



Assembly of First Nations Technical Guide:

April 1, 2022 Reforms to the First Nations Child and Family Services Program and Jordan's Principle



Background

On December 31, 2021, the Assembly of First Nations (AFN), the Government of Canada, and other Parties signed two Agreements-in-Principle (AIPs) outlining a framework toward reaching a settlement on long-term reform to end discrimination in the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle, and to pay compensation to those who have experienced discrimination in the FNCFS Program and through the federal government's narrow application of Jordan's Principle. The AFN is currently in negotiations with the Parties on the development of a Final Settlement Agreement, with agreements on compensation and long-term reform expected in 2022.

For more information on the long-term reforms to be made to the FNCFS Program and Jordan's Principle, please see the Executive Summary of the AIP at: <https://www.sac-isc.gc.ca/eng/1644518166138/1644518227229>.

While the AIP on long-term reform stipulates that a reformed FNCFS Program will begin April 1, 2023, the AFN, Canada, and the other Parties have identified a series of immediate measures that were implemented as of April 1, 2022, and which are intended to alleviate discrimination under the FNCFS Program. The Canadian Human Rights Tribunal (CHRT) affirmed the implementation of these immediate measures in the 2022 CHRT 8 consent order, released on March 24, 2022.

Impact of these Measures for First Nations Exercising Jurisdiction Under An Act respecting First Nations, Inuit and Métis Children, Youth and Families

While the reformed FNCFS Program should benefit all First Nations, not all First Nations are currently operating under the FNCFS Program, nor do all First Nations intend to do so in the future. Under the framework provided in *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act), a small number of First Nations have already begun exercising jurisdiction or are in preparation to exercise jurisdiction over child and family services (CFS).

All First Nations should benefit equally from new funding investments in FNCFS regardless of whether they are pursuing the path of self-governance or choose to remain under the FNCFS Program. For this reason, the AFN and other First Nations parties successfully advocated for the AIP to include a commitment from the Government of Canada that any First Nations exercising jurisdiction under the Act will not receive any less funding than they would have received had they chosen to remain under the FNCFS Program. The AFN will continue to hold the Government of Canada accountable to this commitment. Enhancements to the FNCFS Program will be made available to First Nations exercising jurisdiction over CFS, including those enhancements described below, retroactive to April 1, 2022, and enhancements to capital funding, retroactive to August 26, 2021, in response to the CHRT's capital order (2021 CHRT 41) which applies to the FNCFS Program. Children and youth in First Nations exercising jurisdiction under the Act who are accessing Jordan's Principle will continue to receive those services, products and supports and will continue to benefit from enhancements included in the AIP and anticipated reforms of Jordan's Principle.

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Prevention

What changes were made to prevention funding under the FNCFS Program on April 1, 2022?

First Nations began to receive funding for prevention services on April 1. Prevention services are designed to keep a child in their family home, with removals being a last resort. This funding will support prevention activities and services, such as in-home supports and parent mentoring, provided by First Nations or delegated agencies. The total on-reserve population of the First Nation will be multiplied by \$2,500 to arrive at the total prevention allocation per First Nation. This prevention cost estimate is based on the assumption that prevention should target the entire population in a given service area, not only the child population served. Canada shall fund the \$2,500 on an ongoing basis, to be adjusted annually based on inflation and population. This new prevention funding approach will replace the reimbursement at actual cost for prevention process for FNCFS agencies and the prevention funding provided under the Community Well-Being and Jurisdiction initiative.

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How was the \$2,500 per capita amount determined?

The \$2,500 per capita level of funding is based on case studies conducted by the Institute of Fiscal Studies and Democracy (IFSD) which resulted in two fundamentally different approaches to prevention programming. This ranged from a First Nation with minimal prevention programming (\$800) to moderate prevention programming (\$2,000), to comprehensive community-level programming targeted to the entire community, operating on a prevention basis (\$2,500). The \$2,500 per capita amount is considered to be the funding level necessary for agencies or communities to reasonably deliver best practices in prevention to enable First Nations children, youth, and families to thrive.

What population measure is being used to determine the per capita funding?

To determine the prevention funding amount, ISC is using the registered on-reserve or Crown land information from the Indian Registry System (IRS) as of December 31, 2021.

Who will be responsible for providing these services and who will these funds be disbursed to?

First Nations can deliver the services directly, in whole or in part, or First Nations can redirect funds to an agency or other service provider.

For First Nations served by a delegated agency: In order to reduce the risk of any service disruptions, in the interim, a portion of the \$2,500 per capita allocation will continue to be allocated to the delegated FNCFS agency that serves your First Nation. This portion will be equal to the amount of prevention funding that the agency received in the 2021-2022 fiscal year. First Nations will also be allocated a portion of the per capita funding equal to the amount they received under the Community Well-Being and Jurisdiction initiative. The remainder of new prevention funding will be allocated between the First Nation and the agency that serves them. Under this interim approach, First Nations and FNCFS Agencies have some flexibility to divide the prevention funding between them as they see fit, so long as the funds are being used to support the wellbeing of children and families.

For First Nations not served by a delegated agency: First Nations who are not served by a delegated FNCFS agency will receive the entire \$2,500 per capita amount.

What if a First Nation or service provider is not prepared to begin providing prevention services as of April 1, 2022?

First Nations and service providers will have flexibility on when they begin to provide prevention services if they are not prepared to begin doing so following the start date. The \$2,500 per capita amount presumes that the recipient First Nation has existing infrastructure in place for prevention services, such as a physical space to provide parenting classes. Where this is not the case, please reach out to the ISC Program Officer in your region to discuss ways in which your First Nation can benefit from capacity development regarding this new funding.

Will FNCFS agencies see a reduction to their current prevention funding budgets?

Pursuant to 2016 CHRT 16, ISC must not reduce agency budgets and Jordan's Principle funding. The AFN and the National Advisory Committee on First Nations Child and Family Services Program Reform (NAC) are working with ISC to ensure that no agency budgets see a reduction in their prevention funding as a result of these immediate measures. Additionally, surplus budgets from agencies/communities will not be utilized to fund this work, this will be new funding.

The AIP says that a reformed Funding Approach will be implemented in March 2023. Does this mean the \$2,500 per capita is for only one year?

No, the \$2,500 per capita is part of the reformed First Nations Child and Family Services program that will continue until it is reviewed before the end of the 5-year time period of the agreement with the parties under an agreed-upon process that will be outlined in the Final Settlement Agreement.



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Will unused prevention funds be able to be carried over to the following year?

Yes. The new funding model will enable agencies and/or First Nations to shift monies between funding envelopes and will be able to be carried forward. The AIP commits to flexible and block funding mechanisms under the reformed FNCFS funding approach. [For more information see the Executive Summary of the AIP.](#)

FNCFS Post-Majority Care

What changes are being made to post-majority care funding under the FNCFS Program on April 1, 2022?

Beginning April 1, 2022, First Nations young adults who reach the age of majority while in care have access to wrap-around services and supports up until their 26th birthday. Additional transition supports for young adults approaching their 26th birthday are being developed as well. Wrap-around supports and services are designed to assist youth transitioning to adulthood and may range from mental health supports to financial literacy, to nutrition and cooking classes.

How much funding is available for the provision of post-majority care services?

As of April 1, 2022, First Nations authorized post-majority care service providers are being reimbursed for the actual cost of providing post-majority care services through the actuals process for maintenance and protection. ISC will provide this funding at actual cost to First Nations, or if they wish, delegated agencies in the 2022-23 transition year. This process will be available until March 31, 2023. After this time, funding for post-majority care will be made available through the reformed FNCFS Program's funding formulas, policies, procedures, and agreements in an evidence-informed way to be agreed upon by the Parties in the Final Settlement agreement.

What are the eligible costs for post-majority care services?

The First Nations Parties to the class action, including the AFN, have been working with ISC to develop interim terms and conditions for the Program which will support the roll out of the immediate measures, as ordered by the CHRT. In the long-term, the terms and conditions are going to be completely re-written in accordance with the FNCFS Program reforms, set to be in place by April 1, 2023. These interim terms and conditions do not include a closed list of eligible costs under the FNCFS Program. This means that any costs which support the objectives of the Program will be considered for eligibility. To confirm if a potential expenditure is eligible for payment at actuals, please contact your regional ISC office.

How can First Nations not served by a delegated agency benefit from these post-majority services?

First Nations that are not served by a delegated agency have the option of either providing these services themselves or of working with FNCFS agencies from neighbouring communities to roll out post-majority care services.

Will First Nations youth and young adults living off-reserve have access to these post-majority care services?

The AFN is currently working with ISC to engage with the provinces and territories to advocate for their support in ensuring that First Nations on and off-reserve have access to equitable post-majority supports.

Indigenous Services Canada Cultural Competency and Anti-Racism Plan

What is the Indigenous Services Canada Cultural Competency and Anti-Racism Plan and what changes happened within ISC on April 1, 2022?

An Expert Advisory Committee will support the design of an independent expert evaluation to identify and provide recommendations to redress internal departmental processes, procedures and practices that contribute to the discrimination identified by the CHRT. These measures will be complemented by mandatory staff training, revisions in performance metrics for staff that affirm non-discrimination, and other reforms recommended by the evaluation and/or Expert Advisory Committee.



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The members of the Expert Advisory Committee will represent a broad range of expertise from Indigenous and non-Indigenous individuals, who would bring a balance of academic, organizational, and lived experience, to form a diverse and balanced committee. The Expert Advisory Committee must be established within 60 days of the issuing of 2022 CHRT 8 on March 24, 2022 (ie. before May 23, 2022). 2022 CHRT 8 also orders Canada to take reasonable measures to begin implementing the work plan.

Jordan's Principle Immediate Measures

What are the Jordan's Principle immediate measures?

The Government of Canada was ordered to assess the resources that would be required if they were to provide assistance to families and/or young adults in identifying supports for needed services of high needs Jordan's Principle recipients past the age of majority (as defined in the applicable First Nations or provincial/territorial statute). The Government of Canada was also ordered to fund research and needs assessments related to Jordan's Principle, which is discussed further in the following section.

What changes were made to Jordan's Principle as of April 1, 2022?

The needs of First Nations children and youth do not end when they reach the age of majority. As an important interim step in the right direction, 2022 CHRT 8 calls for the federal government to assess what's required to make sure that First Nations individuals with high needs are supported in this transitional period. The Jordan's Principle immediate measures are commitments to assess the possibility of making certain reforms to Jordan's Principle and what would be required to make these changes. The research and assessment on Jordan's Principle ordered in 2022 CHRT 8 may inform the reform of Jordan's Principle in the future but in the short-term there will be no changes to Jordan's Principle service delivery as a result of these projects. Jordan's Principle continues to be available to support First Nations children and youth to access the services and supports they need. The AFN is continuing to advocate to make these important reforms to Jordan's Principle a reality for First Nations children, youth, and families. The Government of Canada was ordered to consult with the Parties, including AFN, within 60 days of the order (published on March 24, 2022) to discuss what these transition supports could look like and how to build funding capacity into the approach on the long-term reform of Jordan's Principle.

Funding for Needs Assessment and Long-Term Funding Research

Beginning on April 1, 2022, the Government of Canada is required to fund four research studies related to FNCFS and Jordan's Principle Program reform to be conducted by the Institute of Fiscal Studies and Democracy.

What will be the outcomes of this research?

Phase 3: Implementing a well-being focused approach to First Nations child and family services through performance budgeting:

Through this research, 10 FNCFS agencies and 10 First Nations asserting jurisdiction under the Act, representing a diversity of contexts and experiences, will be supported to implement the new funding approach, as well as the Measuring to Thrive performance measurement framework. Updates will be provided on a monthly basis and posted on the IFSD website. The IFSD will use their experience in supporting these agencies and Nations to develop models that will assist other First Nations and agencies that might wish to transition to the new approach. Participating FNCFS agencies and First Nations will have their own financial models developed for their use in planning and advocacy (with consideration of the children, families, and communities they serve). Contributions from participating FNCFS agencies and First Nations will inform the refinement of funding and performance approaches for FNCFS.



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Under the AIP, positive adjustments will be made to the future implementation of the final settlement agreement based on the results of the IFSD's Phase 3 work.

Needs assessment regarding the real needs of First Nations not served by a delegated agency:

First Nations without agencies will be invited to participate in research beginning on April 1, 2022 to identify operations and capacity needs to inform a long-term funding approach. This work is being done to understand and cost CFS in First Nations not served by a FNCFS agency. The information and experiences shared by First Nations will help to produce cost-estimates, define wise practices, and needs. The shared data will contribute to the development of models, tools, reports, briefings, and decision-support for stakeholders.

Jordan's Principle Data Needs Assessment and Jordan's Principle Long Term Funding Approach Research:

There is a major need for a comprehensive analysis of the available Jordan's Principle data to understand the true scope and depth of the service gaps for First Nations children. The Jordan's Principle Data Assessment work will assist to identify what is required to fill these gaps. A complete understanding of what is currently being covered by Jordan's Principle is required for true equality to exist for First Nations children. For instance, analysis on the services and supports being sought and their cost is critical to forecasting expenditures within Jordan's Principle and to supporting the identification of gaps in other programs and services to fill them. The work proposed by the IFSD Jordan's Principle Data Needs Assessment and Jordan's Principle Long Term Funding Approach Research will assess these critical gaps and measure what is needed to close them. In short, the objective of this research is to understand the resources and changes required to ensure that First Nations children have access to the supports and services they need within their own communities, without having to navigate around complicated bureaucratic systems to access support.

How can my First Nation or FNCFS agency take part in this research? Why should First Nations and agencies participate?

We need your expertise and knowledge to build approaches that reflect the realities of your First Nations. If you are a First Nation not served by a FNCFS agency, the information and experiences you share will help to produce cost-estimates, define wise practices, and needs. The shared data will contribute to the development of models, tools, reports, briefings, and decision-support for stakeholders. If you are a First Nation seeking to exercise or exercising jurisdiction under the framework of the Act, you can be a research collaborator and have a CFS budget and organizational plan developed for your First Nation. If you are a First Nation served by an FNCFS agency, your agency can take part through a questionnaire or by serving as a research collaborator. Participating FNCFS agencies and First Nations will have their own financial models developed for their use in planning and advocacy (with consideration of the children, families, and communities they serve). Contributions from participating FNCFS agencies and First Nations will inform the refinement of funding and performance approaches for FNCFS. We need a diversity of voices and experiences. If you are interested in learning more, please contact Stephanie Wellman, Director of Social Development at the AFN at SWellman@afn.ca. By sharing our stories and our knowledge, we can build a future for our children in which they can thrive. The AFN, NAC, and IFSD all remain grateful to the FNCFS agencies and First Nations that have contributed and supported this work. Your participation makes this work possible.

Capital for FNCFS and Jordan's Principle

What changes are happening as a result of 2021 CHRT 41?

As a result of 2021 CHRT 41, First Nations, FNCFS agencies and First Nations-authorized Jordan's Principle service providers can access funding for the purchase and construction of capital assets that are needed to:

- support the delivery of child and family services to First Nations children on-reserve and in Yukon, including prevention services, post-majority care services, and First Nations Representative services
- provide safe, accessible, confidential and culturally- and age-appropriate spaces that are needed to support the delivery of Jordan's Principle services on-reserve, in the Northwest Territories and in Yukon, which can include space to administer those services, such as in support of service coordination
- provide First Nations Representative Services (formerly Band Representative Services) in First Nations in Ontario

Capital assets are pieces of property, buildings, spaces or vehicles that are intended for long-term use. To access funding for capital assets under this order, projects must be considered "ready to proceed." This means that the project has received approval from the First Nation and the feasibility and design work has been completed. The CHRT has also ordered ISC to provide support to First Nations and agencies to bring a project to the stage where it is considered "ready to proceed", including providing funding to conduct a capital needs assessment or a feasibility study.



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How is the remoteness of First Nations being taken into consideration under this order?

According to 2021 CHRT 41, the Government of Canada's review of capital projects for FNCFS Agencies or First Nations situated in remote areas will consider that some aspects of a project may need to be approved before full feasibility or design work is complete due to factors including, but not limited to, seasonal access to the community (e.g., availability of an ice road during the winter months only).

What about capital maintenance, such as building repairs?

FNCFS agencies may continue to seek reimbursement for building repairs through a claim on actuals as per [2018 CHRT 4](#).

Who can apply for capital funding under 2021 CHRT 41?

Funding applications to buy or build capital assets, or to carry out a needs assessment or a feasibility study, can be made by:

- First Nations agencies that deliver child and family services to First Nations children, youth and families ordinarily resident on reserve or in Yukon
- First Nations communities that deliver prevention services to children and families on reserve or in Yukon
- First Nations in Ontario that deliver First Nations Representative Services
- First Nations or First Nations-authorized service providers that deliver Jordan's Principle services to First Nations children who live:
 - o on-reserve in a province
 - o anywhere in the Northwest Territories
 - o anywhere in Yukon

In addition, funding applications to carry out a capital needs assessment or a feasibility study can be made by First Nations or First Nations-authorized service providers that deliver Jordan's Principle services to First Nations children who live on or off-reserve, anywhere in Canada.

How can I apply?

Information on how to apply for this capital funding is available on the ISC website at <https://www.sac-isc.gc.ca/eng/1644603745673/1644603776364>.

First Nations Representative Services

In 2018, the Canadian Human Rights Tribunal ordered the Government of Canada to fund the actual cost of Band Representative Services for First Nations in Ontario. Starting April 1, 2022, funding for First Nation Representative Services will now be provided to First Nations across Canada.

How much funding will be made available for First Nations Representative Services?

Funding for First Nations Representative Services in all provinces and in the Yukon will be calculated as a per capita amount of \$283 based on a First Nation's on-reserve and Crown land population or, in the Yukon, based on the total First Nation population. The funding will be allocated for a five-year period. ISC will support First Nations to develop a five-year plan to deliver these services.

What are First Nations Representative Services?

First Nation Representative Services (also referred to as Band Representative Services in Ontario) support First Nations to have a voice when children, youth, and families from their community are involved/at risk of involvement with the CFS system. First Nation Representative Services are critically important to First Nations.



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First Nation Representative Services functions include, but are not limited to:

- Serving as the main contact between a First Nation and child and family services providers;
- Exercising the rights and responsibilities of the First Nation under provincial and federal child and family services laws;
- Ensuring that child and family services providers address the real needs of First Nations children, youth, and families, including needs tied to culture, land and geography, and the effects of historical and contemporary disadvantage;
- Building and maintaining meaningful cultural, family, and community connections for children, youth, and families involved with the child and family services system;
- Facilitating the repatriation and/or reunification of children and youth in care with their family and First Nation.

Next Steps

A completely new FNCFS Program is anticipated to roll out in 2023-24. It will take an evidence-based funding approach based on the actual needs of First Nations children, youth, and families. Funding will not be fixed but rather flexible to respond to data and research findings. The approach will be supported by work with the parties to the CHRT proceeding and by the research of the IFSD. The AFN will hold engagement sessions at the national and regional levels throughout the spring and fall of 2022, with some sessions designed specifically for youth participation. These events will provide more details on the immediate measures, as well as what youth currently in care can expect once the changes take effect. These engagement sessions will also inform AFN's advocacy for the final settlement agreement for long-term reform, which is set to be finalized in 2022/23.

The long-term measures of program reform are still in negotiation. The AFN is advocating for the final settlement agreement to establish an evidence-informed and results-based funding structure which will address the root causes of the First Nations over-representation in the CFS system. These root causes include multigenerational trauma, inadequate housing, poverty, substance misuse, lack of health and social services, and other factors. Throughout the negotiating process, the AFN will continue to share updates and seek input from First Nations communities.

For additional information, please visit www.fnchildcompensation.ca and sign up to receive regular updates.