribal circumstances rather than interpretations of federal policy. In addition, officials from six tribes GAO spoke with said HHS’s suggested revisions on their draft title IV-E plans were not provided in a timely manner. HHS headquarters officials have not provided regional staff with expected timeframes for draft title IV-E plan reviews and there is no limit on the amount of time staff may spend on the reviews. As a result, tribes may continue to have long title IV-E plan development and review periods and limited direct access to federal child welfare program funding.