

Access to Customary Care – Proposals under the *Child, Youth and Family Services Act, 2017*

Purpose

The purpose of this document is to seek feedback from Ontarians related to the Ministry of Children, Community and Social Services' ("the ministry") **proposed** statutory amendments to the *Child, Youth and Family Services Act, 2017* (CYFSA), as well as proposed regulatory amendments to Ontario Regulations (O. Reg.) 155/18 and 156/18 under the CYFSA.

The legislative proposals outlined in this document relate to the traditional care and support of First Nations, Inuit and Métis children and youth by persons who are not their parents, known as customary care. These proposals aim to address barriers to access to customary care under the CYFSA and to ensure that the standards that govern customary care within the provincial child and family services system provide for the practice of customary care to better reflect the distinct customs of bands and First Nations, Inuit and Métis communities, including by more clearly distinguishing customary care from residential care under the CYFSA.

Please provide the ministry with your comments by email to OICYS@ontario.ca by no later than October 4, 2021.

Background

Since 2013, the ministry has engaged collaboratively with representatives of First Nations, Inuit and Métis peoples, as well as Indigenous service providers, to better understand their perspectives on improving outcomes for First Nations, Inuit and Métis children, youth and families. In 2015, these engagements resulted in approval by both Indigenous leadership and Ontario of the co-developed Ontario Indigenous Children and Youth Strategy (OICYS). The OICYS was reaffirmed in July 2020 through the ministry's Child Welfare Redesign (CWR) Strategy and continues to be the overall framework that supports all work the ministry undertakes in respect of First Nations, Inuit and Métis children, youth and families.

The CWR Strategy is a multi-year strategy to redesign the child welfare system, and is intended to shift the focus from reactionary service delivery to enhanced, community-based, prevention and early intervention-focused services to support the safety and success of children and youth. The CWR Strategy includes a distinct Indigenous approach that seeks to address the unique needs of First Nations, Inuit and Métis children, youth and families.

Priorities of the CWR Strategy's distinct Indigenous approach through the OICYS include both enhanced community control as well as access to culturally based, prevention-focused services. While both Indigenous partners and the province place great priority on the safety and well-being of Indigenous children, partners have raised questions about the province's role in ensuring that children are cared for in a safe and culturally nurturing way. Representatives of First Nations, Inuit and Métis peoples advocate for greater control over the care of children, including through the practice of customary care.

Under s. 2(1) of the CYFSA, customary care is defined as “the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child’s parent, according to the custom of the child’s band or First Nations, Inuit or Métis community.” Customary care arrangements practiced under the CYFSA frequently meet the definition of “residential care”, defined in s. 2(1) as “boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child’s parent, other than boarding, lodging or associated care for a child who has been placed in the lawful care and custody of a relative or member of the child’s extended family or the child’s community”. Likewise, customary care arrangements also often meet the definition of “foster care”, which is a type of residential care, defined in s. 2(1) of the CYFSA as the “provision of residential care to a child, by and in the home of a person who, (a) receives compensation for caring for the child, except under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, and (b) is not the child’s parent or a person with whom the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing)”. As a result, foster care licensing standards, which are rooted in promoting the best interests, protection and well being of children, will usually apply to customary care arrangements and include requirements related to:

- Caregiver screening, including requirements for police record checks and health assessments;
- Training (e.g., use of physical restraints);
- Physical space (designated spaces for living, dining, food preparation and storage and separate rooms for sleeping and bathing; heating for habitable rooms; the home and its grounds are safe and clean and any materials, equipment or furnishings located on the premises are clean and in good working order);
- Sleeping arrangements (depending on age and gender of child);
- Emergency plans (fire and emergency procedures, smoke alarms); and,
- Storage requirements (i.e., medication and firearms).

The ministry has heard from First Nations, Inuit and Métis peoples that their perspectives, worldviews and, in particular, approaches to the care of children and families, are distinct from non-Indigenous approaches in many ways. Many representatives of First Nations, Inuit and Métis peoples stress that for customary care to be truly in the custom of the community, then community standards pertaining to care practices and safety should apply to the greatest extent possible. They do not advocate for no standards, but stringent ones informed by their knowledge, local context and customs.

First Nations, Inuit and Métis peoples typically describe customary care as a traditional system of care for children and families, where all community members have a collective responsibility for the well-being of others. According to First Nations, Inuit and Métis peoples, customary care is an approach that prioritizes prevention and community-based support, so that families can live in a good way.

While defined in legislation since 1985¹, customary care has been practiced by First Nations, Inuit and Métis peoples since long before the arrival of settlers to Canada and the laws they instituted. Government policies, such as those reflected in the Residential School system and “Sixties Scoop”, that sought to assimilate First Nations, Inuit and Métis peoples, have had harmful, intergenerational impacts and contributed to mistrust, including in the sphere of child and family services.

Bands and First Nations, Inuit and Métis communities have provided the feedback that Ontario’s focus on the physical structure of the “house” is far less critical to child well-being than the care and cultural connection that a “home” can provide. Additionally, bands and First Nations, Inuit and Métis communities have expressed that their members are often discouraged from going through the licensing process to become a customary caregiver due to perceptions of the process being intrusive, and because of historical experiences with child welfare.

Customary care arrangements often involve children being cared for in their home community or with kin. This is generally seen as a preferred alternative to placing children in settings that could be far away from their home, culture and support networks.

In response to the barriers to customary care described by bands and First Nations, Inuit and Métis communities, the ministry has, under the CWR Strategy:

- Committed \$5M annually to enhance access to prevention-focused customary care. The investment helps to support access to culturally specific, community-based alternative caregiver arrangements, with the goal of reducing the overrepresentation of Indigenous children in care by supporting family wellbeing before protection concerns arise.
- Received a mandate to propose draft legislative (statutory and/or regulatory) amendments to distinguish customary care from residential care under the CYFSA, so that the practice of customary care better reflects the distinct customs of bands and First Nations, Inuit and Métis communities.

Other relevant developments that have occurred recently in the Indigenous child and family services policy sphere include the coming into force on January 1, 2020, of the federal Act - [An Act respecting First Nations, Inuit and Métis children, youth and families](#), which has two broad purposes including to:

¹ Customary care is addressed in several places in the CYFSA, with three instances having the most practical significance:

- **Section 71** provides for the granting of subsidies for customary care by societies and other entities.
- **Section 80** requires societies to make “all reasonable efforts to pursue a plan for customary care” in certain cases where a First Nations, Inuit or Métis child is in need of protection.
- **Section 112** includes requirements for societies, in cases of children in extended society care, to “make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family” through different options, one of which is a plan for customary care.

- Establish nationally applicable principles for the delivery of child and family services to Indigenous children and families, which pertain to the best interests of the child, cultural continuity and substantive equality; and,
- Affirm the rights and jurisdiction of First Nations, Inuit and Métis peoples in relation to child and family services.

Description of Proposals

The proposals outlined in this document are intended to establish mechanisms that would allow for the practice of customary care to better reflect the distinct customs of bands and First Nations, Inuit and Métis communities, address barriers to access and provide more care options for children close to their home, culture and support networks.

Within the following sections is a brief description related to each of the proposals the ministry is considering.

Case-Specific Exemptions from Licensing Requirements

The ministry is considering the option of creating a mechanism by which a licensee may be exempted from requirements that otherwise would apply to a child receiving residential care that is also receiving customary care.

This mechanism could require that certain pre-exemption criteria are met, for example that:

- The licensee requests the exemption; and,
- Provides information to indicate that the exemption may be reasonably necessary to ensure the child receives care in the custom of the community.

If these criteria are met, there may be a consultation stage involving discussions about the proposed exemption among:

- The licensee;
- The children's aid society (the "society"), if the society is not the licensee;
- The child's band or First Nations, Inuit or Métis community; and,
- The ministry.

Additional requirements may include that:

- The child's band or First Nations, Inuit or Métis community attests that the exemption is reasonably necessary to ensure that the child receives care in the custom of that band or First Nations, Inuit or Métis community; and,
- Both the licensee and the child's band or First Nations, Inuit or Métis community attest that the customary care placement will offer the same or greater level of safety and support for the child's well-being as if the exemption were not granted.

The proposed statutory or regulatory provision would specify the mechanisms by which such exemptions could be granted.

Recognition and Application of Community Standards

The ministry is considering proposing amendments that would provide for written community standards developed by a band or First Nations, Inuit or Métis community to apply in place of some or all of the requirements placed on residential licensees in cases where a child who is a member of or identifies with that band or First Nations, Inuit or Métis community is being cared for in customary care.

This proposal would involve these written community standards being formally affirmed or ratified by the band or First Nations, Inuit or Métis community.

Written community standards could be required to meet high-level minimum requirements, such as:

- Categories of requirements that community standards must address, in alignment with applicable provincial requirements, including the approval and training of customary caregivers, requirements for the physical care space, reference/background checks, and other areas; and,
- Principles that community standards should consider, such as the custom and norms of the band or First Nations, Inuit or Métis community and the best interests of the child.

Expanding the Customary Care Subsidy to Include Parents

The ministry is considering ways to expand access to the customary care subsidy, which is currently authorized under section 71, including proposing amendments to the Act or regulations. The purpose of these proposed legislative amendments, if passed, is to provide for the parents of a child receiving customary care to receive, where appropriate, financial support from a society or entity to address financial needs that may create challenges with being reunited with their child.

Conclusion

These proposals aim to expand access to customary care and provide more culture-based care options so that more children who would benefit from or require alternative caregiver arrangements can remain close to their communities, culture and support networks. They also seek to provide supports to parents, including through potential financial resources, to address barriers to family reunification, where a child has been placed in a customary care arrangement. Beyond the legislative amendments proposed above, the ministry is also working with sector partners to pursue broader changes to applicable funding policy and licensing processes to address further barriers to the provision of customary care. This includes potential changes to provide for a greater participatory role for bands and First Nations, Inuit and Métis communities in the licensing inspection and renewals process.

All interested parties are encouraged to provide feedback on the proposals in this document. The ministry values the unique and diverse perspectives from children and youth, families, representatives of First Nations, Inuit and Métis peoples, Indigenous service providers and broader sector partners.

Please provide the ministry with your comments by email to OICYS@ontario.ca no later than October 4, 2021.

Please note that you will not receive a formal response to your comment. The ministry will review all feedback received.

Thank you for taking the time to review this document and provide feedback.