

**SETTLEMENT AGREEMENT**

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## SETTLEMENT AGREEMENT

### I. PURPOSE AND OBJECTIVES

The purpose of this Agreement is to set forth a plan and process for CYFD and HSD to improve the current system of care so that it is trauma-responsive and compliant with Section 504 of the Rehabilitation Act; the Americans with Disabilities Act; the Fourteenth Amendment to the United States Constitution; the Medicaid Act's Early and Periodic Screening Diagnostic and Treatment Services (EPSDT) and Reasonable Promptness Provisions (42 U.S.C. § 1396 et seq.); and the Indian Child Welfare Act (25 U.S.C. § 1915(a) & (b)).

### II. DEFINITIONS

For purposes of this Agreement, the following definitions apply. Where these terms are further described in the Agreement, the definitions in these sections are not intended to be and should not be interpreted as limiting such descriptions.

**Agencies or Departments** means CYFD and HSD.

**Agreement** means this Settlement Agreement and its Appendices.

**Behavioral Health Care Workforce Development Review** is the plan described in Implementation Target 1 in Appendix D.

**Case or Kevin S. Litigation** means *KEVIN S., et al. v. BLALOCK, et al.*, Case No. 1:18-cv-00896, in the United States District Court for the District of New Mexico.

**Child(ren) in State Custody** means child(ren) and youth in the legal custody of CYFD's Protective Services division, including Native Children and children never removed from the Respondent's home or children returned to the Respondent's home following a removal.

**Children's Code** means the New Mexico Children's Code.

**Co-Neutrals** means the individuals the Parties hereby agree to give the powers set forth below.

**CYFD** means the New Mexico Children, Youth and Families Department.

**CYFD Workforce Development Plan** means the plan discussed in Target Outcome 10 in Appendix B.

**Data Validation Plan** means the plan that Defendants will make, with the Co-Neutrals' approval, to establish a baseline and track progress toward each Target Outcome. Completion of the Data Validation Plan pursuant to this Agreement is an Implementation Target.

**Day or Days** means calendar days unless business days are expressly identified as the relevant period of time. Any deadline falling on a weekend or holiday will be extended to the next non-holiday weekday.

**Defendants** means the named defendants in the *Kevin S.* litigation. Defendants' Counsel refers to the Office of General Counsel for CYFD and HSD or their designees.

**Effective Date** means the date that this Agreement is executed by representatives of all Parties.

**Goals** means a set of high-level objectives that the Target Outcomes and the Implementation Targets are designed to achieve. While the Goals themselves are not binding or enforceable, they may be considered to help inform and interpret other aspects of the Agreement and Appendices, including the Co-Neutrals' assessment of Defendants' efforts to achieve the Implementation Targets and Target Outcomes.

**Guardian(s) ad Litem** means an attorney appointed by the children's court to represent and protect the best interests of the child in an abuse and neglect case under the New Mexico Children's Code who has the powers and duties described in N.M. Stat. § 32A-1-7.

**HSD** means the New Mexico Human Services Department.

**Implementation Targets** are steps that Defendants will take to fulfill the terms of this Agreement and to reach the Target Outcomes.

**Individualized Planning Meeting** means the meetings described in Target Outcome 4 in Appendix A and referenced in the other Appendices.

**Individualized Planning Meeting Plan** means the plan described in Target Outcome 4 in Appendix A.

**Kevin S.** refers to the lawsuit pending in the United States District Court for the District of New Mexico captioned *Kevin S., et al. vs. Blalock, et al.*, Case No. 1:18-cv-00896-WJ-LF.

**MCO** means Managed Care Organizations that contract with HSD and their successors.

**Native Child(ren)** is defined as "Indian child(ren)" under N.M. Stat. § 32A-1-4.

**New Mexico Tribes and Pueblos** is all tribes, pueblos, and nations in New Mexico.

**Parties** refers to Plaintiffs and Defendants in the *Kevin S.* litigation.

**Party** used in the singular means any Plaintiff or any Defendant.

**Performance Standard** refers to the level of achievement Defendants must meet with respect to each Implementation Target and Target Outcome in order to fulfill the terms of the Agreement. Meeting the Performance Standard means making good faith efforts to achieve substantial and

sustained progress toward achieving the Implementation Target or Target Outcome. A finding of good faith efforts to achieve substantial and sustained progress toward achieving the Implementation Target or Target Outcome shall be based on whether Defendants have made all reasonable efforts to achieve each Implementation Target or Target Outcome. This standard is not intended to assess Defendants' subjective intentions, plans, or promises.

**Plaintiffs** are the named plaintiffs in the *Kevin S.* litigation and their representatives.

**Proposed Class** means the class of plaintiffs defined in Plaintiffs' First Amended Complaint filed in the *Kevin S.* Litigation.

**Quality Assurance, Improvement, and Evaluation Plan** means the plan described in Target Outcome 5 in Appendix A.

**Resource Family** means a person or persons, including a relative of the child, licensed or certified by the Department or a child placement agency to provide care for children in the custody of the Department or agency.

**Respondent(s)** are defendant(s) in an abuse and neglect case under the New Mexico Children's Code.

**State** is the State of New Mexico.

**Target Outcomes** are specific achievements that Defendants agree to meet to fulfill the terms of this Agreement. The Target Outcomes appear in the Appendices to this Agreement.

**Trauma-Responsive Training and Coaching Plan** refers to the plan described in Implementation Target 2 in Appendix A.

**Youth Attorney(s)** means an attorney appointed by the children's court to represent the child in an abuse and neglect case under the New Mexico Children's Code who has the powers and duties described in NM Stat § 32A-1-7.1.

### **III. EFFECTIVE DATE AND EFFECT OF AGREEMENT**

This Agreement will take effect on the date it is signed by representatives of all Parties. It will expire when Defendants have satisfied the certification process in Section VIII for all Implementation Targets and Target Outcomes. In the alternative, the Agreement may also expire if the arbitrator engaged through the dispute resolution process set forth in Section IX concludes that a Party has committed a material breach of this Agreement and no lesser remedy than expiration can satisfy the Parties' expectations in entering into this Agreement.

### **IV. NO ADMISSIONS OF LIABILITY**

This Agreement is not an admission of liability or wrongdoing by Defendants. Defendants entered into this Agreement for the purpose of achieving system reform and to avoid the expense and diversion of resources caused by litigation.

## **V. GOALS**

The Goals of this Agreement are to:

1. Develop and implement a system of care that utilizes collaborative decision-making to guide interagency efforts to coordinate delivery of care to Children in State Custody in a trauma-responsive manner.
2. Improve services and outcomes for families and youth.
3. Increase collaboration among child-serving agencies in order to reduce fragmentation of services and avoid duplication and waste.
4. Ensure sufficient human resources to meet the needs of Children in State Custody including trained caseworkers, foster parents, kin foster parents, and behavioral health providers.
5. Set up practices and procedures to enable the State to comply with ICWA and provide culturally appropriate and relevant care to Children in State Custody and their families.
6. Develop and implement trauma-responsive training and coaching for caseworkers, foster parents, kin foster parents, out-of-home providers, and respondents/parents.
7. Establish a consistent screening, assessment, and referral procedure statewide that will facilitate access to medically necessary services for all Children in State Custody.
8. Improve the delivery of intensive home- and community-based services to eligible Children in State Custody.
9. Minimize congregate care and maximize the potential of Children in State Custody to grow into healthy and independent adults.
10. Identify and measure quality management tools to report on, provide, and improve the quality of care provided to Children in State Custody, and to provide transparency and accountability.
11. Provide due process to the Proposed Class.

## **VI. PROCESS**

## **A. Co-Neutrals**

**Appointment:** The Parties appoint Kevin Ryan, Judith Meltzer, and Pamela Hyde as the three Co-Neutrals referenced in this Agreement. In the event that any of the Co-Neutrals are unavailable to serve in this role or become unable to serve in this role during the term of this Agreement, the Parties agree to appoint a subject matter expert to serve in their place, so that there are always three Co-Neutrals at any time.

**Role as Neutrals:** The Co-Neutrals shall function in a neutral capacity and shall exercise their duties under this Agreement in good faith and without bias in favor of or against any Party. The retention of the Co-Neutrals shall be conducted solely pursuant to the procedures set forth in this Agreement and shall not be governed by any formal or legal procurement requirements. The Co-Neutrals shall hire such staff and engage such consultants as the Co-Neutrals deem necessary to discharge their responsibilities under this Agreement. As a courtesy, the Co-Neutrals shall provide the resumes of any staff members or consultants working on the implementation of this Agreement to Defendants, but Defendants shall not have any authority over the Co-Neutrals' choice or assignment of staff members and/or consultants.

**Fees:** Defendants shall be responsible for paying the Co-Neutrals' fees and costs and the fees and costs required for staff and/or consultants assisting the Co-Neutrals.

**Authority:** The Co-Neutrals shall have the authority reasonably necessary to validate baseline performance related to all Target Outcomes and to evaluate and audit progress toward achievement of the Implementation Targets and Target Outcomes. That authority includes the ability to hire staff and engage consultants; contract with entities for data analysis and/or validation; request and receive reports and updates at regular intervals; request underlying data, files, and records; conduct verification activities, including communicating independently with any individual, including but not limited to executive branch staff, providers, caregivers and others as they determine necessary; and gather other information from Defendants. Defendants shall provide the Co-Neutrals with remote access to the Agencies' electronic data systems that collect or record information necessary to validate performance under this Agreement. All final reports prepared by the Co-Neutrals in connection with this Agreement shall be public documents and shall be posted on the Parties' websites. The Co-Neutrals shall have the authority to change the deadlines for the Co-Neutrals' reports, but changes to any such deadlines will not have the effect of changing the deadlines for Defendants' reports.

## **B. Implementation Targets and Target Outcomes**

Implementation Targets are process commitments that Defendants agree to undertake as intermediary and necessary steps toward reaching the Target Outcomes.

Target Outcomes are performance commitments that Defendants agree to reach in consideration for Plaintiffs' agreement to dismiss the *Kevin S.* Litigation.

The Appendices define and set forth Implementation Targets and Target Outcomes in the following subject areas:

- **Trauma-Responsive System of Care** (Appendix A)
- **Least Restrictive and Appropriate Placements** (Appendix B)

- **Indian Child Welfare Act** (Appendix C)
- **Behavioral Health Services** (Appendix D)

**Deadlines:** The Parties have negotiated specific completion dates for each Implementation Target and Target Outcome. Defendants agree to adhere to these deadlines. The Parties may not modify, amend or extend these deadlines other than by mutual consent in writing.

### **C. Implementation**

**1. Data Validation Plan:** By December 1, 2020, Defendants will submit to Plaintiffs and the Co-Neutrals a written Data Validation Plan that has been approved by the Co-Neutrals. Defendants and the Co-Neutrals shall begin to collaborate on the Data Validation Plan by March 15, 2020. The Data Validation Plan will set forth a process, including methodology and data sources, for validating Defendants’ progress toward achieving the Implementation Targets and Target Outcomes. The Data Validation Plan will set clear timelines for taking any intermediary steps necessary to validate progress toward the Implementation Targets and Target Outcomes and assign responsibility for supplying information necessary to fulfill the Data Validation Plan. The Co-Neutrals will evaluate the Data Validation Plan in consultation with each Party.

Completion of a Data Validation Plan that has the approval of the Co-Neutrals is an Implementation Target. The Parties will attempt to resolve any disagreements about the Data Validation Plan in good faith. If they cannot do so, any disputes about the Data Validation Plan shall proceed through the dispute resolution process in Section IX on an expedited basis, with deadlines set by the Co-Neutrals and the arbitrator, as appropriate.

**2. Baseline Reports:** By December 1, 2020, Defendants will provide to Plaintiffs and the Co-Neutrals a baseline report and all data underlying the report. The baseline report shall assess Defendants’ achievement of the Implementation Targets. It shall also describe Defendants’ baseline performance with respect to the Target Outcomes during the period from January 1, 2019 to December 31, 2019.

By April 1, 2021, the Co-Neutrals shall provide a baseline report to Plaintiffs and Defendants. The Co-Neutrals’ baseline report shall validate Defendants’ achievement of the Implementation Targets pursuant to the Data Validation Plan and shall include a determination of whether Defendants have met the Performance Standard with respect to each Implementation Target. The Co-Neutrals’ baseline report shall also validate Defendants’ performance with respect to the Target Outcomes during the period from January 1, 2019 to December 31, 2019.

If the Co-Neutrals cannot validate Defendants’ data in accordance with the Data Validation Plan for any reason, including but not limited to concerns about availability or accuracy of data sources, the Co-Neutrals and their staff and/or consultants will establish a baseline using a quantitative and qualitative review protocol, which may incorporate third party data, information from Plaintiffs, and sampling procedures.

Before issuing their final report, the Co-Neutrals will: 1) provide the Parties no fewer than 15 Days to comment on a draft report, 2) confer with each party about the draft report, and 3) take into consideration each party's comments.

The baseline reports shall be made public on the Parties' websites.

**3. Data:** By May 1, 2021, and every twelve months thereafter, Defendants shall provide to Plaintiffs and the Co-Neutrals any data required to validate the Target Outcomes for the previous calendar year. For example, data covering the period from January 1, 2020 to December 31, 2020 shall be provided by May 1, 2021.

**4. Annual Reports:** By August 1, 2021, and every twelve months thereafter, Defendants shall provide to Plaintiffs and the Co-Neutrals a written report of their progress with respect to the Target Outcomes and Implementation Targets. The period of assessment for each annual report shall be the previous calendar year—for example, the report due by May 1, 2021 shall describe Defendants' performance from January 1, 2020 to December 31, 2020. Defendants' annual reports and any plans, reviews, or policies referenced therein shall be made public on the Parties' websites. These assessments are intended to be informational, and disagreements related to the content of these reports shall not proceed through the dispute resolution process in Section IX.

By November 15, 2021, and at least every twelve months thereafter, the Co-Neutrals shall provide a report to the Parties on Defendants' progress towards the Implementation Targets and Target Outcomes. The period of assessment for each annual report shall be the previous calendar year—for example, the report due by November 15, 2021 shall describe Defendants' performance from January 1, 2020 to December 31, 2020. The Co-Neutrals shall give the Parties no fewer than 15 Days to comment on a draft report, shall confer with each Party, and shall take the Parties' comments into consideration when finalizing their reports.

The Defendants' and Co-Neutrals' reports will assess Defendants' progress with respect to each Implementation Target and Target Outcome and will evaluate whether Defendants have met the Performance Standard with respect to any Implementation Target and Target Outcome for which the deadline is due or has passed. In making these assessments, Defendants and the Co-Neutrals shall consider evidence gathered pursuant to the Data Validation Plan and any qualitative review protocol, as well as data and information provided by the Parties, data and information available from third party sources, and other relevant factors. They shall also consider the Goals and the prefatory language in each Appendix. A lack of progress shown in data (or even negative data) as to any Implementation Target or Target Outcome does not require a finding that Defendants have not met the Performance Standard. If Defendants fail to provide accurate and verifiable data in a timely manner, the Co-Neutrals may find that they have not met the Performance Standard.

Defendants' and the Co-Neutrals' annual reports shall also discuss efforts by Defendants to achieve the designated Performance Standard for each Implementation Target and Target Outcome and any activities that Defendants and/or the Co-Neutrals have undertaken to meet their obligations under this Agreement during the previous year.

The Co-Neutrals' methods may include, but are not limited to, analyses of information collected by Defendants' management and information systems (if and when available and



accurate), reviews of case records, aggregation of data, and interviews with Defendants' personnel, contractors and their staff and/or consultants, service providers and their staff and/or consultants, Children in State Custody or formerly in state custody and their families, and other child welfare and behavioral health stakeholders. A Child in State Custody will only be interviewed if they affirmatively agree to be interviewed. The Co-Neutrals will provide reasonable notice of any planned interview with a Child in State Custody to the child's Guardian ad Litem or Youth Attorney. If the Guardian ad Litem or Youth Attorney believes that an interview will harm the Child in State Custody, the Guardian ad Litem or Youth Attorney will notify the Co-Neutrals and the interview will not proceed.

**5. Monitoring:** The Implementation Targets are steps that need not be monitored once they have been achieved. If the Co-Neutrals find that the Defendants have met the Performance Standard for a specific Implementation Target, that Implementation Target shall not be reassessed in further reports. If the Co-Neutrals find that the Defendants have not met the Performance Standard for a specific Implementation Target, the Implementation Target shall be reassessed every year thereafter until the Performance Standard is met.

Each Target Outcome shall be monitored until Defendants have met the Performance Standard for that Target Outcome continuously for a period of at least 24 months, as described in Section VIII.

**6. Meetings:** The Co-Neutrals shall preside over a meeting between the Parties at least twice a year. In 2020, the Parties and Co-Neutrals shall make every effort to hold these meetings in July and December. In all subsequent years, the Parties and Co-Neutrals shall make every effort to hold the first meeting no more than 30 Days after the release of Defendants' annual report and the second meeting no more than 30 Days after the release of the Co-Neutrals' annual report. The Parties may provide comments on Defendants' and/or the Co-Neutrals' reports to the Co-Neutrals and all other Parties in advance of each meeting.

## **VII. REQUESTS FOR AND ACCESS TO INFORMATION**

**Requests for Information:** The Parties agree that in order to create the Data Validation Plan, to set a baseline for the Target Outcomes, and to evaluate progress toward achieving the Implementation Targets and Target Outcomes, the Co-Neutrals and their staff and/or consultants will require reasonable access to information.

Defendants will designate an employee to facilitate the Co-Neutrals' access to information, including access to Defendants' personnel. The employee will be accountable to both CYFD and HSD and will have expertise in the issues covered by this Agreement and its Appendices. The designated employee will provide the Co-Neutrals and their staff and/or consultants with access to all requested information, including confidential information, and will not have the authority to deny any Co-Neutral's request for information or access, or otherwise to restrict the Co-Neutrals' access to information. In addition to ensuring that the Co-Neutrals have remote electronic access to Defendants' data systems that collect or record information necessary to validate performance under this Agreement, Defendants will respond to any requests for additional information from the Co-Neutrals within 14 Days of the request unless the Co-

Neutrals agree to a different deadline. Plaintiffs may submit proposed written requests for information to the Co-Neutrals, who may in their discretion submit such requests to Defendants.

The Parties and Co-Neutrals will enter into a Protective Order to facilitate access to confidential information. In the event the Co-Neutrals seek the review of confidential information contained in the individual records of Proposed Class members not named as plaintiffs in this proceeding, Disability Rights New Mexico (“DRNM”) and Native American Disability Law Center (“NADLC”) may obtain those records and release them to counsel pursuant to their federal authority and with the consent of the individual or their guardian. Where DRNM and NADLC lack authority to obtain or release the record, the following procedures will apply:

- a) Plaintiffs will obtain a release from the individual child if they are age 14 or older and from the child’s parent/guardian if they are younger than 14. Plaintiffs may use the release to obtain the information sought directly.
- b) If the name/contact information is not known to Plaintiffs but is known to Defendants, Defendants will provide that information so that Plaintiffs may obtain a release.
- c) If there is no way to obtain a release or if Plaintiffs believe that effort will be futile and there is reasonable cause to believe that an individual child is not being appropriately served under this Agreement, Plaintiffs may seek an order from any court of competent jurisdiction requiring the release of confidential information from CYFD, HSD, and/or the provider of services. Under most circumstances, Defendants will take no position on the request or will stipulate to the order for the release of information so long as notice is provided to the individual child and legal guardian and they are given an opportunity to be heard, and so long as the requested order includes provisions adequate to protect the confidential information from unauthorized disclosure.

**Access to Defendants’ Personnel:** As reasonably necessary to assess the implementation of this Agreement, the Co-Neutrals and their staff and/or consultants shall have the power to confer with and interview Defendants’ personnel. The Co-Neutrals must direct any request to meet with Defendants’ personnel to the employee designated to facilitate the Co-Neutrals’ access to information in first instance. Plaintiffs and Defendants’ Counsel shall receive reasonable notice of the dates and topics of such meetings and may propose that alternate or additional personnel provide information to the Co-Neutrals regarding the designated topics. The Co-Neutrals shall decide whether to confer with and interview the alternate or additional personnel proposed by the Parties. Neither Party shall send representatives to such meetings aside from the personnel to be interviewed. Defendants’ personnel must participate in the meeting in good faith and Defendants shall not retaliate against any of their personnel who provide information to the Co-Neutrals or their designees. The Parties may propose to the Co-Neutrals the names or positions of any of Defendants’ personnel that they believe should be interviewed about Defendants’ progress towards meeting the Implementation Targets and Target Outcomes.

## **VIII. CERTIFICATION OF IMPLEMENTATION TARGETS AND TARGET OUTCOMES**

When the Co-Neutrals certify that Defendants have met the Performance Standard for an Implementation Target, or have met the Performance Standard for a Target Outcome for a continuous period of no less than 24 months, they may certify that Defendants have done so and may declare that the Implementation Target or Target Outcome is no longer subject to monitoring in the Co-Neutrals' reports. Once an Implementation Target or Target Outcome is no longer subject to monitoring, it is severable from the rest of the Agreement for the purposes of determining expiration of the Agreement.

## **IX. DISPUTE RESOLUTION**

**A. Alternative Dispute Resolution and Arbitration.** Any dispute arising out of or related to this Agreement shall be subject to the following process:

**Step 1 – Alternative Dispute Resolution:** At any time following the execution of this Agreement, any Party or Parties may notify the other Parties that they are initiating the alternative dispute resolution process by providing written notice of the issue in dispute, the initiating Party's position on that dispute, and their choice to initiate the dispute resolution process to all other Parties and to the Co-Neutrals. The Co-Neutrals shall attempt to resolve the dispute through mediation within 30 Days of the initiation of the dispute. The Parties shall use good-faith, best efforts to discuss and resolve the dispute.

For any dispute over whether the Defendants have met the Performance Standard for an Implementation Target or Target Outcome by the agreed-upon deadline, the Co-Neutrals and the Parties shall attempt to agree on a corrective action plan through mediation. No Party shall initiate the arbitration process in Step 2 until the time for Defendants to complete any corrective action plan has expired.

**Step 2– Arbitration:** After the Parties have completed the alternative dispute resolution process set forth in Step 1 and any time to resolve the disputed issue through a corrective action plan has elapsed, any Party may initiate binding arbitration. A Party may not initiate arbitration without having completed the alternative dispute resolution process set forth in Step 1. The Parties intend arbitration to be the exclusive means for resolving any disputes arising out of or related to this Agreement that cannot be resolved through the alternative dispute resolution process set forth in Step 1. To the maximum extent allowed by law, the Parties hereby voluntarily and knowingly waive their rights to bring a dispute arising out of or related to this Agreement in court.

**1. Arbitration Procedure:** A Party may initiate arbitration by providing written notice to the other Parties of their choice to do so no less than 14 Days from the completion of the mediation or the expiration of the corrective action plan, whichever is longer. The Parties appoint Hon. James Hall (Ret.) as the arbitrator for any disputes arising under this provision. In the event that Hon. James Hall is unavailable to serve in this role or becomes unable to serve in this role during the term of this Agreement, the Parties agree to appoint a new arbitrator to serve in his place.

**a. Briefing:** Within 14 Days of the initiating Party's provision of written notice, the Parties shall file simultaneous opening briefs. Within 14 Days of the filing of the opening briefs, the Parties shall file simultaneous rebuttal briefs. No reply briefs by any Party shall be permitted.

**b. Hearing:** Subject to the arbitrator's availability, the arbitrator will hold a hearing on the issues in dispute within 7 business days after the filing of rebuttal briefs. If the arbitrator is not available within 7 business days, then the hearing shall take place at the arbitrator's earliest convenience. The Co-Neutrals shall not be called as witnesses in the arbitration but their reports may be submitted as evidence.

**c. Decision:** The arbitrator shall render a reasoned decision within 14 Days after the hearing or at the arbitrator's earliest convenience thereafter. The arbitrator's decision shall be final and non-appealable except on grounds set forth in the AAA's Commercial Arbitration Procedures. The arbitrator shall have the authority to award any relief necessary to effectuate the purpose of this Agreement, including all types of relief, other than monetary damages, that a state or federal court in New Mexico could issue, such as specific performance, injunctive relief, declaratory relief, and reasonable non-monetary sanctions. If Plaintiffs are the prevailing party, the arbitrator, in his discretion, may allow Plaintiffs reasonable attorneys' fees and costs.

**d. Post-Arbitration Relief:** If the Party against whom the arbitrator rules fails to comply with the arbitrator's ruling in the time set forth in the arbitrator's decision, the prevailing party may confirm and enforce the arbitrator's award pursuant to N.M. Stat. Ann. § 44-7A-23.

**e. Other Matters:** The Parties' arbitration briefs, as well as the arbitrator's decision, shall be public. The arbitrator's fees shall be paid by Defendants.

## **X. DISMISSAL AND NON-RELEASED CLAIMS**

**A. Dismissal:** Within 30 Days of the execution of this Agreement by the Parties, Plaintiffs shall promptly and voluntarily dismiss with prejudice all causes of action and claims alleged in the *Kevin S.* litigation.

**B. No Release of Claims for Money Damages:** Because the *Kevin S.* case was limited to claims for injunctive and declaratory relief and for recovery of attorneys' fees and costs, nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by the Plaintiffs or members of the Proposed Class for money damages against Defendants.

**C. No Release of Future Claims:** Nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by the named Plaintiffs or members of the Proposed Class related to or arising out of acts or omissions by Defendants after the Effective Date of this Agreement.

**D. No Limitation on DRNM and NADLC's Duties Under Federal Law:** Nothing in this Agreement shall be deemed to limit DRNM and NADLC's ability to fulfill their duties or roles under the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act, 42

U.S.C. § 10801, et. seq., and the regulations promulgated thereto, 42 C.F.R. § 51, et seq., and the Developmental Disabilities Assistance and Bill of Rights (“DD”) Act, 42 U.S.C. § 15041, et seq., and the regulations promulgated thereto, 45 C.F.R. § 1386 et seq.

## **XI. ATTORNEYS’ FEES AND COSTS**

Within 90 Days of the Effective Date of this Agreement, Defendants shall pay \$2,400,000 in Plaintiffs’ attorneys’ fees and costs in consideration for Plaintiffs’ role in initiating the *Kevin S.* litigation and implementing this Agreement. Plaintiffs may also receive attorneys’ fees and costs in connection with arbitration proceedings, as described in Section IX. Defendants shall be responsible for the payment of their own attorneys’ fees and costs incurred in the litigation and negotiation of this Agreement.

## **XII. OTHER PROVISIONS**

**A. Choice of Law:** This Agreement shall be interpreted under the laws of the State of New Mexico without regard to that State’s choice of law principles.

**B. Authority to Execute:** The signatories to this Agreement represent and warrant that they have the full authority to execute this Agreement on behalf of, and to bind, any person whom they represent.

**C. Notice:** Any notice to the Parties required or provided for under this Agreement shall be given by emailing notice to the following:

For Plaintiffs:

Tara Ford – taraford@law.stanford.edu

Kathryn Eidmann – keidmann@publiccounsel.org

Grant Davis-Denny – Grant.Davis-Denny@mto.com

Jesselyn Friley – jfriley@publiccounsel.org

For Defendants:

Eli Fresquez – Eli.Fresquez@state.nm.us

James Cowan – James.Cowan@state.nm.us

Paul Ritzma – Paul.Ritzma@state.nm.us

Lisa Hahn-Cordes – Lisa.Hahn-Cordes@state.nm.us

**D. Counterparts and Delivery:** The Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. The Agreement may be executed and delivered by transmission in PDF or similar electronic document format.

**E. Successors:** The Agreement shall be binding on, apply to, and inure to the benefit of the Parties and their successors, including any public official subsequently appointed to serve in

either of Defendants' official roles or an official role that has substantially similar responsibilities with respect to the subject matter of the *Kevin S.* Litigation.

**F. Further Assurances:** The Parties shall take such further and other steps and execute such further and other documents, including but not limited to agreements with the Co-Neutrals, as may reasonably be required to give effect to the terms of the Agreement.

**G. HSD and CYFD Obligations:** This Agreement specifies actions to be taken by HSD and CYFD, including obligations to collaborate as set forth in the Agreement and its Appendices. Nothing in this Agreement shall be read to place additional obligations on HSD or CYFD beyond what is set forth in this Agreement and its Appendices or otherwise required by state and/or federal law.

**H. Entire Agreement:** The Agreement contains the entire agreement among the Parties relating to the subject matter hereof and supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements, and discussions, whether written or oral. The Agreement may not be changed or modified except in a writing signed by all Parties hereto.

**I. No Party Considered Drafter:** None of the Parties shall be considered the drafter of the Agreement, or any provisions of the Agreement, for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

**J. Named Plaintiffs:** Each named Plaintiff will be offered an assessment for community-based behavioral health services within 60 Days of the signing of this Agreement to determine their current need for intensive home- and community-based behavioral health services. Defendants will make available any medically necessary services to each named Plaintiff immediately where possible and no later than 30 Days after the assessment otherwise. If community-based behavioral health services are not medically necessary for any named Plaintiff who is in an out-of-home placement, Defendants will meet on a monthly basis to develop a plan that will enable the named Plaintiff to be placed in a family setting as soon as medically appropriate. Defendants will routinely update the Co-Neutrals on their efforts to serve the named plaintiffs.

Dated:

**Plaintiffs**

KEVIN S., THROUGH HIS NEXT FRIEND  
BETTE FLEISHMAN, *Plaintiff*

By: 

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CHRIS W., THROUGH HIS NEXT FRIEND  
BETTE FLEISHMAN, *Plaintiff*

By: 

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JENNIFER H., THROUGH HER NEXT FRIEND  
LIZ MCGRATH, *Plaintiff*

By:

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DIANA D., THROUGH HER NEXT FRIEND  
ERNESTINA R. CRUZ, *Plaintiff*

By:

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BRIAN J., THROUGH HIS NEXT FRIEND  
MATTHEW BERNSTEIN, *Plaintiff*

By:

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ELLIOT J., THROUGH HIS NEXT FRIEND  
FELIZ RAEL, *Plaintiff*

By:

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MICHAEL J., THROUGH HIS NEXT FRIEND  
FELIZ RAEL, *Plaintiff*

By:

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OLIVIA L., THROUGH HER NEXT FRIEND  
GEORGIA BERREBERG, *Plaintiff*

By:

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MATTY B., THROUGH HIS NEXT FRIEND  
GABRIELLE VALDEZ, *Plaintiff*

By:

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JUSTIN B., THROUGH HIS NEXT FRIEND  
GABRIELLE VALDEZ, *Plaintiff*

By:

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CHRIS W., THROUGH HIS NEXT FRIEND  
BETTE FLEISHMAN, *Plaintiff*

By:

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JENNIFER H., THROUGH HER NEXT FRIEND  
LIZ MCGRATH, *Plaintiff*

By:

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DIANA D., THROUGH HER NEXT FRIEND  
ERNESTINA R. CRUZ, *Plaintiff*

By:

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BRIAN J., THROUGH HIS NEXT FRIEND  
MATTHEW BERNSTEIN, *Plaintiff*

By:

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ELLIOT J., THROUGH HIS NEXT FRIEND  
FELIZ RAEL, *Plaintiff*

By:

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MICHAEL J., THROUGH HIS NEXT FRIEND  
FELIZ RAEL, *Plaintiff*

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OLIVIA L., THROUGH HER NEXT FRIEND  
GEORGIA BERRENBURG, *Plaintiff*

By:

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MATTY B., THROUGH HIS NEXT FRIEND  
GABRIELLE VALDEZ, *Plaintiff*

By:

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JUSTIN B., THROUGH HIS NEXT FRIEND  
GABRIELLE VALDEZ, *Plaintiff*

By:

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CHRIS W., THROUGH HIS NEXT FRIEND  
BETTE FLEISHMAN, *Plaintiff*

By:

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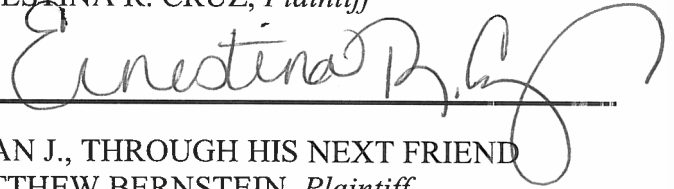
JENNIFER H., THROUGH HER NEXT FRIEND  
LIZ MCGRATH, *Plaintiff*

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GABRIELLE VALDEZ, *Plaintiff*

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LUCAS M., THROUGH HIS NEXT FRIEND  
MARIEL WILLOW, *Plaintiff*

By:

JULIAN M., THROUGH HIS NEXT FRIEND  
MARIEL WILLOW, *Plaintiff*

By:

DAVID G., THROUGH HIS NEXT FRIEND  
HEIDI TODACHEENE, *Plaintiff*

By:

DISABILITY RIGHTS NEW MEXICO, *Plaintiff*

By:

NATIVE AMERICAN DISABILITY LAW  
CENTER, *Plaintiff*

By:

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GABRIELLE VALDEZ, *Plaintiff*

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MARIEL WILLOW, *Plaintiff*

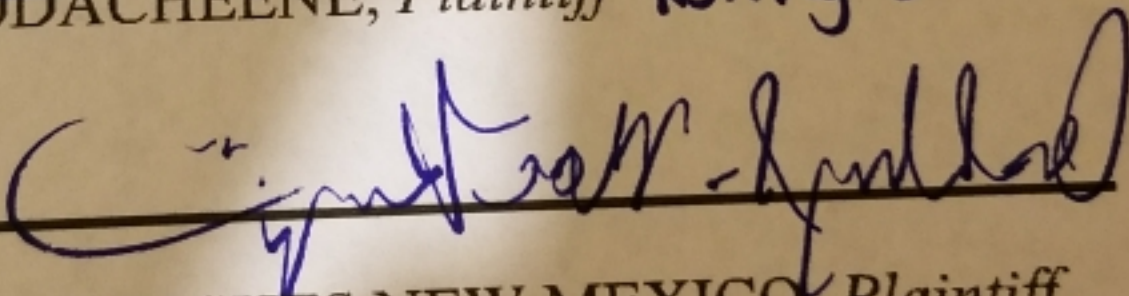
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DAVID G., THROUGH HIS NEXT FRIEND  
~~HEIDI TODACHEENE~~, *Plaintiff* Ashley S. Mae Kenzie

By:

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DISABILITY RIGHTS NEW MEXICO, *Plaintiff*

By:

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NATIVE AMERICAN DISABILITY LAW  
CENTER, *Plaintiff*

By:

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JACKSON B., THROUGH HIS NEXT FRIEND  
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By:

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**Defendants**

BRIAN BLALOCK, Secretary for CYFD,  
*Defendant*

By:

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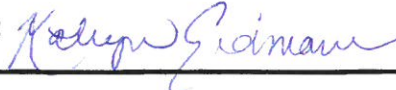
DAVID SCRASE, Secretary for HSD, *Defendant*

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**Plaintiffs' Counsel**

PUBLIC COUNSEL

By:  3/16/20

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MUNGER, TOLLES & OLSON LLP

By:

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DISABILITY RIGHTS NEW MEXICO

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FREEDMAN BOYD HOLLANDER GOLDBERG  
URIAS & WARD, P.A.

By:

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STANFORD LAW SCHOOL MILLS LEGAL  
CLINIC, YOUTH AND EDUCATION LAW  
PROJECT

By:

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MARTINEZ, HART, THOMPSON & SANCHEZ,  
P.C.

By:

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**Defendants**

BRIAN BLALOCK, Secretary for CYFD,  
*Defendant*

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DAVID SCRASE, Secretary for HSD, *Defendant*

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**Plaintiffs' Counsel**

PUBLIC COUNSEL

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MUNGER, TOLLES & OLSON LLP

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**Defendants**

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*Defendant*

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DAVID SCRASE, Secretary for HSD, *Defendant*

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DISABILITY RIGHTS NEW MEXICO

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CLINIC, YOUTH AND EDUCATION LAW  
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P.C.

By:

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**Defendants**

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*Defendant*

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**Plaintiffs' Counsel**

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THE LAW FIRM OF ALEXANDER D. CRECCA,  
PC

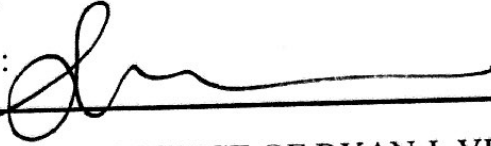
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THE LAW FIRM OF ALEXANDER D. CRECCA,  
PC

By:



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THE LAW OFFICE OF RYAN J. VILLA

By:

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RODEY LAW FIRM

By:

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**Defendants' Counsel**

KELEHER AND MCLEOD PA

By:

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THE LAW FIRM OF ALEXANDER D. CRECCA,  
PC

By:

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THE LAW OFFICE OF RYAN J. VILLA

By: *Kelly K. Waterfall*

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RODEY LAW FIRM

By:

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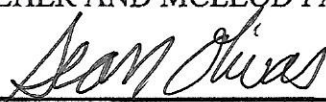
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KELEHER AND MCLEOD PA

By:



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Sean Olivas

Gary Van Luchene

4822-2530-1687, v. 1

## **APPENDIX A: TRAUMA-RESPONSIVE SYSTEM OF CARE**

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD build and support a trauma-responsive system of care for all Children in State Custody. A trauma-responsive system of care is one that identifies, recognizes, understands the effects of, and provides sufficient services and supports to ameliorate trauma, including secondary trauma. A trauma-responsive system of care must also support and serve other stakeholders, including families and persons who work for or on behalf of children, youth, and families. A trauma-responsive system includes culturally appropriate services and supports. A trauma-responsive system of care should utilize collaborative decision-making to identify strengths and needs and to develop an individualized plan for the child. Children should have a voice in decisions about where and with whom they should live and what services they should receive, and these decisions should occur in a timely manner. Accurate, complete, and relevant evidence-based quality management tools and measures are necessary for the State to implement and refine a trauma-responsive system of care. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

### **IMPLEMENTATION TARGETS**

By December 1, 2020, CYFD and HSD will take the following specific steps necessary to create an effective trauma-responsive system of care for Children in State Custody.

1. CYFD, with input and collaboration from HSD, will establish Child and Adolescent Needs and Strengths ("CANS") and functional trauma assessment criteria for access to intensive home-based services in consultation with clinical experts agreed upon by Defendants and Plaintiffs. The criteria will aim to help CYFD, stakeholders, and providers identify children and youth for whom intensive home-based services are medically necessary and will include but not be limited to consideration of Serious Emotional Disturbance ("SED") criteria, CANS, and functional trauma assessment screening. CYFD and HSD will revise SED criteria to clarify that removal from home is not a requirement to access these services.
2. Trauma-Responsive Training and Coaching Plan. CYFD and HSD will create a cross-departmental Trauma-Responsive Training and Coaching Plan that describes in writing a plan and process for providing mandatory, high-quality trauma-responsive training to all CYFD employees, Designated HSD Employees<sup>1</sup> and employees of child-serving agencies that contract with CYFD or HSD to provide care to Children in State Custody. Training will address the impact of trauma including its neurodevelopmental effects, implementing and accessing trauma-responsive supports and services, and secondary trauma. Training will

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<sup>1</sup> "Designated HSD Employees" refers to (1) Social and Community Services Coordinators, their supervisors and managers, including the Behavioral Health Services Division Director; and (2) any HSD employee or their designee involved in care coordination activities, EPSDT services, or determinations about service utilization for Children in State Custody, including supervisory and management level employees.

comply with professional standards and best practices in adult education, including by being case-based and interactive, and including an assessment component to measure effectiveness. Trauma-responsive training will consist of initial or pre-service training as well as consistent, ongoing in-service training, mentoring, coaching, and support. The Trauma-Responsive Training and Coaching Plan will also provide for mandatory trauma-responsive training for Resource Families and optional trauma-responsive training for Respondents. Training for Resource Families and Respondents will be accessible both online and in person, and CYFD will provide childcare during any in-person sessions if needed. Notice of training shall be provided to Resource Families and Respondents reasonably in advance of any scheduled training, and no less than 14 Days in advance of any scheduled training. Notices will state that childcare will be provided and that requests for childcare must be received 48 hours prior to the training, or a lesser number of hours determined by CYFD and/or HSD. The written plan will include identification of the training program or materials to be used and the number of hours of training to be received by each category of trainee. The trauma-responsive training and coaching described in the plan must be sufficient to allow the Departments to meet their obligations under this Agreement. The Co-Neutrals must approve the Trauma-Responsive Training and Coaching Plan.

## **TARGET OUTCOMES**

1. **Screening.** By December 1, 2021, every Child in State Custody will receive the screenings indicated below. CYFD and HSD will identify, and Co-Neutrals must approve, the form of the Child and Adolescent Needs and Strengths Crisis Assessment Tool (“CANS-CAT”) and comprehensive CANS screening tools to be used. CYFD will ensure that every Child in State Custody receives the indicated screenings and will provide the results of the indicated screenings to HSD (through its MCOs and/or their successors). HSD will ensure that MCOs and/or their successors have capacity to provide indicated screenings.
  - a. Results of initial screening using the CANS-CAT will be filed with the court no less than 24 hours before the child’s 10-day hearing. If this deadline falls on a weekend or holiday, the screening results must be filed no less than one business day prior to the 10-day hearing.
  - b. Comprehensive screening using a CANS-Trauma Comprehensive instrument or a comprehensive CANS assessment instrument with a trauma module will be conducted within 45 Days of removal from the home. Any child discharged from CYFD’s legal custody before these screenings are conducted will be provided a referral for the screenings.
  - c. Follow up screening indicated by the CANS-CAT, CANS, and/or any other information available to CYFD or HSD, including screening for intellectual and developmental disabilities and/or sexual exploitation, will be conducted immediately where possible and within 10 Days of indication otherwise. Any child discharged from CYFD’s legal custody before these screenings are conducted will be provided a referral for them.
2. **Services.** By December 1, 2022, every Child in State Custody will receive age-appropriate trauma-responsive services, supports, and/or treatment to meet his or her individualized needs indicated by the CANS and functional trauma assessments, beginning immediately where possible and not to exceed 10 Days after the date of the screening and/or assessment.

HSD and CYFD will work with MCOs and other entities designated to provide care coordination to make sure medically necessary services are provided, documented in the child's file, and analyzed when developing plans for future care and services. HSD and CYFD will expand and offer community-based, evidence-based, well-supported, and promising trauma-responsive services, which include mobile crisis response services, intensive case management, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). These services will be available to all Children in State Custody for whom the services are medically necessary and will be available immediately where possible and within 10 Days of the determination of medical necessity otherwise.

**3. Training**

- a. By December 1, 2021, all CYFD employees, designated HSD employees, employees of child serving agencies that contract with CYFD or HSD to provide care to Children in State Custody, and Resource Families will receive the training identified in the Trauma-Responsive Training and Coaching Plan. All Respondents will be offered the trauma training identified in the Trauma-Responsive Training and Coaching Plan.
- b. By December 1, 2021, all CYFD employees, designated HSD employees, and employees of child serving agencies that contract with CYFD or HSD who provide care to Children in State Custody will demonstrate through competency assessments and self-reporting that they have received adequate trauma-responsive training.

- 4. Individualized Planning Meetings.** Subject to the approval of the Co-Neutrals, CYFD and HSD will develop and implement a process (the Individualized Planning Meeting Plan) for convening an Individualized Planning Meeting team for making decisions and for delivering services and supports for each Child in State Custody. The Individualized Planning Meeting process shall be informed by Child and Family Teaming (CFT), collaborative decision-making, and High Fidelity Wraparound models, and shall prioritize the child's voice and choice. The process shall also be strengths-based, connected to natural supports, and respectful of the child's family and unique cultural heritage. The Co-Neutrals shall not withhold approval of the Individualized Planning Meeting Plan if it is reasonably calculated to achieve the Goals of this Agreement. The Individualized Planning Meeting Plan will be completed and approved by December 1, 2020, and fully implemented by December 1, 2022.

- 5. Quality Assurance, Improvement, and Evaluation.** CYFD and HSD will create and implement a Quality Assurance, Improvement, and Evaluation Plan, including quality management tools and measures to be used for reporting on CYFD and HSD's capacity to meet the needs of Children in State Custody, including measures for reporting on providing and improving quality of care, collaborating across Departments, and for providing transparency and accountability. The Plan will include: consistent definitions and terms across CYFD and HSD, data exchange and matching across CYFD and HSD, clarification of existing measures and indicators, self-assessments, metrics as indicators of system performance (including process indicators, client outcomes, and system impact), a continuous quality improvement process that provides information in real time to decision-makers, and a process for responding to findings from the Plan. CYFD will develop a meaningful quality assurance process to ensure



that training, policy, and procedure is being properly utilized and integrated into daily processes. The Co-Neutrals must approve the Quality Assurance, Improvement, and Evaluation Plan. CYFD and HSD will develop the Quality Assurance, Improvement, and Evaluation Plan by December 1, 2020 and fully implement it by December 1, 2021.

## **APPENDIX B: LEAST RESTRICTIVE AND APPROPRIATE PLACEMENTS**

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD build a system for placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment. Children in out-of-home care should have caregivers who understand their strengths and needs and are able to support them to grow and heal. Children in out-of-home placements should be in the least restrictive, most connected, most family-like setting appropriate for their unique needs. Children aged 14 and older should be consulted on their express placement preferences. Children in out-of-home placements should have stable placements that meet their needs and should be protected from the harm caused by multiple placement moves. Foster care should be as temporary an arrangement as possible, with its goal being to provide children in out-of-home placements a safe, nurturing, and permanent home quickly. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

### **IMPLEMENTATION TARGETS**

By December 1, 2020, HSD and CYFD will take the following specific steps:

1. CYFD and HSD will develop a plan to (1) increase recruitment and retention of culturally reflective, community-based placements, with a focus on maximizing family supports and serving rural areas and difficult-to-place populations and (2) ensure that children in out-of-home care remain in stable placement and educational settings to the maximum extent feasible and that any change in placement is made in the best interests of the child and consistent with achieving the child's permanency goals.
2. CYFD will publish guidance prohibiting retaliation against any person, including foster parents, for raising concerns related to the unmet needs of Children in State Custody or their caregivers.
3. CYFD and HSD will develop and promote a warm line for Resource Families and Respondents who need assistance meeting the behavioral needs of the children in their care. CYFD will promote its internal Grievance Procedure for youth. CYFD will also develop a Grievance Procedure for Resource Families.

### **TARGET OUTCOMES**

1. By December 1, 2020, no child under 18 will be placed in any hotel, motel, out-of-state provider, office of a contractor, or state agency office unless in extraordinary circumstances necessary to protect the safety and security of the child as documented in the child's record and approved by the Secretary or the Protective Services Director of CYFD. In any such

extraordinary circumstance, CYFD shall provide notice to the child's Guardian ad Litem and Youth Attorney immediately where possible, and not more than 24 hours after the placement of the child. Notification to the dependency court to which the child's case is assigned must occur within 3 business days. When a child is placed with an out-of-state provider, notice to the child's Guardian ad Litem, Youth Attorney, and the dependency court to which the child's case is assigned will be given prior to the move, pursuant to statute.

2. By December 1, 2020, HSD and CYFD will conduct a joint clinical review of any out-of-state placement, where the child's out-of-state placement is not the child's permanency plan, at least on a monthly basis. A CYFD caseworker known to the child will conduct in-person visits every month. Within the first 30 Days of the placement, the out-of-state Individualized Planning Meeting team will develop a discharge plan which includes identification of in-state resources that need to be developed for the child to return to New Mexico. The CYFD caseworker will do so by working with HSD or its designee to secure services that could be funded by Medicaid. Individualized Planning Meetings, which may take place during scheduled treatment team meetings for children in residential care, will be held every 30 Days to support the child and identify steps necessary to promote discharge.
3. By December 1, 2021, for any child placed in a congregate care setting due to a medical necessity determination that the child requires residential treatment, the finding of medical necessity will be clinically reviewed every 30 Days, or more frequently as needed. The finding of medical necessity must take into consideration whether community-based mental health services have been or could be provided. Individualized Planning Meetings will be held every 30 Days to support the child and identify steps necessary to promote discharge.
4. By December 1, 2021, any placement in a congregate care setting that is not supported by a determination of medical necessity, including placement in specialized group homes such as Transitional Living Placements, Maternity Group Homes, or settings for Commercial Sexual Exploitation of Children, must be supported by a determination of the Individualized Planning Meeting team, including a mental health professional, that it is in the best interests of the child. The best interest determination will be reviewed by the Individualized Planning Meeting team, including a mental health professional, every 90 Days, or more frequently as needed. If extraordinary circumstances require placement of a child in a shelter, CYFD will conduct an Individualized Planning Team meeting within 48 hours to identify an appropriate placement to which to move the child and any medically necessary services needed by the child, and will notify the child's legal representative of the result of the review.
5. By December 1, 2021, every child in out-of-home care will be in a licensed foster home placement unless a current finding of medical necessity requires otherwise or an Individualized Planning Meeting team determines that a non-clinical setting is in the child's best interest. The finding of medical necessity for a more restrictive setting (residential treatment or Qualified Residential Treatment Programs) will be reviewed every 30 Days or more frequently as needed and will take into consideration whether community-based mental health services and supports have been or could be provided.

6. Beginning on December 1, 2020, and on an annual basis by December 31 each year thereafter, the Co-Neutrals will approve a Target Outcome for CYFD to approve a specified number of new culturally reflective foster homes during the following year, and for HSD to approve a specified number of new treatment foster care placements during the following year.
7. By December 1, 2022, at least 40% of children in out-of-home care will be placed with kin. CYFD will use Seneca Family Finding software to attempt to identify and locate family members for every Child in State Custody within 48 hours of entering state custody.
8. By December 1, 2022, for children under 18 in out-of-home care, the rate of moves from a placement setting shall not exceed 3 moves per 1,000 Days in care. The educational consequences of a change in placement must be considered in all placement change determinations and must be discussed at Individualized Planning Meetings. Any change in placement that impacts the child's education must be accompanied by a written plan to ensure continuity in the child's education, including transportation and educational supports to minimize the impact of the transition.
9. Of all children in care for 12-23 months at the start of a 12-month period, 40% will achieve permanency (reunification, adoption, or permanent guardianship) within 12 months of the start of that period by December 2023.
10. **CYFD Workforce Development Plan.** CYFD will create a CYFD Workforce Development Plan that will ensure CYFD's workforce has adequate qualifications, expertise, skills, and numbers of personnel. The CYFD Workforce Development Plan will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement. The plan will include a specific hiring plan that identifies, by county, the number of staff, credentials, and training required to meet the objectives identified in the CYFD Workforce Development Plan and outlines strategies to recruit and retain staff. The Plan will require that all caseworkers and supervisors have sufficient educational credentials and/or directly relevant experience. It will require that CYFD have a sufficient number of caseworkers to ensure that no caseworker will carry a case load of greater than the current professional standard identified by the Child Welfare League of America (CWLA). It will also include sufficient numbers of staff trained and able to implement ICWA guidelines using culturally responsive practices. The Plan will describe specific strategies to attract and retain diverse, high-quality staff with appropriate qualifications and skills. Co-Neutrals must approve the CYFD Workforce Development Plan. CYFD will develop the Workforce Development Plan by December 1, 2020 and fully implement it by December 1, 2021.

## APPENDIX C: INDIAN CHILD WELFARE ACT

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD serve Native American families, build a relationship with each of the New Mexico Tribes and Pueblos, and comply with the Indian Child Welfare Act (ICWA) in its letter and intent. The State has an obligation to comply with ICWA and shall make every effort to ensure that all Native Children and families receive appropriate support and services. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

### **IMPLEMENTATION TARGETS**

By December 1, 2020, HSD and CYFD will take the following specific steps necessary to create a culturally responsive system of support for Native Children in State Custody:

1. CYFD and HSD will work with the Administrative Office of the Courts (AOC) and with New Mexico Tribes and Pueblos to draft a State ICWA law that mirrors and expands upon the federal version. The drafting committee will include representatives of New Mexico Tribes and Pueblos, representatives of Native Children, Native parents, and other caregivers involved in the child welfare system, experts on the federal ICWA, and providers of culturally relevant services and supports. The drafting committee will have discretion to determine the content of the law and will consider definitions of "active efforts," "qualified expert witness," including qualifications of for determining a "qualified expert witness," and development of a pool of potential expert witnesses. HSD and CYFD will identify and arrange for an appropriate facilitator such as the New Mexico Department of Indian Affairs to convene the drafting committee to assist in drafting the law. CYFD and HSD will actively promote passage of the law, including by making a positive recommendation of the bill to the Governor's Office with appropriate justification.
2. With the input of New Mexico's Tribes and Pueblos, CYFD and HSD will develop processes and procedures to promote traditional interventions as first-line interventions and services, using an assessment tool for Native Children in State Custody, modifications of existing assessment tools, or other means recommended by Native experts. The form of the assessment tool or other means shall be approved by the Co-Neutrals, but the Co-Neutrals shall not withhold approval of the assessment tool if it is reasonably calculated to achieve the Goals of this Agreement.
3. HSD and CYFD will pursue federal funding to the maximum extent allowable through Medicaid and IV-E funding for traditional and culturally responsive treatments, interventions, and supports, including non-medicalized interventions, for Native Children in State Custody.

4. CYFD will maintain a full-time employee responsible for developing and maximizing culturally responsive services for Native Children in State Custody and for coordinating and overseeing provision of culturally responsive services to Native Children in State Custody by local staff throughout the state.
5. CYFD will develop a plan to increase recruitment and retention of Native Resource Families. The plan will include identifying relatives of Native Children, as required by ICWA or the New Mexico Tribe or Pueblo's preferred placement priorities, as well as identifying other potential Native Resource Families. The plan will include identification of additional supports needed for Native Resource Families, including supports and services that are culturally responsive and are not the same as those provided to non-Native parents, as well as providing assistance for families to navigate Resource Family licensing requirements. One methodology for identifying additional needed supports will be surveying former Native Resource Families to determine why they have stopped serving as a Resource Family and surveying potential Native Resource Families that did not complete the process to determine why they chose not to become a Resource Family.
6. CYFD will work with New Mexico Tribes and Pueblos to engage in dialogue, develop agreements, and take any other steps necessary to help New Mexico Tribes and Pueblos better access IV-E funding to improve services for Native Children, including additional funding for legal representation for New Mexico Tribes and Pueblos and Respondents.
7. CYFD and HSD will collect and analyze data sufficient to understand the characteristics and needs of Native Children in State Custody and the capabilities of the State to meet those needs. The data to be collected will include (1) data about Native Children in State Custody, including tribal membership status, confirmation and correction of birth certificates, removal rates, and placements (including whether children are placed with relative, non-relative Native, or non-relative non-Native Resource Families, Treatment Foster Care, congregate care, residential placement, or other out of home placement); (2) data on the demographics and characteristics of placements available to Native children (including Resource Families); and (3) data on the demographics, characteristics and services provided by treatment providers available to Native Children in State Custody.
8. CYFD and HSD will create and maintain a dedicated ICWA unit in the 2<sup>nd</sup> Judicial District that includes dedicated and specially trained caseworkers, supervisors, and children's court attorneys who will specialize in ICWA and act as consultants and trainers on ICWA cases. CYFD will work with the AOC to implement lessons learned from the ICWA unit and court in the 2<sup>nd</sup> Judicial District throughout the State.

## **TARGET OUTCOMES**

1. By December 1, 2021, assessments using the tool developed for Native Children in State Custody or other process developed per Implementation Target 2 above will be conducted within 30 Days of CYFD filing a petition for custody of a Native Child in State Custody.
2. CYFD will work with New Mexico Tribes and Pueblos, families, and Native Children to identify culturally responsive services. HSD will develop and expand access to traditional

and culturally responsive treatments, interventions, and supports. CYFD will develop and arrange for traditional and culturally competent interventions, which may include interventions that are not medicalized and/or have not been evaluated as evidence-based, well-supported, or promising. CYFD and HSD will expand culturally relevant services that can be used as an active effort to keep families intact and to avoid taking children into custody.

- a. By December 1, 2022, Individualized Planning Meetings for every Native Child in State Custody will address the need for traditional or culturally responsive services, supports, or interventions, including non-medicalized interventions, to meet his or her individualized needs as indicated by his or her assessments.
- b. While a family can decline CYFD's assistance, CYFD recognizes that it has the responsibility to coordinate services and ensure they are provided;
- c. When appropriate traditional or culturally responsive services, supports or interventions, including non-medicalized interventions, are identified, they will be provided immediately where possible and not to exceed 10 Days after the date of identifying the need, unless a longer period is necessary due to cultural traditions, norms, or factors outside of CYFD's control.
- d. If there is a basis for delaying the intervention as outlined under subpart c above, then it will be identified and communicated in writing to the Individualized Planning team and reviewed at subsequent meetings.
- e. If the intervention requires involvement from the tribe or tribal community, CYFD will identify the nature of the community's involvement and the reason for any delay in provision of the intervention, if any, for the Individualized Planning team and it will be reviewed at subsequent meetings.

CYFD will make every effort to ensure that services are provided as quickly as possible with consideration of the traditions and culture of the Native Child's tribe or pueblo, as well as child and family preferences.

By December 1, 2020, CYFD will develop policies to ensure that Native Children in State Custody receive traditional or culturally responsive services, supports, or interventions, including interventions which are non-medicalized and/or have not been evaluated as evidence-based, well-supported, or promising, including collecting data on the implementation of the protocols. The Co-Neutrals will approve the policies and evaluate the Department's compliance with the policy. The Co-Neutrals shall not withhold approval of the policy if it is reasonably calculated to achieve the Goals of this Agreement.

3. By December 1, 2020, CYFD will develop a policy to provide or ensure provision of direct assistance for traditional ceremonies, including arranging for all preparation and providing payment if needed, if Native Children want to participate. The policy will 1) provide for Native Children in State Custody to be presented with information about traditional ceremonies with sufficient time to decide whether they want to participate, 2) affirmatively encourage participation, and 3) facilitate all necessary preparation activities. The Co-Neutrals will approve the policy and evaluate the Department's compliance with the policy. The Co-Neutrals shall not withhold approval of the policy if it is reasonably calculated to achieve the Goals of this Agreement.

4. CYFD is committed to having Native Children in ICWA-preferred placements. By December 1, 2020, when a Native Child is in a non-ICWA-preferred placement, the placement will be reviewed every 30 Days. CYFD will establish protocols governing the 30-Day review process to include families, tribal representatives, legal representatives, and Resource Families. The protocols will require that the aim of the placement review will be to determine what actions, services and supports will enable the child to be moved to an ICWA-approved placement. If State ICWA legislation is passed and is more protective than the federal ICWA, a placement may meet this standard by being preferred by or consistent with the State ICWA legislation. The Co-Neutrals shall approve the protocols, but the Co-Neutrals shall not withhold approval of the protocols if they are reasonably calculated to achieve the Goals of this Agreement. The Co-Neutrals will evaluate compliance with the protocols. CYFD will work with New Mexico Tribes and Pueblos to identify any tribal placement preferences that deviate from ICWA. CYFD will create procedures that enhance accountability for ICWA placement preferences, including allowing the child's tribe or pueblo and extended family members to participate in ICWA-preferred placement reviews, Individualized Planning Meetings and case decision making meetings.
  
5. **Training.** CYFD will develop an ICWA training plan by December 1, 2020, and implement it by December 1, 2021. ICWA trainings will be developed collaboratively with the CYFD's Academy for Training and Professional Development Team, Protective Services Tribal Liaison, CYFD Tribal Liaison, Tribal Advisors, and culturally responsive experts. The ICWA training will include specific information on the history of ICWA, historic relations between Native American people and state and national government, and the history of culturally insensitive social work practices. It will also include skills development in working with Native families and communities, historical trauma, engagement, cultural humility and culturally responsive intervention techniques for Native American parents and youth and community engagement with New Mexico Tribes and Pueblos, as well as best practices for ICWA. The training will include information on New Mexico Tribes and Pueblos, sovereignty, and jurisdictional issues. The Co-Neutrals shall approve the ICWA training plan, but the Co-Neutrals shall not withhold approval of the training plan if it is reasonably calculated to achieve the Goals of this Agreement. The Co-Neutrals will evaluate implementation of the training plan.



## APPENDIX D: BEHAVIORAL HEALTH SERVICES

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD structure and build a statewide, community-based mental health system that all children and families will be able to access. A statewide system is necessary to ensure that Children in State Custody and their families have prompt access to necessary services regardless of where they live. These services are critical to keeping children with their families or in the most family-like setting possible. This system will include a diverse and full spectrum of community-based services, will decrease reliance on congregate care, keep families together in their community to the maximum extent possible, and greatly reduce reliance on out of state residential placements. Medically necessary mental health services will be provided, in descending order of preference: at home, in a family setting, or in the most home-like setting appropriate to a child's needs and consistent with the Children's Code. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

### **IMPLEMENTATION TARGETS**

By December 1, 2020, HSD and CYFD will take the following specific steps necessary to create an effective system for delivery of community-based mental and behavioral health services—including screening/assessment, High Fidelity Wraparound services,<sup>1</sup> evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services—to Children in State Custody.

1. **Behavioral Health Care Workforce Development Review.** HSD and CYFD will create a Behavioral Health Care Workforce Development Review with the objective of supporting and expanding provider capacity to provide community-based mental and behavioral health services with reasonable promptness that are accessible throughout the State, and particularly in rural areas. The Behavioral Health Care Workforce Development Review will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement, including how HSD works with MCOs on increasing capacity to make available screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services to every Child in State Custody for whom they are medically necessary. HSD will either create or require MCOs to create a specific hiring/contracting plan that identifies, by county, the number of staff and credentials required to meet the objectives identified in the Behavioral Health Care Workforce Development Review. The Co-Neutrals must approve the Behavioral Health Care Workforce Development Review.

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<sup>1</sup> High Fidelity Wraparound services are a critical component in a well-functioning system of care, ensuring children and youth with complex behavioral health needs receive care that is individualized, family and youth driven, strengths-based, culturally competent, and coordinated across systems, particularly for children and youth who are at risk for out of home placements.

2. To assess need, HSD and CYFD will define initial expected service utilization for screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services. The Co-Neutrals must approve the methodology for predicting expected utilization of these services.
3. HSD will develop and publish reimbursement methodology, billing rates (taking into account validated information regarding adequate rates), and guidance for providers for screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services, leveraging Medicaid whenever possible. The methodology and guidance will include provider eligibility criteria as well as billing and coding procedures.
4. CYFD, with input from HSD, will adopt regulations governing medication protocols to ensure that Children in State Custody are not overmedicated, while ensuring timely access to medically necessary medication and treatment. The regulations will include a mandatory clinical review process provided by an independent mental health professional with a license to prescribe psychotropic medication for all children prescribed psychotropic medication while in state custody and will include guidance aimed to ensure that medication is not misused as a primary response to trauma-related behaviors. In addition, the regulations will require specific review of: 1) any use of polypharmacology; 2) dosage for all prescribed medication; and 3) use of atypical anti-psychotics. Co-Neutrals must approve the final form of these regulations.
5. HSD will monitor implementation of a term in all contracts with its designees to require that care coordination include identification of physical, behavioral health, and long-term care needs, and providing services to address said needs, in compliance with Section 4.4 of Centennial Care 2.0 Managed Care Organization contracts with HSD.
6. HSD will reinstate language in its Medicaid contracts to prevent children from being rejected or removed from behavioral health services providers. HSD will work with providers to identify and remove other administrative barriers to providing services.
7. HSD will revise its Notice of Action and grievance protocols to require a Notice of Action be provided to the child's caregiver, legal representative, and legal custodian whenever a service recommended by an Individualized Planning Meeting Team is reduced, modified, delayed, or denied, or if the service or is not approved within 10 Days.
8. HSD and CYFD will review and identify the responsibilities shared by both Departments and create a joint process for offering services and supports include screening, assessing, referring, treating and providing transition services to Children in State Custody of the department, including Children in State Custody who were never removed from Respondents' homes or children who have returned to Respondents' homes but who remain Children in State Custody.

The goal of this joint process shall be to maximize each child's access to services and to create unified process for offering services and supports.

9. HSD or its designees will require training through its contracts for those providing care coordination for children in state custody who receive Medicaid, consistent with the requirements in place under Section 3.3.5 and 4.4 of the Centennial Care 2.0 MCO contracts with HSD. HSD will require this training in any and all future contracts with its designees.

## TARGET OUTCOMES

1. **Workforce Development.** HSD will work with MCOs to implement the Behavioral Health Care Workforce Development Review, with the objective of expanding and developing the statewide workforce sufficient to implement the system for delivery of community-based mental and behavioral health services described in this Agreement.
  - a. By December 1, 2021, HSD will employ sufficient staff such that it has the internal capacity to effectively oversee, monitor, and manage the MCOs and to oversee and develop policy and procedures related to EPSDT.
  - b. By December 1, 2021, HSD will require that MCOs have a provider network sufficient to meet the needs identified in the Behavioral Health Care Workforce Development Review and hiring plans.
2. **Training.** By December 1, 2021, HSD or its designees will provide incentives for providers to be trained in evidence-based, well-supported, and promising trauma-responsive services, which include intensive case management, High Fidelity Wraparound services, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). Training will comply with professional standards and best practices in adult education, including by incorporating experiential and interactive components and using evaluations to measure effectiveness.
3. **Community-Based Mental and Behavioral Health Services.** By December 1, 2022, the following services will be available to every Child in State Custody for whom they are medically necessary, as indicated by the CANS and functional trauma assessments and any follow up. Services will be available immediately where possible and not to exceed 10 Days otherwise.
  - a. High Fidelity Wraparound services
  - b. intensive case management
  - c. intensive home-based services, which include mobile crisis response services and evidence-based, well-supported, or promising trauma-responsive therapies such as Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR).
4. By December 1, 2021, every Child in State Custody will receive a comprehensive well-child checkup within 30 Days of entering state custody.