



February 23, 2024

Cabinet Secretary Teresa Casados
New Mexico Children, Youth, and Families Department

Cabinet Secretary Kari Armijo
New Mexico Human Services Department

Tara Ford
Kevin S. Plaintiffs' team

Via Electronic Mail

**Re: *Kevin S., et al. v. Blalock et al.*
Co-Neutrals' Corrective Action Plan (CAP) Implementation Memorandum**

On June 30, 2023, the Parties to *Kevin S., et al v. Blalock* signed a negotiated Corrective Action Plan (CAP)¹ that includes strategies deemed necessary to implement the *Kevin S.* Final Settlement Agreement (FSA).² Specifically, the CAP "...sets forth the commitments that CYFD and HSD agree to undertake to come into compliance with the Agreement between the Parties and to ensure that children currently in state custody are able to benefit from the State's commitments as outlined in the Agreement." Additionally, "[t]he Parties have jointly agreed that the commitments outlined in the CAP are necessary and will be undertaken in the time set forth in the CAP to improve the State's ability to comply with its commitments. The Parties agree that this CAP shall expire on January 5, 2024."

This memorandum was prepared by the *Kevin S.* Co-Neutrals to provide information on the State's implementation of select CAP commitments for which the State has provided data and/or information to the Co-Neutrals. The Co-Neutrals have prepared this memorandum to ensure that certain relevant and current information is available to the Parties to inform their ongoing discussions about progress in *Kevin S.*

The preliminary analyses in this memorandum are based on data provided by CYFD and HSD. The Co-Neutrals gathered additional information during discussions with the Parties, key stakeholders, and CYFD staff during meetings in New Mexico in September 2023 and January 2024. The Co-Neutrals do not make any judgments regarding FSA Performance Standard achievement within this memorandum; those judgments are reserved for the Co-Neutrals' Annual Report, which is due on November 15, 2024. Additionally, as the data analysis included in this memorandum is based upon preliminary data submissions by the State, most data have not yet

¹ The *Kevin S.* CAP can be found [here](#).

² The *Kevin S.* FSA can be found [here](#).

been validated by the Co-Neutrals. Wherever possible, the Co-Neutrals in this memorandum used methodologies consistent with the approved Data Validation Plan (DVP),³ although some differences between the structure and content of the preliminary data and the State's annual data prevented uniform application. Wherever methodologies varied, this memorandum describes the limitation that led to the discrepancy and provides detail of the approach applied in this analysis.

In this memorandum, the following CAP provisions are discussed:

- CYFD Workforce Caseloads (FSA BTO10)
- Family Based Placements (FSA BTO6)
- Treatment Foster Care (FSA BTO6)
- Behavioral Health Services (FSA DTO3)
- Critical Incident Review (FSA BTO2, 3, 4)
- Joint Powers Agreement and Tribal Resources (FSA Appendix C)
- Well-Child Visits (FSA DTO4)
- Data Submissions

In each section, the Co-Neutrals summarize the CAP commitments and provide the most recent data available to assess progress on that commitment.

For a number of CAP commitments – for example, including but not limited to, implementation of pilots for coordinated action within local communities and follow up to the Appendix C Tribal Listening Session – the State and/or Co-Neutrals have previously reported information related to implementation with the Parties; thus, discussion of these are not included in this memorandum.

1. CYFD Workforce Caseloads (FSA BTO10)

CAP Commitments:

- a. By December 31, 2023, no Investigation Case, Permanency Planning, In-Home Services, or Placement worker will have over 200% of the applicable caseload standards documented in the 2023 Data Validation Plan approved by the Co-Neutrals, including trainees with graduated caseloads.
- b. By December 31, 2023, no supervisor will be carrying any cases.
- c. Monthly data reports with data elements agreed to by the Co-Neutrals will be made available to Co-Neutrals, which the Co-Neutrals may validate.

³ The Kevin S. DVP can be found [here](#).

Data and Discussion:

The State provided the Co-Neutral team with a list of all individuals assigned as primary worker on at least one case as of January 5, 2024. The DVP defines case-assignable workers as, “staff with any of the following titles – Investigation Case Worker, Permanency Planning Worker, In-Home Services Provider, or Placement Worker – who have completed New Employee Training (NET) and are eligible for case assignments.”⁴ Individuals with supervisory and managerial titles are not case-assignable, nor are staff with titles such as “Investigations Case Aide,” “Kinship Specialist,” and other positions that do not typically require case-carrying duties.⁵

As defined in the CYFD Workforce Development Plan (WDP),⁶ Investigations Case Workers may be assigned as primary workers for a maximum of 12 investigations; Permanency Planning Workers (PPW) for a maximum of 15 children; In-Home Services Workers for a maximum of eight cases; and Placement Workers for a maximum of either 15 adoption cases, 20 licensed families, or 15 home studies.

The WDP also prescribes graduated caseloads for case-assignable workers who have recently completed NET, such that the maximum number of investigations or permanency cases an individual may be assigned as a primary worker depends on the number of months since the worker completed NET.^{7,8} Per the methodology agreed upon in the DVP, the applicable caseload standard for individuals with mixed caseloads weights each case according to its type (e.g., an investigations case counts as one-twelfth or 8% of the standard, a child in a permanency case counts as one-fifteenth or 7% of the standard, and so on).

⁴ DVP p. 6.

⁵ DVP pgs. 99-100.

⁶ CYFD's WDP can be found [here](#).

⁷ The State agreed that in the first two months after completing NET, a worker cannot be assigned as primary for any investigation case but can be assigned as primary for up to five permanency cases. In the third and fourth months after NET, a worker can be assigned as primary for up to three investigations cases or eight permanency cases. In the fifth and sixth months after NET, a worker can be assigned as primary for up to six investigations cases or 12 permanency cases. After the sixth month following NET completion, a worker is eligible for full caseloads. There is no graduated caseload standard for placement or in-home services.

⁸ The data the State submitted did not include a NET completion date for 268 of the 364 individuals assigned as primary on at least one case. Of these 268, 200 are in case-assignable roles. Individuals in case-assignable roles are only eligible for case assignment after completing NET, and the graduated caseload period is calculated from the NET completion date. Therefore, the Co-Neutrals cannot determine with certainty which and how many primary cases an individual in a case-assignable role is eligible to carry without knowing the date of NET completion.

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According to data submitted by CYFD,⁹ there were 364 CYFD staff assigned as a primary worker to at least one case as of January 5, 2024.¹⁰ As summarized in Table 1:

- **23 percent of these individuals had caseloads compliant with the applicable caseload standards as defined in the CYFD WDP;**
- **34 percent had caseloads above the applicable standard, including 19 percent (70) of case-assignable workers whose caseloads were above 200 percent of the standard, the commitment set forth in the CAP.¹¹**

⁹ The State submitted data from three sources. Primary case assignments for January 5, 2024 were from FACTS data (CYFD's system of record). The position titles and start dates of individuals were from CYFD's Human Resources system (SHARE). NET completion dates for individuals were from Cornerstone (an online training platform). The State completed a name match to link the SHARE and Cornerstone data to the FACTS assignment data. The State was not able to find a current match in SHARE for 15 workers who were assigned as primary on at least one case on January 5, 2024; in the data submitted to the Co-Neutrals, six individuals were listed as "Termination," four were listed as "No longer with Agency," two as "Temp," and three as "Not found."

¹⁰ Excludes 15 workers who were assigned as primary workers but did not appear in CYFD's Human Resources system (SHARE) as current staff on January 5, 2024.

¹¹ For this analysis, the Co-Neutrals assumed that case-assignable workers missing a NET completion date who were hired in 2021 or later and did not have a senior job title (e.g., "Investigations Senior Case Worker" or "Permanency Planning Senior Worker") (n = 81) had not completed NET and were thus ineligible to carry cases. If a case-assignable worker missing a NET completion date had a senior job title (n = 79), or they had a non-senior job title but were hired before 2021 (n = 40), they were assumed to be eligible to carry a full caseload. The year 2021 was selected as the cutoff for these assumptions because in 2021 the DVP was finalized, and the Co-Neutrals and the State reached agreement on caseload standards and the commitment that workers needed to complete NET before being assigned any cases.

Table 1: Count of Individuals Assigned as Primary on Any Case, by Compliance with Caseload Standard¹²

| | N | % |
|----------------------------------------------------|------------|------------|
| Individuals assigned as primary on any case | 364 | |
| Total caseload compliant w. standard | 82 | 23% |
| 0-50% | 33 | 9% |
| 51-100% | 49 | 13% |
| Total caseload above standard | 124 | 34% |
| 101-200% | 54 | 15% |
| 201-400% | 54 | 15% |
| +400% | 16 | 4% |
| Ineligible for assignment | 158 | 43% |
| Ineligible - new hire (with NET) | 4 | 1% |
| Ineligible - hired after 2020 (no NET) | 81 | 22% |
| Ineligible - role | 73 | 20% |

Source: Analysis of data submitted by CYFD on January 12, 2024.

Forty-six (13%) of the 364 individuals assigned as primary worker on at least one case on January 5, 2024 were supervisors, 27 others were in a non-case-assignable role,¹³ and another 81 (22%) appear to be ineligible to carry cases because there was no record in the submitted data that they completed NET.¹⁴ Another four individuals were assigned as primary worker on at least one investigation, but had completed NET within the two months before January 5, 2024, and were therefore ineligible for case assignment per the State's graduated caseload standard.

¹² This table reflects the analytic assumptions described in footnote 11. To assess the sensitivity of findings to the specific assumptions, the Co-Neutrals calculated compliance using a range of assumptions. Under the most stringent assumptions – that individuals with no record of NET completion who were hired after 2020, regardless of their job title, are ineligible to carry cases – 20 percent of individuals had caseloads compliant with the standard, while 27 percent had caseloads above the standard, including 16 percent whose caseloads were above 200 percent of the standard. Under more flexible assumptions – that all individuals with missing NET dates completed NET on their date of hire – 32 percent of individuals had caseloads compliant with the standard, while 46 percent had caseloads above the standard, including 25 percent whose caseloads were above 200 percent of the standard.

¹³ Supervisory and managerial titles are not case-assignable, nor are titles such as “Investigations Case Aide,” “Kinship Specialist,” and other positions that do not typically require case-carrying duties.

¹⁴ See discussion in footnote 11.

The State has reported making significant progress addressing issues with the quality of its caseload data. The Co-Neutrals confirmed this progress during interviews with CYFD staff during site visits to eight county CYFD offices across New Mexico in January 2024, but some issues remain. For example, 84 cases had no primary worker assigned on January 5, 2024 in the data submitted, and 15 individuals assigned as primary workers did not appear to be current CYFD employees (assigned as primary workers for a total of 141 cases).¹⁵ When the Co-Neutral team reviewed reported caseloads with some CYFD staff during interviews in January 2024, the results were mixed. Some staff agreed on reported caseload assignments, and others reported meaningful discrepancies between their understanding of their caseloads and the counts reflected in FACTS. Additionally, some supervisors and managers reported that they were assigned to work on cases as the primary worker but those assignments were not reflected in FACTS.

2. Family-Based Placements (FSA BTO6)

CAP Commitments:

- a. In five high-needs counties (Bernalillo, Dona Ana, Santa Fe, San Juan, and Chavez/Eddy), CYFD will immediately assign one placement staff to focus exclusively on recruitment until at least September 30, 2023. The State will maintain its dedicated public staff in the 5 designated counties at least until the private contractor has fully ramped up its capacity in those 5 designated counties.
- b. CYFD will enter into contracts with at least one private provider for resource family recruitment by September 30, 2023 to focus on foster home recruitment and retention with specific capacity focused on growing new foster homes in each county throughout the State.
- c. CYFD will provide Co-Neutrals with quarterly statewide data on gain/loss of non-relative licensed resource homes. Details of these data, including quarterly date ranges and submission deadlines, will be agreed upon by the Co-Neutrals and the State. CYFD will collect and assess the data by county and will provide data by county to the Co-Neutrals.

¹⁵ See discussion in footnote 9.

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Data and Discussion:

CYFD has provided the following data related to resource home gains and losses between June 30, 2023 and November 30, 2023. These data have not been validated by the Co-Neutrals; validated data will be included in the Co-Neutrals' next Annual Report.¹⁶

During the five-month period of July 2023 to November 2023, CYFD reports that the agency licensed 32 new non-relative resource homes and 161 relative homes, for a statewide total of 193 resource homes. During the same period, the State reports 228 resource homes (both relative and non-relative) were discontinued, representing a net loss of 35 homes. The number of newly licensed and discontinued relative resource homes is relatively flat – 161 new and 169 closed. The number of new non-relative resource homes (32) is nearly half the number of non-relative resource homes that discontinued their license (59). See Table 2 for county-by-county detail on discontinued and new resource homes.

¹⁶ CYFD reports that valid data related to the exact dates providers discontinue providing placement services is inconsistently documented. For example, workers may take steps to inactivate a license when a provider discontinues placement services or the license may lapse without a renewal.

**Table 2: Number of Discontinued and New Non-Relative and Relative Resource Homes
June 30, 2023 – November 30, 2023**

| County | Discontinued | | | Newly Licensed | | |
|------------------|--------------|---------------|------------|----------------|---------------|------------|
| | Foster Care | Relative Home | Total | Foster Care | Relative Home | Total |
| Bernalillo | 14 | 31 | 45 | 9 | 56 | 65 |
| Chaves | 0 | 5 | 5 | 1 | 7 | 8 |
| Cibola | 0 | 4 | 4 | 0 | 4 | 4 |
| Colfax | 3 | 2 | 5 | 0 | 2 | 2 |
| Curry | 2 | 3 | 5 | 2 | 7 | 9 |
| De Baca | 0 | 1 | 1 | 0 | 0 | 0 |
| Dona Ana | 8 | 16 | 24 | 4 | 13 | 17 |
| Eddy | 1 | 11 | 12 | 1 | 10 | 11 |
| Grant | 0 | 2 | 2 | 0 | 1 | 1 |
| Lea | 6 | 17 | 23 | 3 | 4 | 7 |
| Lincoln | 3 | 0 | 3 | 0 | 0 | 0 |
| Los Alamos | 0 | 0 | 0 | 0 | 1 | 1 |
| Luna | 0 | 4 | 4 | 1 | 0 | 1 |
| McKinley | 2 | 3 | 5 | 2 | 9 | 11 |
| Mora | 0 | 2 | 2 | 0 | 0 | 0 |
| Otero | 4 | 3 | 7 | 1 | 4 | 5 |
| Quay | 0 | 0 | 0 | 0 | 2 | 2 |
| Rio Arriba | 0 | 5 | 5 | 0 | 1 | 1 |
| Roosevelt | 1 | 4 | 5 | 0 | 2 | 2 |
| San Juan | 1 | 12 | 13 | 1 | 6 | 7 |
| San Miguel | 0 | 6 | 6 | 2 | 3 | 5 |
| Sandoval | 6 | 7 | 13 | 1 | 3 | 4 |
| Santa Fe | 1 | 9 | 10 | 1 | 6 | 7 |
| Sierra | 1 | 0 | 1 | 0 | 2 | 2 |
| Socorro | 1 | 0 | 1 | 0 | 4 | 4 |
| Taos | 1 | 2 | 3 | 0 | 2 | 2 |
| Torrance | 1 | 3 | 4 | 0 | 1 | 1 |
| Valencia | 3 | 17 | 20 | 3 | 11 | 14 |
| Statewide | 59 | 169 | 228 | 32 | 161 | 193 |

Source: Data provided by CYFD; data have not been validated by the Co-Neutrals

To increase capacity and focus on resource home recruitment and retention, the State committed in the CAP to assign one placement staff in Bernalillo, Dona Ana, Santa Fe, San Juan, and Chavez/Eddy to focus exclusively on recruitment from July 2023 until at least September 30, 2023. In September 2023, the Co-Neutrals met with Placement workers in two of these county offices and no one interviewed in either office was able to identify a Placement worker whose sole, or even primary, responsibility was resource home recruitment. Staff reported that due to vacancies

and the workload of other staff in their units, that in addition to recruitment, they had other substantial assignments such as completing adoption disclosures, providing training for resource parents, and supervising children who were placed in the CYFD office.

Per the CAP agreement, in July 2023, CYFD reported that they executed a contract with a private contractor to develop recruitment and retention strategies to increase the number of family-based placements throughout the state. The contractor has proposed a plan for a “spider-web networking” model that includes holding house meetings to use word-of-mouth advertising to generate applicants, and is developing a mobile app to assist with placement matching and resource parent support. The State reported that it expects to launch this model in one county in February 2024.

The contractor also reported meeting with County Based Recruitment Teams and other CYFD statewide and regional Placement staff to discuss general recruitment, targeted recruitment, support, and retention of resource parents.

Despite the still-urgent need to recruit additional resource parents, **the Co-Neutrals are unable to confirm that specific capacity focused on growing new resource homes in each county throughout the State has been added pursuant to the CAP commitments.** In fact, in the eight counties visited by the Co-Neutrals in January 2024, CYFD appears to have lost ground and staff reported that they do not have dedicated time and resources for this work. Implementation of county-based recruitment plans was not well organized or proactive. CYFD staff repeatedly and consistently reported that when resource family recruitment is discussed, it is during ad-hoc meetings among existing investigative, PPW, and Placement staff at the county offices as an additional piece of their work. Staff pervasively reported that there is no funding available for resource family recruitment activities. The acute shortage of resource families has led the State to place babies and infants at the Bernalillo County Receiving Center – some for weeks – reflecting a significant and unacceptable deficiency in the pool of available resource homes.

3. Treatment Foster Care (FSA BTO6)

CAP Commitments:

- a. When a child is recommended for TFC, including but not limited to a recommendation from a mental health provider or a request from IPP team, CYFD will submit the information to the MCO to confirm medical necessity by a prior authorization. The MCO care coordinator will document such activity appropriately in the child’s file kept by the MCO pursuant to the obligations as outlined in Section 4.4 of the Medicaid Managed Care Organization Service Agreement. See also LOD 69-1, describing new obligations under section 4.12.15. The Parties agree that the determination (approval/denial/modification/reduction/delay) will be tracked by

CYFD and HSD and that the time (number of days) between approval and treatment foster care services beginning will be tracked.

- b. Aggregate and child-specific level data for the following on a quarterly basis (data will include the case and person ID, date of birth, date of request/activity or disposition decision and notice provided) will be provided to the Co-Neutrals.

Data and Discussion:

Pursuant to the CAP, the State instituted new processes and procedures for managed care organization (MCO) care coordinators to seek and secure Treatment Foster Care (TFC) placements for children. These procedures are outlined in LOD #100¹⁷ (effective August 14, 2023) which includes the following:

- When a child is recommended for TFC, CYFD will submit the referral packet and current assessment to the MCO for medical necessity review and pre-approval.
- In response, the MCO sends the pre-approval notification with the medical necessity determination back to CYFD.
- The MCO care coordinator assigned to the child has the responsibility for coordinating and obtaining TFC services for the child, and will document all activities in the child's file.
- Any denials, reductions, or modifications for TFC service requests will be reviewed by the Medical Director at the MCO, and the Medical Director's decision will be sent to the CYFD and HSD Cabinet Secretaries.
- If TFC services are not authorized by the MCO, HSD, and/or CYFD, the State will identify alternative services for the child within five days.

The MCOs are required to collect data related to this process and the results.

Data submitted by HSD¹⁸ indicate that between August 15, 2023 and December 31, 2023, **CYFD sent referrals to MCOs for TFC services for 23 children, and five (22%) of these children were ultimately placed in TFC.** There were an additional 10 requests for reauthorizations of TFC services for children who were already in a TFC placement to authorize them to remain in their placement as the initial authorizations were time limited; two of these were for two of the five children who received referrals for new TFC services and were ultimately placed in TFC in the period. **All 10 of these reauthorization requests were approved.**¹⁹ See Table 3 for a summary.

¹⁷ LOD #100 can be found [here](#).

¹⁸ The summary presented here is based on the unvalidated data the Co-Neutrals received from HSD and thus may not be a comprehensive view of TFC services in the third and fourth quarters of 2023. It is possible that referrals and placements took place that are not reflected in the submitted data.

¹⁹ The data submitted by the State do not describe why reauthorizations were necessary for these placements. Two of the reauthorizations were requested by CYFD within a month of the initial placement. For the other eight reauthorizations, the data did not include the date of the initial referral for TFC services or the initial placement.

Among the 18 children who were referred and not placed in TFC, MCOs sent referrals to an average of seven TFC agencies per child. HSD reports that the TFC agencies took an average of six days to respond to referrals. Agencies denied 84 percent of these referrals, and no response was recorded by the MCO to the remaining 16 percent. The most common reason for the TFC agencies to deny placement as documented by the MCOs was the lack of an appropriate treatment match (74% of denied referrals). There were no substantial differences in the response trends between the three MCOs.

Table 3: Summary of Children Referred for New or Reauthorized TFC from August 15, 2023 to December 31, 2023

| | |
|-----------------------------------------------------------------------------------------|-----------------|
| Total number of children referred for new or reauthorized TFC services | 31 |
| Children for whom CYFD submitted <i>new</i> requests for TFC services | 23 |
| <i>Children placed in TFC services</i> | <i>5 (22%)</i> |
| Avg. number. of days between the MCO's referral to TFC agency and start of TFC services | 16 |
| <i>Children not placed in TFC services</i> | <i>18 (78%)</i> |
| Avg. number of TFC agencies to which MCO sent referrals for a child | 7 |
| Avg. number. of days from MCO referral to TFC agency response | 6 |
| Referrals with no recorded response from agency | 20 (16%) |
| Referrals denied (denied reason below) | 104 (84%) |
| No appropriate treatment match | 77 (74%) |
| No available space | 15 (14%) |
| Other ²⁰ | 7 (7%) |
| No reason given | 5 (5%) |
| Children in TFC placements who received a <i>reauthorization</i> of TFC services | 10* |

Source: Analysis of data submitted by HSD on December 12, 2023 and January 31, 2024.

* Includes two of the 23 children for whom CYFD submitted new requests for TFC services (their new services began and were reauthorized within the period in question) and eight additional children who received reauthorizations for existing services.

Although required by the CAP, the State did not provide the Co-Neutrals with quarterly data on the total number of TFC homes. In information provided by CYFD to San Juan community pilot members in February 2024, CYFD reports that as of mid-January 2024, there were nine active TFC providers with a total of 189 TFC homes statewide. This data has not been validated by the Co-Neutrals.

The Co-Neutrals spoke with four TFC providers in late 2023 to discuss current strengths and challenges in providing TFC services. They all expressed concerns with the shrinking capacity of

²⁰ Such as "Age criteria not met" or "Clinical criteria not met."

this service across the state and were unable to identify specific strategies that the State was implementing to prevent further loss. Themes from these conversations are bulleted below:

- Similar to CYFD, TFC providers are also experiencing challenges in recruiting new resource home providers, and they have lost previously licensed TFC providers due to reported challenges in working with CYFD.
- In order to support more TFC homes, private agencies report needing additional capacity and staffing within their agencies, specifically treatment coordinators and therapists.
- Placements in TFC are based on whether the service is clinically appropriate for the child and if there is a therapeutic match with an available home. Providers report that they decline placement if they do not have a home that is a therapeutic match with the child. However, providers express that if there were more TFC homes, there would be a larger pool from which to match children with an appropriate and available home.
- Lack of available and supportive community-based services in rural communities throughout the state was cited as a challenge to TFC placements. Agencies indicated TFC families are hesitant to accept children with challenging needs and behaviors if they do not have the supports necessary to successfully care for the child.
- Agencies cited interpretation and application of the Every Student Succeeds Act (ESSA)²¹ as a significant roadblock to finding TFC placements for children. Providers and other stakeholders report that when a therapeutic match is identified, it could be outside of the transportation zone of the child's school of origin and require significant transportation support, resulting in the home not being selected as appropriate. Despite many reported meetings among CYFD and providers to address and resolve this issue, there has not been any reported progress.

4. Behavioral Health Services (FSA DTO3)

CAP Commitments:

- a. HSD and CYFD will double the number of High-Fidelity Wraparound (HFW) sites from 10 to 20.
- b. HSD and CYFD will double the number of HFW facilitators from 26 to 52.
 - a. It takes six months to train HFW facilitators. HSD and CYFD will have 26 additional facilitators in the training pipeline by January 1, with credentialing expected in the first quarter of 2024.
- c. On October 1, 2023, HSD and CYFD will provide the Co-Neutrals and the Plaintiffs with: 1) facilitator training tracking logs to reflect HFW facilitators in

²¹ NM's State Plan for the Every Student Succeeds Act can be found [here](#).

training, and 2) a Medicaid provider enrollment report to reflect the number of enrolled HFW providers.

- d. [HSD and CYFD will provide the Co-Neutrals and the Plaintiffs with] a final report [on HFW] to be provided on January 15, 2024 reflecting the status as of January 1, 2024.

Data and Discussion:

The State provided the following data and materials regarding the expansion of High-Fidelity Wraparound (HFW) services between July 1, 2023 and December 31, 2023: facilitator training logs as of October 1, 2023 and January 1, 2024; lists of HFW providers enrolled and active with Medicaid as of October 1, 2023 and January 1, 2024; and information on facilitator training and certification requirements.

According to data provided by the State, there are 11 active HFW sites in New Mexico as of January 1, 2024, operated by nine total HFW providers. In terms of trained facilitators, there are 35 certified HFW facilitators as of January 1, 2024, with three additional Facilitators-in-Training expected to be certified by the end of the first quarter of 2024. Seventeen additional HFW Facilitators-in-Training are still completing their certification training, which generally takes between six months to one year to complete. Facilitators-in-Training are able to provide HFW services to families under the supervision of a HFW coach prior to being certified after completing some of the required foundational training.

To collect additional information regarding the State's expansion of HFW, the Co-Neutrals spoke with various stakeholders who have experience with the service, including multiple HFW agencies, CYFD staff, staff from the NMSU Center of Innovation (COI), and resource parents. Many providers and staff spoke about the challenges faced due to a lack of available and appropriate staff to hire and train to provide HFW. HFW requires a lengthy training and certification process, and with the current turnover rates behavioral health providers are experiencing, there are concerns about the sustainability of training staff who in turn leave the agency within a short period of time. It was also shared that some providers have difficulty accessing training when they hire new staff, as new staff may wait weeks or longer before being able to begin the training process. The delays in access to training and staff costs that cannot be billed for hired staff who are waiting for training or are in the training/certification process are an additional financial burden for HFW provider agencies.

Providers also expressed frustration with the roll-out process once HFW became a Medicaid-billable service, and many had concerns regarding the change in requirements to be a HFW coach. Specifically, the change requiring a Bachelor's degree for HFW coaches was identified as a barrier to expanding HFW services. Providers in different areas of the state expressed disappointment over the lack of referrals from CYFD, and noted that there appears to be staff confusion regarding

the differences between HFW and the newly implemented Individualized Planning Process (IPP) Meetings conducted by CYFD.

5. Critical Incident Review (FSA BTO2, 3, 4)

CAP Commitments:

- a. CYFD will provide the Co-Neutrals with written notice via email within one (1) business day of notification to the department of any critical incident regarding a child placed in hotels, motels, offices, out-of-state, in shelters, or in congregate care in New Mexico.....The Co-Neutrals will provide information quarterly to Plaintiffs which will at minimum detail numbers of CIR by type.

Data and Discussion:

The CAP defines critical incidents as any situation that occurred for a child placed in a hotel/motel, CYFD office, out-of-state facility, shelter, or congregate care facility in New Mexico that results in either a 911 call, an allegation of harm, an allegation of abuse and/or neglect, an allegation of restraint/seclusion, or a change in licensure of a facility. The State is required to notify the Co-Neutrals in writing that a critical incident occurred within one business day of the incident.

The State provided the Co-Neutrals with documentation of 58 Critical Incident Reports (CIRs) for critical incidents that occurred between July 1, 2023 and January 5, 2024.²² The Co-Neutrals previously provided two quarterly detailed summaries of the CIRs received to the Parties; the summaries are attached to this memo with redactions to protect child confidentiality.

The 58 CIRs reviewed by the Co-Neutrals involved 29 unique children, with many children involved in multiple incidents. The majority of CIRs (49 out of 58, or 84%) document incidents that occurred at a CYFD office (including the Receiving Center), with the remaining incidents occurring in a kinship home, out-of-state residential treatment center (RTC), and in-state RTC. Most critical incidents were 911 calls (45 out of 58 CIRs, or 76%) made regarding an incident at a CYFD office.²³

²² Most of these critical incident notifications were provided by CYFD to the Co-Neutrals within a short time following the incident. During the Co-Neutrals' case record reviews of children's placements in offices and shelters in CY2023, the Co-Neutral team identified seven possible critical incidents documented within children's case records for which a CIR report was not initially submitted by CYFD to the Co-Neutrals. The Co-Neutrals requested information from the State regarding these incidents on February 8, 2024, and as of February 22, 2024, CYFD has submitted two additional CIRs based on their review of children's records; these critical incidents are included in the data analysis in this section. The Co-Neutrals continue to await a response on the other five potential critical incidents.

²³ Two CIRs categorized as 911 calls were for children staying in either a kinship home or an in-state RTC. All other CIRs marked as 911 calls occurred for children housed in a CYFD office. One CIR was categorized as both a 911 call and an allegation of harm (toward staff).

Table 4 outlines the CIRs reviewed by the Co-Neutrals.

Table 4: Summary of Critical Incidents Reviewed by the Co-Neutrals

| Month Critical Incident Occurred | Type of Critical Incident Reviewed | | | | | |
|----------------------------------|------------------------------------|---------------------------------------------|-----------------------------------------------|----------------------------------------------|----------------------------------------------|-----------|
| | Number of 911 calls | Number of Allegations of Harm ²⁴ | Number of Allegations of Abuse and/or Neglect | Number of Allegations of Restraint/Seclusion | Number of Changes in Licensure of a Facility | Total |
| July 2023 | 5 | 0 | 0 | 0 | 0 | 5 |
| August 2023 | 7 | 1 | 1 | 1 | 0 | 10 |
| September 2023 | 12 | 2 | 0 | 2 | 0 | 16 |
| October 2023 | 6 ²⁵ | 0 | 0 | 1 | 0 | 7 |
| November 2023 | 5 | 2 | 0 | 1 | 0 | 8 |
| December 2023 | 9 | 0 | 0 | 0 | 0 | 9 |
| January 2024 | 1 | 1 | 0 | 1 | 0 | 3 |
| Total | 45 | 6 | 1 | 6 | 0 | 58 |

Source: CIRs provided by CYFD and case records reviewed by the Co-Neutrals

6. Joint Powers Agreement and Tribal Resources (FSA Appendix C)

CAP Commitments:

- By September 1, 2023, CYFD will make good faith efforts to engage and negotiate with five N/P/Ts who are interested in a new or revised JPA, with initial outreach being made to the 5 N/P/T with the most children in state custody.
- By December 31, 2023, CYFD will make good faith efforts to initiate engagement and negotiate with any remaining N/P/Ts who wish to engage in discussions on JPAs. Any current efforts CYFD has taken to collaborate, communicate, and negotiate with N/P/Ts on various matters, including but not limited to JPAs, will continue.
- With the input from representatives from each N/P/T who are interested, CYFD will engage, negotiate, and develop a written agreement template, regarding N/P/Ts access to financial resources, including Title IV-E funds by November 30, 2023.

²⁴ Five out of six allegations of harm appear to be alleged harm against staff, not against the identified child in each CIR reviewed.

²⁵ One CIR was categorized as both a 911 call and as an allegation of harm (toward staff). For the purposes of this review, it is counted here only in the 911 category.

Discussion:

The CAP states that CYFD will inform the Co-Neutrals of the status of Joint Power Agreements (JPAs) with the explicit knowledge and permission of those Nations, Pueblos, and Tribes. CYFD has informed the Co-Neutrals that they have received permission from three Pueblos to share this information. As of this writing, no new JPAs have been executed.

Between July and December 2023, CYFD reports that the Office of Tribal Affairs (OTA) met at least once with 10 separate Nations, Pueblos, and Tribes to discuss JPAs.

7. Well-Child Visits (FSA DTO4)

CAP Commitments:

- a. The State will come into full compliance with Target Outcome 4 (100% of children in state custody receiving a Well-Child visit within 30 days) by January 1, 2024; this target is for remedial purposes and does not change the FSA deliverable date.
- b. The State will ensure that all children who entered care before July 1, 2023 and are still in custody on September 15, 2023 have a completed well-child visit by September 15, 2023.

Data and Discussion:

Pursuant to the CAP, HSD issued LOD #96 titled “Comprehensive Well Child Checkups for Children in State Custody (CISC) Within 30 Days” on June 30, 2023.²⁶ LOD #96 outlines the responsibilities and reporting requirements of MCOs to ensure all children in state custody have a well-child checkup within 30 days of entering care.

CYFD reported the agency hired a full-time EPSDT coordinator in June 2023 to assist in facilitating the completion of well-child visits. CYFD also reported it is working on a Memorandum of Understanding (MOU) with the Department of Health to assist in getting well-child visits completed.

The State provided the Co-Neutrals with a preliminary list of children who entered care each month from January through November 2023, as well as a list of children in care on September 15, 2023 who had entered care prior to 2023.²⁷ From these lists, the Co-Neutrals selected a random sample

²⁶ LOD #96 can be found [here](#).

²⁷ As required by the CAP, beginning in September 2023, the State provided preliminary monthly well-child performance data on the 5th day of the following month of when the visits were due (for example, the July 2023 performance data was provided to the Co-Neutrals on September 5, 2023.)

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of children to review,²⁸ and requested documentation to verify completion of a well-child visit from the State for each child in the sample. In response to the Co-Neutrals' sample requests, the State provided appointment documentation, and preliminary billing data provided by HSD.

To assess timeliness, the Co-Neutrals removed from analysis children in the pre-July 2023 sample who entered care before January 1, 2023, as the State provided records for these children's most recent well-child visit prior to September 15, 2023, and not for the first well-child visit the child received after they entered care which may have been 12 or more months prior. The Co-Neutrals reviewed the number of days between a child's date of entry and the date of well-child checkup on records provided by the State. Due to the preliminary nature of the billing data, the Co-Neutrals did not consider the submission of HSD billing dates without corroboration from additional medical record documentation for the purpose of CAP data validation.²⁹

To assess completeness, the Co-Neutrals reviewed children's medical records provided by the State to determine whether required and applicable³⁰ elements of a well-child visit were documented. Required elements were derived using the criteria from HSD's Keeping Kids Healthy website,³¹ which lists the required elements as: medical history; measurements of height, weight, and BMI; unclothed physical examination; nutrition screening; vision and hearing screenings; developmental/behavioral assessment; hematocrit/hemoglobin at nine months and 13 years; lead screening at 12 months and 24 months; immunizations; selective screenings necessary according to risk factors;³² and anticipatory guidance.³³

²⁸ The Co-Neutrals selected random samples of 50 percent of the children in each of the monthly cohorts (not to exceed 25 children) to verify completion of well-child visits consistent with the CAP. For the pre-July cohort, the Co-Neutrals selected a 10 percent stratified sample, with half of the sample from children who entered care between January 1 and June 30, 2023, and half of the sample from children who entered care before January 1, 2023.

²⁹ The *Kevin S. DVP* metric for this FSA commitment specifies applicable billing codes providers may use to identify whether a medical appointment should be considered as a well-child visit, however, this level of detail is not yet available due to the preliminary nature of the data. HSD confirmed to the Co-Neutrals that HSD provided only those billing dates consistent with the applicable billing codes as agreed upon in the DVP.

³⁰ All elements listed within HSD's Keeping Kids Health guidance for well-child visits are not required for every child at every well-child visit, depending on the child's chronological age. To assess applicability of required elements, reviewers referred to the NM Periodicity Schedule, which can be found [here](#), and NM's Medical Assistance Division's Recommended Behavioral/Developmental Assessment poster, which can be found [here](#).

³¹ HSD's Keeping Kids Healthy website can be found [here](#).

³² During the course of their evaluation, providers may identify risk factors for children for which they are then expected to complete additional screenings. This may include a Tobacco, Alcohol, or Drug Use Assessment if the child demonstrates behavior that may put them at risk for drug use, or STI testing due to sexual behavior. Additional information on screening for risk factors can be found [here](#) and [here](#).

³³ Anticipatory guidance is given by the health care provider to assist parents, guardians, or caretakers in the understanding of the expected growth and development of children. Anticipatory guidance, specific to the age of the patient, includes information about the benefits of healthy lifestyles and practices that promote injury and disease prevention. This guidance may be given in the form of a handout or verbally. Additional information on anticipatory guidance can be found [here](#).

At this time and with the information available, the Co-Neutrals are unable to validate whether requirements outlined in the LOD have occurred. **The data provided by the State do not indicate that all children in state custody received a completed well-child visit within 30 days of entering care.** Specifically, the Co-Neutrals found that:

- The State was able to produce records to verify completion of a well-child visit for 36 percent (108 out of 303) of the records requested by the Co-Neutrals.³⁴
- Of the 86 records reviewed for a sample of children who entered care in 2023, a well-child visit occurred within 30 days of entry for 74 percent of those children (64 out of 86 records reviewed).³⁵
- All required and applicable elements of a well-child checkup were documented for 51 percent of children in the reviewed sample (55 out of 108 records reviewed).³⁶ Of the remaining 53 records reviewed, 52 showed documentation of at least two or more of the required well-child checkup elements, while one record showed documentation of only one required element.³⁷

During the Co-Neutrals' site visits to CYFD county offices in September 2023 and January 2024, CYFD staff identified barriers they have experienced in scheduling and completing well-child appointments for children on their caseloads. Staff expressed there is often role confusion over who is responsible to schedule and facilitate well-child visits, particularly for children whose appointments might be made by the investigation worker prior to the child being assigned to a PPW. While some workers reported receiving reminders to schedule well-child appointments from the EPSDT coordinator, the lack of available providers in certain parts of the state makes scheduling an appointment in a timely manner challenging.

³⁴ The total number of records requested (303) includes records requested for children who entered care prior to January 1, 2023 who remained in care as of September 15, 2023. The State advised that some records were not produced in time to provide the documentation to the Co-Neutrals within the five-day turnaround period, and some records were not produced at all. The State also stated that some caregivers and youth over the age of 14 had not consented by signed release for providers to send the records to CYFD, which the State described as a cause of some records not being produced.

³⁵ The Co-Neutrals reviewed timeliness only for children in the sample who entered care after January 1, 2023 (215 of 303 entries in the full sample) for whom the State was able to produce records to verify completion of a well-child visit (86 of the 215 children in the sample who entered care after January 1, 2023). The Co-Neutrals did not examine timeliness for the 88 children in the full sample who entered care before 2023 as the records provided by the State may not have reflected the first well-child visit the child received after entering care.

³⁶ The Co-Neutrals reviewed the completeness of well-child visits for all children in the sample for whom the State was able to produce records to verify completion of a well-child visit – including records provided for children who entered care prior to 2023, for a total of 108 records reviewed.

³⁷ The Co-Neutrals identified quality issues with some of the records provided which impacted validation efforts. For the July and October 2023 medical record submission, in some instances, the State produced documentation for dental, vision, or sick appointments rather than well-child appointments. In other instances, the documentation provided included records on a CYFD form presumably completed by the provider detailing what was discussed and assessed during the visit. There were also multiple instances where the records submitted appeared to be missing pages which may have provided additional information on what well-child elements occurred during the visit.

Further detail on the Co-Neutral's verification process is provided in the initial update shared with the Parties on December 6, 2023.

8. Data Submissions

CAP Commitment:

- a. The Parties agree that it is imperative for the State and the Co-Neutrals to have access to real time data to assist the State in meeting the obligations in the Agreement and that the failure to have access to real time data has already delayed needed progress on many deliverables. In order to more effectively monitor the State's progress, CYFD and HSD agree to provide real time data as outlined in CAP.

Discussion:

The Co-Neutrals have received most data identified in the CAP from the State. Some of the provided data required additional clarification or structuring, and the data were not consistently provided within the timelines outlined in the CAP. As of this writing, the Co-Neutrals have not received all medical necessity determination information for new in-state and out-of-state clinical congregate care placements nor quarterly data on the total number of TFC homes despite repeated requests from the Co-Neutrals.

The CAP was intended to address previously noted deficiencies and areas where progress has lagged. Overall, this has not occurred in a meaningful way. Further, as identified in the Co-Neutrals' January 26, 2024 letter to the Parties, there are urgent, critical issues threatening child and worker safety which undermine the ability of the State to implement its *Kevin S.* commitments in good faith. We urge the State to address those issues immediately.

Sincerely,



Judith Meltzer
Center for the Study
of Social Policy



Kevin Ryan
Public Catalyst

cc: Julie Sakura, General Counsel, CYFD
Mark Reynolds, Chief General Counsel, HSD
Alex Castillo Smith, Deputy Cabinet Secretary, HSD

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Attachments:

2 2024 Attachment 1.pdf
2 2024 Attachment 2.pdf