

CO-NEUTRALS' 2021 ANNUAL REPORT

Kevin S., et al. v. Blalock and Scrase



CO-NEUTRALS

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**Center for the
Study of
Social Policy**
Ideas into Action



H&A Hyde & Associates
Policy and Practice Consulting, LLC

Kevin S. v Blalock and Scrase
Co-Neutrals’ Annual Report – January - December 2021

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I. Introduction

The *Kevin S., et al. v. Blalock and Scrase* (“Kevin S.”) lawsuit was filed in the U.S. District Court for New Mexico on September 22, 2018,^{1,2} on behalf of a class of children in the custody of New Mexico’s child welfare system (“Plaintiffs”) by Disability Rights New Mexico,³ the Native American Disability Law Center,⁴ Public Counsel, Pegasus Legal Services for Children, and associated counsel. The Defendants in the lawsuit include state officials responsible for administering and supervising New Mexico’s child welfare system – Children, Youth, and Families Department (CYFD) – and the system responsible for delivery of Medicaid services for eligible children as well as other behavioral health services for adults, children, and their families – Human Services Department (HSD). Following months of negotiations among the *Kevin S.* parties, on March 17, 2020, the parties executed a Final Settlement Agreement (“FSA,” also referred to herein as “Agreement”),⁵ and on March 26, 2020, filed a Joint Stipulation of Dismissal⁶ of the lawsuit. In reaching this Agreement, the parties acknowledged their mutual commitment to the development of a trauma-informed system of care that meets the needs of New Mexico’s diverse children and youth and their families.⁷

The FSA is organized in five sections. The first section enumerates the goals of the Agreement, which provide a guiding focus on the desired outcomes of the reform and summarizes the purpose and objectives; provides definitions of terms; and outlines processes, including the appointment and role of the Co-Neutrals, FSA implementation, Performance Standard determinations, and reporting of performance. The remaining sections of the Agreement are organized by the primary subject areas alleged as deficient in the *Kevin S.* complaint (codified as Appendices). Specifically,

- Appendix A, titled *Trauma-Responsive System of Care*, requires CYFD and HSD to make good faith efforts to achieve substantial and sustained progress toward the development and support of a trauma-responsive system of care for all children in state custody.

¹ Case 1:18-cv-00896, Dkt. No. 1

² Plaintiffs’ counsel filed an Amended Complaint on December 28, 2018 (Dkt. No. 16), and included one additional Named Plaintiff.

³ Disability Rights New Mexico (DRNM) is a 501(c)(3) non-profit New Mexico corporation, designated as New Mexico’s protection and advocacy organization whose mission is to protect, promote, and expand the rights of persons with disabilities.

⁴ The Native American Disability Law Center (NADLC) is a 501(c)(3) nonprofit organization that advocates for the legal rights of Native Americans with disabilities, and is authorized by federal statutes to initiate legal action designed to protect the rights of persons with disabilities, including children in the foster care system.

⁵ Exhibit A to the Joint Stipulation of Dismissal (Dkt. No. 62)

⁶ Dkt. No. 62

⁷ Shortly after the parties executed the FSA, the Covid-19 pandemic had a significant and unforeseeable impact on the State and nation. The parties agreed to extend by 180 days the deadline for compliance with a significant number of commitments originally scheduled to be completed on December 1, 2020. FSA IV, B states, “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.” The parties’ agreement is referred to herein as “Parties’ Extension Agreement.”

- Appendix B, titled *Least-Restrictive and Appropriate Placements*, requires CYFD and HSD to make good faith efforts to achieve substantial and sustained progress toward the development of a system for placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment.
- Appendix C, titled *Indian Child Welfare Act*, requires CYFD and HSD to make good faith efforts to achieve substantial and sustained progress to serve Native American families, build a relationship with each of the New Mexico Tribes and Pueblos,⁸ and comply with the Indian Child Welfare Act in its letter and intent.
- Appendix D, titled *Behavioral Health Services*, requires CYFD and HSD to make good faith efforts to achieve substantial and sustained progress to build a statewide, community-based mental health system that all children and families will be able to access.

Each Appendix includes a set of Implementation Targets (ITs) and Target Outcomes (TOs) toward which the State committed to make good faith efforts to achieve substantial and sustained progress. The FSA defines ITs as process commitments that CYFD and HSD have agreed to undertake as intermediary and necessary steps toward reaching TOs.⁹ The TOs are defined as performance commitments toward which CYFD and HSD agree to make good faith efforts to achieve substantial and sustained progress in consideration for Plaintiffs' agreement to dismiss the *Kevin S.* litigation.¹⁰

Implementation of the State's obligations within the FSA are validated and monitored by three Co-Neutrals. The parties appointed Judith Meltzer,¹¹ Pamela Hyde,¹² and Kevin Ryan¹³ to serve in this role. The Co-Neutrals function in a neutral capacity, and have the authority to validate, evaluate, and audit progress toward achievement of the ITs and TOs. The Co-Neutrals are also

⁸ The FSA defines New Mexico Tribes and Pueblos to be inclusive of all Tribes, Pueblos, and Nations in New Mexico. The Co-Neutrals use of this term within this report is consistent with the FSA definition.

⁹ ITs may not be monitored once they have been achieved. Pursuant to the FSA, if the Co-Neutrals find that the Defendants have met the Performance Standard for a specific IT, the IT will not be reassessed in further reports. (FSA, pg. 8)

¹⁰ The Co-Neutrals must monitor each TO until the State has met the Performance Standard continuously for a period of at least 24 months. (FSA, pg. 8)

¹¹ Judith Meltzer is the President of the Center for the Study of Social Policy, a national non-profit policy organization that connects community action, public system reform, and policy change to create a fair and just society in which all children and families thrive. Ms. Meltzer has been appointed as court monitor or has served as a member of a technical assistance team in other state and federal class action lawsuits involving child welfare systems, including in Washington DC, New Jersey, Tennessee, South Carolina, Kansas, and Humboldt County, CA.

¹² Pamela Hyde is the principal in Hyde & Associates – Policy and Practice Consulting, LLC. Ms. Hyde previously served as Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA), and before that, as Secretary of New Mexico's HSD. Ms. Hyde has served as Secretary or Director of other state and city agencies, and has consulted nationwide providing technical assistance for governmental agencies and agencies utilizing government funding to provide health and human services for their populations.

¹³ Kevin Ryan is the former commissioner of the New Jersey Department of Children and Families, former New Jersey State Child Advocate, and, through Public Catalyst, supports U.S. District Court Judges overseeing child welfare reform across the country.

responsible for assessing and providing approval of certain policies, plans, and efforts the State must complete related to specific ITs and TOs, as identified in the FSA.

The primary public accountability mechanism for validating, evaluating, and auditing the State's progress is through issuance of public reports. The State and Co-Neutrals are each required to produce a baseline and subsequent annual reports to assess CYFD and HSD's achievement of ITs and TOs. The State submitted their *Quantitative Baseline Report* (measuring baseline performance for 2019 and 2020) to the Co-Neutrals and Plaintiffs' team on July 1, 2022,¹⁴ and submitted their *2021 Annual Progress Report* to Plaintiffs' team and to the Co-Neutrals on August 1, 2022. The State's *2021 Annual Progress Report* was released to the public on October 5, 2022.¹⁵ Those reports were authored by the State, and provide a self-assessment of the State's efforts and progress in 2021, and in some cases, during 2022.

This report – authored by the Co-Neutrals – assesses and, where possible, validates the 2019-2021 data¹⁶ and information produced by the State, and documents the Co-Neutrals' determinations whether the State has met the Performance Standard for ITs and TOs due in 2021. The FSA defines the Performance Standard as,

“...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 and 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.”¹⁷

The FSA also describes the information the Co-Neutrals should consider when assessing the State's efforts against the Performance Standard, and the factors the Co-Neutrals should apply, including consideration of the FSA's goals and prefatory language in each Appendix.¹⁸ Ultimately, ITs and TOs are meant to collectively strengthen the agencies' practices, processes, and infrastructure, and in turn, improve outcomes for children and families served by CYFD and HSD. As required by the FSA, the Co-Neutrals have applied the FSA definition of the Performance Standard in this report to assess the State's 2021 performance.

¹⁴ To view the State's *Quantitative Baseline Report*, see https://cyfd.org/docs/Kevin_S_Quantitative_Report_CY19-20.pdf

¹⁵ To view the *State of New Mexico, 2021 Annual Progress Report*, see https://cyfd.org/docs/October_Resubmission-2022_Annual_Progress_Report.pdf

¹⁶ Limited data are available for 2019 and 2020 because many of the FSA commitments have required the State to adopt new processes or collect different data than the State tracked previously. To provide contextual information over a longer horizon than would otherwise be possible, the State identified “secondary” metrics (denoted with an asterisk (*) within this report) that could be calculated for earlier years. Detailed methodologies for primary and secondary metrics are provided in the Data Validation Plan (DVP).

¹⁷ FSA, pgs. 2-3.

¹⁸ FSA VI, C.

A. Report Structure

The report is structured as follows:

- Section I outlines the original *Kevin S., et al. v. Blalock and Scrase* complaint, subsequent Agreement, the definition and role of the Co-Neutrals, and provides sources of information used and activities completed by the Co-Neutrals to prepare and compile this report.
- Section II summarizes the State’s progress on *Kevin S.* commitments due by December 2021.
- Section III provides an overview of the demographics of children in state custody in New Mexico during 2019, 2020, and 2021.
- Section IV discusses the State’s performance on all FSA commitments due by December 1, 2021, organized by each of the Agreement’s subject area Appendices.
- Section V, Appendix A, provides baseline data from 2019-2021 for commitments due in future years.

B. Methodology

During this period, the Co-Neutrals held regular meetings and communicated with the Secretaries of CYFD and HSD, the agencies’ leadership teams and staff, and provided feedback to the State on certain work relevant to each commitment. The Co-Neutrals also met with youth, the Plaintiffs’ team, community advocates, private providers, tribal representatives, and resource parents.¹⁹

The Co-Neutrals and their team collaborated with the State’s data team and program leadership to identify and refine the methodologies described in the Data Validation Plan (DVP).²⁰ They also reviewed, analyzed, and validated children’s cohort and performance data submitted by the State. The Co-Neutral team developed qualitative instruments and collected 2021 performance data for several TOs in Appendix B that were applicable in 2021.

The IT and TO Performance Standard determinations within this report assess CYFD and HSD’s performance in 2021. The Co-Neutrals recognize both CYFD and HSD have continued their efforts and progress toward implementing FSA commitments throughout 2022, but the FSA dictates the period of assessment for each annual report; specifically, this report – due by

¹⁹ In September 2022, the Co-Neutrals conducted visits to seven CYFD county offices, leadership of one Pueblo and a representative from a consortium of Native child welfare professionals, and met with several service and placement providers across New Mexico to further inform the Co-Neutrals’ understanding of the State’s performance and its efforts in 2022.

²⁰ The DVP is an IT, and was included in the set of commitments for which the State received a 180-day extension for finalization. The Co-Neutrals’ assessment and discussion of the DVP is detailed later in this report.

November 15, 2022 – assesses the State’s performance from January 1, 2021 to December 31, 2021.²¹

The Performance Standard determinations are solely based upon the State’s efforts to achieve substantial and sustained progress in 2021, even though comments regarding commitments completed in 2022 are included in this report. Nevertheless, the Co-Neutrals’ next report – due by November 15, 2023 – will discuss and assess the State’s performance in 2022.

II. Executive Summary

This is the Co-Neutrals’ second *Kevin S.* report on the State’s efforts to achieve the commitments of the FSA. The *Kevin S.* Agreement reflects the State’s commitment to redesign and improve the ways in which both CYFD and HSD and their system partners serve children and families, and engage and collaborate with the State’s Nations, Pueblos, and Tribes. In 2021, these efforts unfolded as New Mexico, like other states across the nation, confronted the continuing effects of the Covid-19 pandemic.

On October 1, 2021, New Mexico Governor Michelle Lujan-Grisham nominated the Honorable Barbara Vigil as CYFD Secretary; the Senate confirmed her to the post on January 31, 2022. Secretary Vigil and HSD Secretary Dr. David Scrase have been deeply engaged in efforts to implement the FSA and in establishing the agency collaboration necessary to achieve the goals of the *Kevin S.* Agreement. Though Secretary Vigil had only been serving for a few months by the end of 2021, she and Secretary Scrase began to assemble, and as of this report writing in the Fall of 2022, are continuing to grow and support cross agency management teams with appointed leads for each FSA Appendix. At the close of 2021, their work to implement *Kevin S.* was proceeding in some areas, behind schedule in some areas, just beginning in some areas, and strengthening in others. The impacts of the Covid-19 pandemic have been one, but not the only influence on the pace of progress. The State continues to work on its *Kevin S.* commitments in 2022,²² and this report on progress through December 31, 2021 does not provide a current or comprehensive picture of all the current work underway in 2022.

Some of the States’ achievements in 2021 included:

- Substantial Completion of a comprehensive Data Validation Plan (DVP)
- Development of a Plan for Recruitment and Retention of Resource Families (App. B, IT 1.1)
- Publication of Guidance Prohibiting Retaliation (App. B, IT 2.1)

²¹ The Co-Neutrals’ previous report included information and discussion of performance through June 2021 because, due to the impact of the Covid-19 pandemic, the parties had agreed to extend the deadline for a significant number of commitments originally due by December 2020 to June 2021.

²² In certain instances, activities or actions in 2022 are detailed in either report narrative or in footnotes. These areas will be more fully described in the Co-Neutrals’ 2023 Report discussing progress toward ITs and TOs in 2022.

- Development and Promotion of a Warm Line for Resource Parents (App. B, IT 3.1)
- Collaboration with New Mexico’s Nations, Pueblos, and Tribes leading to the passage in 2022 of the New Mexico Indian Family Protection Act (IFPA), which codifies into state law provisions of the federal Indian Child Welfare Act (ICWA) (App. C, IT 1.1)
- Reinstatement of “No Reject, No Eject” Language in certain Medicaid Contracts (App. D, IT 6.1)
- Finalization of Notice of Action and Grievance Protocols for Denial or Delay of Recommended Services (App. D, IT 7.1)

These are significant accomplishments. The parties understand they are not, by themselves, nearly sufficient to realize the full intent of the *Kevin S.* FSA. As the State acknowledges, they have fallen short of certain commitments the Agreement requires to have been accomplished by no later than December 31, 2021. While work is underway in all areas covered by the *Kevin S.* Agreement, serious challenges remain. The FSA was structured with Implementation Targets (ITs) due to be completed in the first years of the reform as the foundation to create conditions for improved outcomes (Target Outcomes, TOs) for New Mexico’s children, youth, and families. Of the 16 ITs assessed in this report, CYFD and HSD met the Performance Standard for seven by December 31, 2021.²³ Numerous states pursuing major system reform have struggled at the outset, and New Mexico is in a similar position. CYFD and HSD did not in 2021 meet the Performance Standard for the 31 TOs assessed in this report. In many areas, the State has made efforts and progress in 2022 that are not fully detailed in this report because they extend beyond the period under review.

To achieve the promises of the FSA for children and families in New Mexico, the State’s investments and efforts must continue to focus on fundamental capacity building components of the FSA: **(1) strengthening and stabilizing the CYFD and HSD workforce; (2) growing resource family placements; (3) expanding behavioral and mental health services; and (4) strengthening the collaboration and communication with New Mexico’s Nations, Pueblos, and Tribes.** Meeting the current gaps and challenges in these areas will require not only the continued commitment and support from agency leaders but continued investment in the commitments of the FSA by the Governor and the Legislature, as well as collaboration with providers; advocates; New Mexico’s sovereign Nations, Pueblos, and Tribes; front-line workers; and the children and families served.

While some planning was in process, at the conclusion of 2021, neither HSD nor CYFD had met the Performance Standard for two of the State’s primary workforce commitments in the FSA: the HSD Behavioral Health Care Workforce Development Review and the CYFD Workforce

²³ These totals do not include nine ITs and TOs that were not assessed for 2021 performance, specifically: seven App C ITs and TOs that have been subject to mediation and negotiation by the parties for the majority of the last 12 months following the *Co-Neutrals’ November 2021 Report* when alternative dispute resolution was invoked; and App. A, TO 1b and App. B, TO 3.2 for which the timeline for analysis is outside of the reporting year (further discussion later in this report).

Development Plan. Those documents are intended to provide roadmaps to ensure HSD and CYFD staff, and the staff of their provider partners, have the skills, resources, and reasonable caseloads necessary to serve children and families as set forth in the FSA.²⁴ They are intended to address large challenges that loomed at the end of 2021, including high turnover among CYFD staff and numerous HSD providers. Drafts of these two plans were provided recently to the Co-Neutrals for review.

Data and information from 2020 and 2021 show the importance of placing children with kin is ingrained in CYFD practice. At the same time, there was a significant shortage of non-relative resource homes for children who cannot be safely placed with kin, likely worsened by the pandemic. The lack of home-based placement options contributed to children spending nights in 2021 in offices, shelters, congregate settings, and other placements that are not able to meet their needs.

Several of the FSA commitments due at some point in 2021 are tied to the development of a more robust system of care to meet children's and families' behavioral health needs; the development of this critically important service array was behind schedule at the end of 2021. The availability of outpatient and inpatient services throughout the state posed a significant challenge for children and families, and affects every phase of children's experience in state custody.

The Secretaries of HSD and CYFD express a strong understanding of the importance of building trusting relationships between their agencies and providers with Nations, Pueblos, and Tribes across New Mexico. They acknowledge the importance of this collaboration to support and empower Native children and families effectively, and to implement federal, and now state, requirements governing the care of Native children and their families. HSD and CYFD leaders understand that due to centuries of historical distrust, this effort will require ongoing, transparent, and effective communication and sufficient staff resources available to engage in open, honest, and productive conversations.

In the Co-Neutrals' extensive experience working in and with state child welfare systems that have undertaken system transformation, the significant challenges that faced HSD and CYFD at the close of 2021 are not unique. The situation in New Mexico can change for the better, as it has in numerous other jurisdictions, as the State makes good faith efforts to achieve substantial and sustained progress, particularly around workforce development and expansion of services and placements for children. The achievements noted in this report are evidence of the State's on-going commitment to the goals of this reform. The State's efforts must continue and strengthen in order

²⁴ Secretary Vigil's assessment that CYFD's workforce is experiencing a crisis as of September 2022 underscores the State's understanding of the critical importance of these FSA commitments. Santa Fe New Mexican, *Child welfare in 'workforce crisis,' New Mexico lawmakers told* (September 28, 2022), see https://www.santafenewmexican.com/news/local_news/child-welfare-in-workforce-crisis-new-mexico-lawmakers-told/article_e7e57ee-3e74-11ed-85dc-83c8288e8f0c.html

for the promise of the *Kevin S.* Agreement to become a reality for children in state custody and their families.

III. Contextual Summary of Children in State Custody

Demographic data provided by CYFD on children in foster care during 2021 show that 2,949 children were in CYFD Protective Services Division (PSD)²⁵ custody at some point from January 1, 2021 to December 31, 2021. There were 1,781 children in state custody on December 31, 2021.²⁶ This is a decrease from both 2019 and 2020. There were 1,027 entries into care during 2021 (representing 984 unique children), and 1,226 exits (representing 1,211 unique children).²⁷

Table 1: Children Entering and Exiting State Custody in 2019-2021²⁸

	2019	2020	2021
Children in care during reporting year	3,881	3,344	2,949
Children in care on Dec. 31	2,212	1,984	1,781
Entries during the year	1,533	1,199	1,027
Exits during the year	1,747	1,420	1,226

Source: Analysis of Sandbox *Cohort*, *Cohort_Dec31*, *Cohort_Entries* and *Cohort_Exits* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021)

A. Age, Gender, and Race

As of December 31, 2021, young children aged birth to six years old made up the largest portion (45%) of children in state custody, followed by youth aged 12 to 17 years (30%), and children aged seven to 11 years (25%). Although the number of children in state custody decreased year over year from 2019 to 2021, the age distribution was similar for each year.

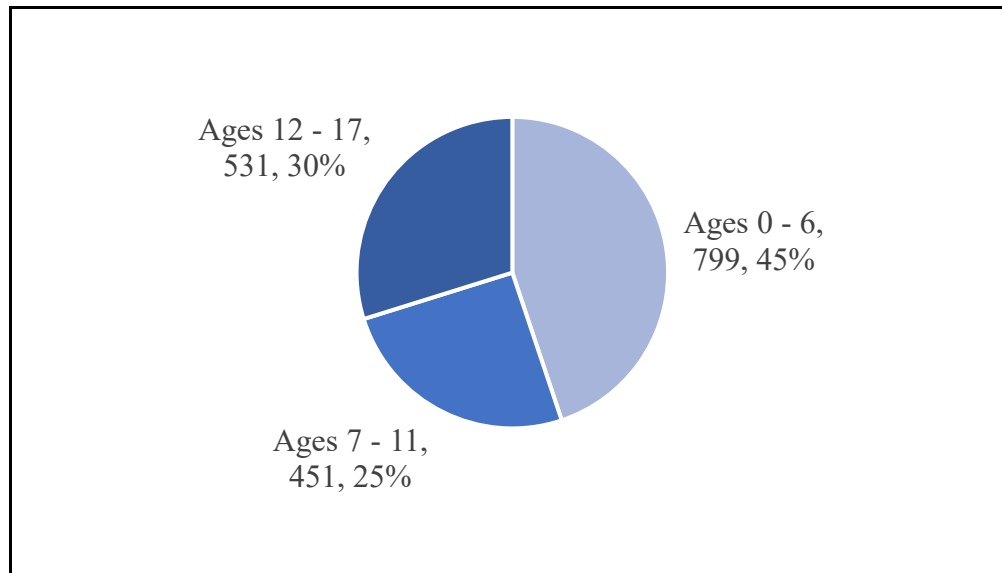
²⁵ CYFD is comprised of four divisions. These include Protective Services Division (PSD), Juvenile Justice Services (JJS), Behavioral Health Services (BHS), and Office of Tribal Affairs (OTA).

²⁶ The Co-Neutrals’ analysis of 2019-2021 cohort file (Sandbox data), submitted by CYFD on March 31, 2022 (2019 and 2020) and May 2, 2022 (2021).

²⁷ The Co-Neutrals’ analysis of 2019-2021 cohort entry and cohort exit files, submitted by CYFD on March 31, 2022 (2019 and 2020) and May 2, 2022 (2021).

²⁸ The data include all entries and exits for children with multiple episodes of custody during 2021, as submitted by CYFD on May 2, 2022. The number of children in care on December 31 of a reporting year should be equal to the number of children in care on January 1, plus the number of entries, minus the number of exits. However, there were consistency issues across the files as submitted (e.g., different discharge dates for the same child in multiple files). The State included in the May 2022 submission a list of consistency issues identified during their quality assurance review, but did not resolve the issues in the Sandbox files prior to submission. The Co-Neutral team made some adjustments (e.g., removed duplicates and placements after a child’s 18th birthday) but did not manually adjust data files to correct for all identified issues.

Figure 1: Age of Children in State Custody on December 31, 2021
N=1,781



Source: Analysis of Sandbox *Cohort_Dec31* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021)

In 2021, there were slightly more male (51%) than female (49%) children in state custody. The race and ethnicity of children in state custody as of December 31, 2021 was: 62 percent (1,112) of children were of Hispanic ethnicity, 21 percent (381) of children were White (non-Hispanic), seven percent (125) were American Indian/Alaskan Native (non-Hispanic), four percent (77) were Black/African American (non-Hispanic), three percent (56) were Multiracial (non-Hispanic), and less than two percent (30) were categorized as “Unknown.”²⁹ Of all 1,781 children, 86 percent (1,523) were not documented in FACTS as having a Tribal affiliation, 12 percent (220) were documented as having a Tribal affiliation, and two percent (38) of children’s Tribal affiliation was not able to be determined, as shown in Table 2.

²⁹ According to 2021 data from the US Census Bureau, 62 percent of children in New Mexico are Hispanic or Latino, 16 percent are American Indian or Alaska Native, and five percent are Black or African American. US Census Bureau, American Community Survey 1-Year Estimates for children under 18 years in New Mexico; categories are not exclusive.

Table 2: Race, Ethnicity, and Tribal Affiliation Status of Children in Custody on December 31, 2019-2021

Race and Ethnicity	Dec. 31, 2019		Dec. 31, 2020		Dec. 31, 2021	
	N	%	N	%	N	%
Hispanic ethnicity (of any race)	1,404	64%	1,269	64%	1,112	62%
White (non-Hispanic)	499	23%	395	20%	381	21%
American Indian/Alaska Native (non-Hispanic)	133	6%	147	7%	125	7%
Black/African American (non-Hispanic)	106	5%	94	5%	77	4%
Multi-Race (non-Hispanic)	64	3%	64	3%	56	3%
Native Hawaiian or Other Pacific Islander	0	0%	2	<1%	0	0%
Unknown	6	<1%	13	1%	30	2%
Total	2,212	100%	1,984	100%	1,781	100%
Tribal affiliation (No)	1,975	89%	1,731	87%	1,523	86%
Tribal affiliation (Yes)	211	10%	222	11%	220	12%
Tribal affiliation (unable to determine)	26	1%	31	2%	38	2%

Source: Analysis of Sandbox *Cohort_Dec31* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021)

B. Living Arrangements

On December 31, 2021, 94 percent (1,513) of children in state custody lived in family settings, including 39 percent (696) in relative and fictive kin resource families, 33 percent (578) in non-relative resource families, 11 percent (188) in treatment foster care (TFC) homes (relative and non-relative),³⁰ and three percent (51) in pre-adoptive homes. On December 31, 2021, five percent (97) of children lived in congregate settings³¹ as shown in Table 3.

³⁰ Due to an issue with State data production, at the time of this report, the Co-Neutrals were not able to distinguish with certainty which TFC placements were with relatives and which were with non-relatives. The Co-Neutrals are working to resolve this issue with the State for future reports.

³¹ For purposes of this report, the Co-Neutrals classify placements recorded in FACTS as Supervised Independent Living as congregate placements, subject to the “best interest” determination in App. B, TO 4.1.

**Table 3: Placement Type for Children in State Custody
on December 31, 2019-2021**

Setting	Dec. 31, 2019		Dec. 31, 2020		Dec. 31, 2021	
	N	%	N	%	N	%
Children in Placements	1,967	89%	1,825	91%	1,610	90%
Family-based settings						
Foster Family Home (Non-Relative)	865	39%	715	36%	578	33%
Foster Family Home (Relative & Fictive Kin)	605	27%	655	33%	696	39%
Treatment Foster Care	252	11%	237	12%	188	11%
Pre-Adoptive Family	82	4%	86	4%	51	3%
In-state congregate settings						
Facility	48	2%	45	2%	14	1%
Emergency Shelter	30	1%	17	1%	16	1%
Group Home	19	1%	31	2%	20	1%
Community Home	10	1%	9	1%	14	1%
Hotel/Motel, Office, Receiving Center	0	0%	0	0%	2	<1%
Supervised Independent Living	8	<1%	3	<1%	5	<1%
Out-of-state congregate settings	48	2%	27	1%	26	2%
Children not in placements	245	11%	159	9%	171	10%
Trial Home Visit	172	8%	101	5%	89	5%
Runaway	51	2%	41	2%	46	3%
Temporary Absence	9	<1%	9	1%	20	1%
Acute Hospitalization	5	<1%	4	<1%	8	<1%
Protective Supervision	5	<1%	3	<1%	6	<1%
Detention	3	<1%	1	<1%	2	<1%
Total for all Children in State Custody	2,212	100%	1,984	100%	1,781	100%

Source: Analysis of Sandbox *Cohort_Dec31* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-2021); Manual *Hotel Stays* file submitted 3/31/22 (2020)

C. Length of Time in State Custody

Of the 1,781 children in state custody on December 31, 2021, 35 percent (626) had been in state custody less than one year, 25 percent (435) had been in state custody for one to two years, 15 percent (271) had been in state custody for two to three years, and 25 percent (449) had been in state custody for more than three years.

Although the number of children in state custody decreased year over year from 2019 to 2021, the length of stay in care for children in state custody was similar. Of note, six percent of children in 2021 had been in state custody for six years or more (see Table 4), an increase of two percentage points since 2019.

Table 4: Length of Stay in Care of Children in State Custody on December 31, 2021
N=1,781

Setting	Dec. 31, 2019		Dec. 31, 2020		Dec. 31, 2021	
	N	%	N	%	N	%
Less than one year	740	34%	702	35%	626	35%
One year to less than two years	548	25%	469	24%	435	25%
Two years to less than three years	384	17%	293	15%	271	15%
Three years to less than six years	446	20%	422	21%	338	19%
Six or more years	94	4%	98	5%	111	6%
Total	2,212	100%	1,984	100%	1,781	100%

Source: Analysis of Sandbox *Cohort_Dec31* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021).

D. Geography

As of December 31, 2021, nearly one-third of children in care were from Region 3 (Bernalillo County), as seen in Table 5. Approximately 23 percent were from Region 4 (Southeast), 16 percent from Region 1 (Northwest), 15 percent from Region 2 (Northeast), and 16 percent from Region 5 (Southwest). Seventy-six percent (1,224) of children were placed in their home region on December 31, 2021, compared to 79 percent (1,434) in 2020 and 74 percent (1,461) in 2019. One hundred and fourteen children (7%) were placed out of state (at least 26 in residential settings) on December 31, 2021.

Table 5: Regional Distribution of Case Region and Placement Region for Children in State Custody on December 31, 2021

Region Name	Case Region		Placement Region	
	N	%	N	%
Region 1 (Northwest)	280	16%	269	15%
Region 2 (Northeast)	267	15%	193	11%
Region 3 (Bernalillo)	529	30%	512	29%
Region 4 (Southeast)	411	23%	281	16%
Region 5 (Southwest)	282	16%	241	14%
Unknown	12	1%	0	0%
Out of State	0	0%	114	6%
Not in an out of home placement on December 31 ³²	n.a.	n.a.	171	10%
Total	1,781	100%	1,781	100%

Source: Analysis of 2021 Sandbox *Cohort_Dec31* files submitted 5/2/22

³² Includes six children in Protective Supervision, 89 on Trial Home Visit, and two in detention, as well as 74 children who were temporarily absent on December 31, 2021 (including 46 who were missing or had run away, and eight acute hospitalizations).

E. Federal Permanency Goals and Legal Status

Of the children in care on December 31, 2021, 802 children (45%) had a federal permanency goal of reunification, which was an increase from 2019 and 2020.³³ An additional 754 children (42%) had a federal permanency goal of adoption, a decrease from 2019 and 2020.

Table 6: Federal Permanency Goals for Children in State Custody on December 31, 2019-2021

Federal Permanency Goal	2019		2020		2021	
	N	%	N	%	N	%
Adoption	1116	51%	954	48%	754	42%
Reunification	887	40%	845	43%	802	45%
Guardianship	107	5%	120	6%	141	8%
Long Term Foster Care	53	2%	41	2%	49	3%
Unknown	49	2%	22	1%	33	2%
Live With Other Relative(s)	0	0%	2	<1%	2	<1%
Total	2,212	100%	1,984	100%	1,781	100%

Source: Analysis of Sandbox *Cohort_Dec31* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021)

According to the State’s data, nearly one-third of children in care (556) on December 31, 2021 had the legal status “Post TPR/Relinq.-Freed For Adoption,” indicating their parents’ rights had been terminated, and they were legally detached from a family.

F. Exits from State Custody³⁴

Most (54%) children who exited state custody in 2021 exited to reunification with family. Reunification rates were higher in both 2019 (68%, 1,179 exits) and 2020 (59%, 836 exits) compared to 2021, while rates of exits to adoption (28%) and guardianship (11%) were higher in 2021.

³³ List of federal permanency goals are included in Table 6.

³⁴ The Co-Neutrals’ analysis of 2019-2021 cohort exit files, submitted by CYFD on March 31, 2022 (2019 and 2020) and May 2, 2022 (2021).

IV. Discussion of Performance

A. FSA Section IV: Process

i. Data Validation Plan

Section IV of the FSA requires the State to complete a written Data Validation Plan (DVP) that has the approval of the Co-Neutrals. According to the FSA, the DVP should, “set forth a process, including methodology and data sources, for validating Defendants’ progress toward achieving the Implementation Targets and Target Outcomes.” The DVP must also, “set clear timelines for taking any intermediary steps necessary to validate progress towards the Implementation Targets and Target Outcomes and assign responsibility for supplying information necessary to fulfill the Data Validation Plan.”

The DVP provides key methodological definitions, detail about core data systems and processes (including planned systems changes to strengthen data collection) and presents a set of quantitative and qualitative metrics to help the State manage, and the Co-Neutrals assess, progress. For each quantitative metric, the DVP specifies the data and methodology that will be used to calculate the metric for each reporting period. For some items, both quantitative and qualitative metrics are necessary, and work is now occurring to develop the instruments needed for qualitative review. The State is working with the Co-Neutrals to identify, create, or accept the instruments necessary for any qualitative metrics for approval by the Co-Neutrals.

The Co-Neutrals and State collaboratively developed the DVP throughout 2020 and 2021. The work was iterative; the State submitted draft methodologies and the Co-Neutrals provided detailed feedback – communicating recommendations and suggestions, and highlighting potential programmatic issues. The work was substantially completed in 2021, and the Co-Neutrals approved the DVP on February 16, 2022.^{35,36}

Importantly, the DVP will evolve and change as implementation proceeds and the State makes adjustments to practice and improvements to its data collection and systems. The Co-Neutrals will work with the State to identify proposed modifications each year, and assess whether to approve changes after consultation with each party.

³⁵ The DVP, as approved, includes a number of deadlines for completion of steps necessary to validate progress. It requires the State to develop (and the Co-Neutrals to approve) qualitative instruments, sampling strategies, and to determine a cadence of implementation and reporting by April 30, 2022. It also requires CYFD to finalize a caseload standard for Placement Workers in collaboration with the Co-Neutrals, and for HSD to submit a proposed methodology reflecting their strategy to track coaching by July 1, 2022. As of the writing of this report, these items have not yet been completed. The Co-Neutrals will continue to work with the State to complete these items.

³⁶ To view the *Kevin S. Settlement Data Validation Plan*, see https://cyfd.org/docs/Kevin_S_Full_Updated_DVP_FINAL.pdf

Based upon review and consideration of all available information, the Co-Neutrals assess the State met the Performance Standard for this IT in 2021.

ii. Production of Data

The FSA requires the State to submit the data required to validate the TOs for the previous reporting period by May 1st each year, and to submit data used to calculate baseline metrics concurrently with those reports. The State submitted revised 2019 and 2020 data to the Co-Neutrals on March 31, 2022 to address concerns identified by the Co-Neutrals and to make adjustments to better align data with the methodologies specified in the DVP. The State timely submitted 2021 data on May 2, 2022.³⁷ Additional data files were submitted to address issues as they were identified during the validation process.

The FSA requires the State to collect data to assess new system practices that were not previously recorded, and to use this data in new and different ways to assess the experience of children in state custody within both the foster care system (managed by CYFD) and the broader health continuum (managed by HSD). In 2021, the State made progress developing the capacity to do this work, including engaging with an external contractor (Falling Colors Corporation) to create an infrastructure to merge and support data reporting across systems. Much has been accomplished, and more work remains. The Co-Neutrals continue to work closely with the State and the State's data partners to improve the quality, completeness, and consistency of the data submitted for validation.³⁸

iii. Production of Reports

Section IV, paragraph C of the FSA requires the State to produce a baseline report to the Co-Neutrals and to Plaintiffs which details the State's baseline performance of TOs from January 1 to December 31, 2019, and to provide, "any data required to validate the Target Outcomes for the previous calendar year."³⁹ The State submitted the quantitative baseline report (measuring baseline performance for 2019 and 2020) to the Co-Neutrals and Plaintiffs' team on July 1, 2022.⁴⁰

³⁷ May 1, 2022 was a Sunday, therefore, data were due to the Co-Neutrals on May 2, 2022. (FSA, pg. 2)

³⁸ The structured reports produced by Falling Colors and submitted for validation are referred to as "Sandbox" files. The State also submits to the Co-Neutrals as background information extracts from FACTS (the primary system of record for CYFD), ROM (structured management reports produced from FACTS data), and other data systems as described in the DVP. To address issues identified in the Sandbox files submitted for this report, the Co-Neutral team created "base files" for validation merging in data from supplemental files necessary for validation (e.g., service code detail) and making other quality adjustments (e.g., removed duplicates, placements after a child's 18th birthday, and episodes with the same start and end date). However, the data team was not able to resolve all the issues identified by the State at the time of submission or through the subsequent review process. In particular, the care start and end dates were not consistent across submitted files for a small subset of children. Therefore, there are some minor consistency issues across results presented within this report and between the State and Co-Neutral reports.

³⁹ FSA IV, C.

⁴⁰ To view the State's *Quantitative Baseline Report*, see https://cyfd.org/docs/Kevin_S_Quantitative_Report_CY19-20.pdf

As described earlier, the FSA requires both the State and the Co-Neutrals to each produce an annual written report detailing the State’s progress with respect to the ITs and TOs due in the previous calendar year. The State submitted their 2021 Annual Report to Plaintiffs’ team and to the Co-Neutrals on August 1, 2022. A revised version of the *State of New Mexico, 2021 Annual Progress Report* was released to the public on October 5, 2022.⁴¹

iv. Parties Meetings

Section IV, paragraph C of the FSA requires the Co-Neutrals to, “preside over a meeting between the parties at least twice a year,” and stipulates the Co-Neutrals and the parties, “must make every effort to have the first Parties’ Meeting no later than 30 Days after the State publishes its annual *Kevin S.* report, and the second meeting no later than 30 Days after the Co-Neutrals publish their *Kevin S.* annual report.”⁴² The parties have the ability to provide comments on the State’s and the Co-Neutrals’ annual reports prior to these meetings.

In 2021, the first parties’ meeting was held on August 26, 2021, within 30 days of release of the State’s 2020 Annual Report. The second meeting was held on December 2, 2021, within 30 days of release of the Co-Neutrals’ 2020 Annual Report. The Co-Neutrals facilitated the meetings, which were attended by leadership and staff from CYFD and HSD, including both CYFD Secretary Vigil and HSD Secretary Scrase, and the Plaintiffs’ team.

⁴¹ To view the *State of New Mexico, 2021 Annual Progress Report* (dated August 1, 2022), see https://cyfd.org/docs/October_Resubmission-2022_Annual_Progress_Report.pdf

⁴² FSA IV, C.

B. FSA Appendices

i. Appendix A: Trauma-Responsive System of Care

The commitments in Appendix A of the FSA require CYFD and HSD to, “build and support a trauma-responsive system of care for all children in state custody.” A trauma-responsive system is defined as, “one that identifies, recognizes, understands the effects of, and provides sufficient services and supports to ameliorate trauma, including secondary trauma.” The child’s voice and choice are prioritized, particularly, “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.” A trauma-responsive system must, “support and serve other stakeholders, including families and persons who work for or on behalf of children, youth, and families... include[s] culturally appropriate services and supports... [and] care should utilize collaborative decision-making to identify strengths and needs and to develop an individualized plan for the child.” FSA Appendix A also requires, “accurate, complete, and relevant evidence-based quality management tools and measures” throughout implementation of a trauma-responsive system of care, ensuring every facet of the State’s work, inclusive of quality assurance and quality management, is completed through a trauma-responsive lens.⁴³

Implementation Targets due December 1, 2020, June 1, 2021, and December 1, 2021 that were not previously achieved

In the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021), the Co-Neutrals assessed the State had met the Performance Standard for the following ITs: *Establish Child and Adolescent Needs and Strengths and Functional Trauma Assessment Criteria (App. A, IT 1.1)* and *Revised Serious Emotional Disturbance (SED) Criteria (App. A, IT 1.2)*. Thus, those ITs will not be assessed in this or future reports.

1. Developing a Trauma-Responsive Training and Coaching Plan (App. A, IT 2.1)

FSA Requirement	<i>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 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 comply with professional standards and</i>
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⁴³ FSA, pg. 1a.

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. (Due June 1, 2021)

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021.

Discussion

The State provided an initial draft of their Trauma-Responsive Training and Coaching Plan to the Co-Neutrals for review in March 2021. Between April and December 2021, the Co-Neutrals reviewed drafts and provided feedback on versions of the Plan provided by the State. As of December 31, 2021, the Co-Neutrals had not yet approved the Plan although the Plan with revisions was approved in August 2022.

The State’s current Plan provides a timeline by which the State commits to train CYFD staff and leadership, all resource parents, all CYFD contracted providers, and all Behavioral Health Services Division (BHSD) staff and providers who deliver behavioral health services to children in state custody and their families or caregivers in accordance with the FSA requirements. Providers who contract through the Managed Care Organizations (MCOs) will receive trauma-responsive training

from the MCOs or other trainers that are approved by the State. Each group will complete a trauma-responsive training curriculum.⁴⁴

The State’s Plan further requires CYFD and HSD staff to complete coaching sessions to supplement the training they receive. The State is developing a summative assessment tool as well as a pre- and post-test to assess the effectiveness of trauma-responsive training for staff, which will be used to assess performance toward App. A, TO 3b. As of the writing of this report, although the general Plan has been approved, the Co-Neutrals are awaiting the final curriculum and pre- and post-test assessments for review and approval.

*Target Outcomes Due December 1, 2020, June 1, 2021, and December 1, 2021*⁴⁵

2. **Completing Indicated Screenings** (App. A, TO 1)

<p>FSA Requirement</p>	<p><i>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. (Due December 1, 2021)</i></p>
<p>Co-Neutrals’ Finding</p>	<p>Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).</p>

⁴⁴ The State’s current curriculum was developed with the guidance of Dr. Bobbi Beale. For more information on Dr. Beale, see <https://case.edu/socialwork/begun/about-us/faculty-staff/bobbi-beale>. Importantly, the State has been collaborating with the Co-Neutrals on ensuring the curriculum includes relevant information on complex and developmental trauma, including expanding upon the unique trauma experienced by children and youth who are removed from their homes and/or separated from their primary caregiver(s). The impact of this curriculum will be assessed through App. A, TO 3a.

⁴⁵ App. A, TO 2.2 – *Expansion and Availability of Services* – is due on December 1, 2022; validated performance data for 2019-2021 are included in Appendix B of this report.

DVP Metrics and Validated Performance Data

ATO1(iii) – primary metric: For all episodes of custody longer than 10 days that occurred or overlapped with the reporting year, the percent for which a complete screen was conducted using the approved CAT screening tool by December 31 of the reporting year.

The Co-Neutrals examined State data, and found CAT screens were completed for 18 (34%) of the 53 children who entered care between December 1 and December 21, 2021.⁴⁶

ATO1(iv) – primary metric: For all episodes of custody for children in State custody for at least 45 days and for whom at least one CANS screening was completed and approved by CYFD during the reporting year, the percent for which screening results were provided to their MCO or other care coordinating provider or entity within 5 business days.

The State did not provide performance data with sufficient detail to calculate this metric prior to the Co-Neutrals' deadline for this report.⁴⁷

ATO1(v) – primary metric: For all episodes of custody for children in State custody for at least 10 days and for whom at least one CAT screening was conducted during the reporting year, the percent provided to their MCO or other care coordinating provider or entity within 5 business days.

As referenced above, in December 2021, CAT screens were completed for 18 children who entered care and remained in care for at least 10 days.⁴⁸ The FSA requires the State to share completed CAT screens with MCOs or other care coordinating entities, but there was no documentation the CAT screens were shared in December 2021 (or earlier in the year).

ATO1(i): qualitative metric: Qualitative review of practice used to identify and address child's trauma-related needs⁴⁹

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

⁴⁶ This does not correspond with the metric as reflected in the DVP, which, due to drafting errors, did not limit the analysis only to new entries. The Co-Neutrals will work with the State to adjust the methodology for future years.

⁴⁷ Sufficient detail was not included in any of the Sandbox *Screening* files submitted to identify the number of screens completed in December 2021 using the CANS instrument approved by the Co-Neutrals.

⁴⁸ In the *State of New Mexico, 2021 Annual Progress Report*, data were presented for this metric for the entire 2021 calendar year.

⁴⁹ This qualitative metric will be used to validate multiple related commitments, specifically ATO1.1, ATO1.a, ATO1.b, ATO1.c, ATO2.1, ATO2.2, ATO2.3, and DIT7.1.

Discussion

The Co-Neutrals approved the State’s CAT and CANS screening tools on March 2, 2021, in fulfillment of FSA commitment App. A, IT 1.1 *Establish Child and Adolescent Needs and Strengths and Functional Trauma Assessment Criteria*. The State issued Program Instruction Guide (PIG)⁵⁰ 12-2021-#21 *Children in State Custody (CISC) CATS/CANS Requirements, Medicaid/Medical Coverage and Well-Child Checkup* to staff on December 1, 2021,⁵¹ which states in paragraph 7.1:

“Once an abuse and neglect petition has been filed, all children in the case will have a Crisis Assessment Tool (CAT) completed by the investigator and filed with the court no less than one business (24 hours) day prior to the 10-day hearing. If this deadline falls on a weekend or holiday, the screening results must be filed no less than one business day (24 hours) prior to the 10-day hearing. The CBHC may provide consultation regarding the CAT to the Investigation Worker as needed.”

Paragraph 7.2 of PIG 12-2021-#21 requires CANS screenings to be:

“... completed by the assigned Investigation Worker or PPW or an available CANS certified PSD worker within 45 days of removal from the home. The NMCANS is re-administered prior to every initial judicial review and on- going judicial reviews, and permanency hearings to review progress in the case plan (or within six months, whichever comes first) or to adjust services and supports as results may indicate. NMCANS shall also be updated upon discharge from CYFD custody. NMCANS shall also be completed whenever any change in behavior is identified, and after any significant life-changing event. Life-changing events may include (but not limited to) the following:

1. change in placement;
2. change in clinical level of care;
3. a safety or crisis event;
4. a traumatic event; and
5. a birth or death of a family member.”

⁵⁰ Program Instruction Guidelines (PIGs) are interim directives to CYFD PSD staff which mandate changes to procedures and practice that CYFD expects to be implemented immediately, and will be incorporated into new or revised procedure or policy in the near future. PIGs are disseminated to CYFD PSD staff through email, and are posted on the CYFD Intranet, which is currently unavailable to anyone other than CYFD staff. The Co-Neutrals are unable to independently verify the date the PIG was finalized and distributed to staff, and how readily accessible it is to staff.

⁵¹ The State replaced PIG 12-2021-#21 with PIG 08-2022-#5 titled Re-ISSUE *CATS/CANS Requirements, Medicaid/Medical Coverage and Well-Child Checkups* on August 30, 2022. To review the updated PIG, see https://cyfd.org/docs/08-2022-no5_PIG-RE-ISSUE_CATS_CANS_and_Medicaid.pdf

In early 2022, HSD published Letter of Direction (LOD)⁵² #69-1 titled, *MCO Requirements for Children in State Custody (CISCs)*.⁵³ LOD #69-1 requires MCOs to have “two certified CANS trainers” on their staff who are “responsible for training care coordination staff and other relevant members of the organization, including but not limited to utilization management.” LOD #69-1 further requires trainings on the CANS to be “timely and targeted” and to be part of the MCO’s annual training plan submissions.

Although the State developed these procedures and guidance to staff, performance data do not reflect this practice occurred in December 2021 as required.

3. *Filing Results of CAT Screenings with the Court* (App. A, TO 1a)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).

DVP Metrics and Validated Performance Data

ATO1a(i) – primary metric: For all episodes of custody longer than 10 days that occurred or overlapped with the reporting year, the percent for which CAT results were filed with the court no less than two business days prior to a child’s 10-day hearings. 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.

The data submitted by the State did not provide sufficient detail to identify 10-day hearings, and the State was not able to develop a strategy to provide necessary detail prior to the Co-Neutrals’ deadline for this report. As a result, there are not sufficient data to calculate this metric as described in the DVP.

⁵² In New Mexico, a Letter of Direction (LOD) provides instruction for MCOs to make them aware of any changes or additional responsibilities that must be completed in accordance with their contracts with HSD.

⁵³ LOD #69-1 was published on February 28, 2022. To review LOD #69-1, see https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf

However, as additional contextual information to inform the Co-Neutrals’ assessment of the State’s efforts, the Co-Neutrals reviewed the data submitted which documented that only one CAT screen was shared with the court (out of up to 18 screens completed between December 1 and December 21, 2021).

Discussion

As discussed within App. A, TO 1 above, although the State developed PIG 12-2021-#21 integrating this FSA commitment into practice, performance data do not document this practice was occurring as required in December 2021.

4. Comprehensive CANS Screenings (App. A, TO 1b)

FSA Requirement	<i>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. (Due December 1, 2021)</i>
Co-Neutrals’ Finding	The Co-Neutrals do not make a Performance Standard determination for this TO in 2021, as the data to assess performance in December 2021 were unavailable until 2022. ⁵⁴

DVP Metrics and Validated Performance Data

ATO1b(i) – primary metric: For all episodes of custody for children who were removed and remained in State custody for at least 45 days during the reporting year, the percent for which an approved screen was conducted using the CANS within 45 calendar days of removal from home. The metric will exclude children who both did not receive this screening and who were discharged in less than 45 calendar days.

This metric was not calculated since the timeline for analysis is outside of the reporting year.⁵⁵

⁵⁴ For calendar year 2021, this metric would have assessed screens and referrals during the month of December only.
⁵⁵ Per the DVP, the metric is limited to entries during the reporting period. Given the 45-day window for completion, CANS screens were not due in 2021 for children who entered care during December 2021.

ATO1b(ii) – primary metric: For all episodes of custody for children who were removed during the reporting year and discharged without a CANS screening conducted, the percent whose family received a referral for the CANS screening.

This metric was not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA, including referrals at discharge.

Discussion

As discussed within App. A, TO 1 above, although the State developed PIG 12-2021-#2 and LOD #69-1 integrating this FSA commitment into practice, performance data are not available for December 2021 to assess whether the practice was occurring as required.

5. Completing Follow Up Screenings (App. A, TO 1c)

FSA Requirement	<i>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. (Due December 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).

DVP Metrics and Validated Performance Data

ATO1c(i) – primary metric: For all episodes where a child’s initial CANS or CAT screenings indicated a need for follow-up assessment(s) (as determined by the staffing team), the percent for which all appropriate follow-up assessments were conducted within 10 days of the completion of the initial screening. The metric will exclude children discharged from care within 10 days of the initial screening who did not receive follow-up assessment(s) prior to discharge.

ATO1c(ii) – primary metric: For all episodes where a child’s initial CANS or CAT screenings indicated a need for follow-up assessment(s), and where the child did not receive the indicated

follow-up assessment(s) prior to discharge, the percent whose family received referral(s) for the follow-up assessment(s) when the discharge took place.

These metrics were not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA, including decisions regarding appropriate follow-up assessments and referrals at discharge.

ATO1c(i) – secondary metric: The percent of episodes of custody which included at least one follow-up assessment, as specified in the annual list provided to the Co-Neutrals.⁵⁶*

Of the 735 eligible episodes of custody in 2021 (i.e., children’s episodes in care of 10 days or longer that began during the reporting period), the data show that 328 (45%) included at least one of the indicated assessments during a child’s time in foster care. State data indicate performance decreased from 2019 to 2021; specifically, 51 percent of the eligible episodes in 2019 and 50 percent of the eligible episodes in 2020 included at least one assessment during a child’s time in state custody.

Discussion

The State issued PIG 12-2021-#21 *Children in State Custody (CISC) CATS/CANS Requirements, Medicaid/Medical Coverage and Well-Child Checkup* to staff on December 1, 2021.⁵⁷ The PIG requires referrals be made based on needs identified by the CAT or CANS screenings to, “reflect the individual needs of the child” (paragraph 8). Further, the PIG states:

“When it is determined further assessment or evaluation is needed for a child or youth, the worker consults with child or youth’s team (including resource parents and parent, guardian, or custodian when rights have not been terminated) to identify and select an appropriate provider to meet the needs of the child or youth.” (Paragraph 8.1); and

“When making a referral, the worker ensures the results of the CANS yields an appropriate referral to meet the needs of the child or youth. The PPW attaches any other collateral information, in addition to the results from most recent CANS or CAT. If the child is 14 years or older, written consent by the child is required for release of behavioral health and medical records.” (Paragraph 8.2)

⁵⁶ For 2019-2021, this metric tracked the prevalence of the following service codes: H2010, 90791, 96130, 96131, 96132, 96133, 90885, 90892, and H2000.

⁵⁷ The State replaced PIG 12-2021-#21 with PIG 08-2022-#5 titled *Re-ISSUE CATS/CANS Requirements, Medicaid/Medical Coverage and Well-Child Checkups* on August 30, 2022. To review the updated PIG, see https://cyfd.org/docs/08-2022-no5_PIG-RE-ISSUE_CATS_CANS_and_Medicaid.pdf

Although the State developed PIG 12-2021-#2 and LOD #69-1 integrating this FSA commitment into practice, performance data do not document the practice was consistently occurring in December 2021 as required.

6. *Completion of Trauma-Responsive Training* (App. A, TO 3a)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

As discussed above, the Trauma-Responsive Training and Coaching Plan was not finalized as of December 31, 2021, thus, implementation consistent with an approved Plan did not occur by the required due date.

7. *Trauma-Responsive Competency Assessments* (App. A, TO 3b)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

As discussed above, the Trauma-Responsive Training and Coaching Plan, which includes the creation of pre- and post-competency assessments, was not finalized as of December 31, 2021. Thus, implementation consistent with an approved plan did not occur by the required due date.

8. *Developing Process for Individualized Planning Meetings* (App. A, TO 4.1)

FSA Requirement	<i>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 (HFW) 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. (June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

In March 2021, the State provided an initial draft of the Individualized Planning Meeting (IPM) Plan, which they renamed the Individualized Planning Process (IPP).⁵⁸ Between April and December 2021, the Co-Neutrals provided feedback on the draft IPP and Letter of Direction (LOD) provided by the State. As of December 31, 2021, the Co-Neutrals had not approved the Plan.

⁵⁸ The FSA denotes, “CYFD and HSD will develop and implement a process (the Individualized Planning Meeting Plan)” to fulfill this commitment. The State has committed to implementing an Individualized Planning Process (IPP) to serve as a framework to which all team meetings at CYFD will adhere to satisfy this commitment. The document describing the IPP will include a list of specific meetings which will utilize the IPP approach for different purposes and at specific decision-making points in a case and identify participants needed for each type of team meeting.

The State’s current IPP approach, approved by the Co-Neutrals in 2022,⁵⁹ is based on the New Mexico Practice Model⁶⁰ and is described as “a facilitated approach to conducting teaming meetings to support children and families involved with CYFD”; it will be applied as a framework across many of CYFD’s child and family team meetings. Page one of the State’s IPP Plan describes the IPP as,

“...an individualized, trauma-responsive approach that is strengths-based, family and youth-focused, and includes the family as an equal partner whenever possible. Team meetings conducted using the IPP approach result in individualized plans that unify the family and team under a vision with specific, targeted outcomes.”

The State’s IPP approach was informed by various focus groups held by the Child Welfare Group (CWG), the State’s contractor in this work.⁶¹ CWG also oversaw the training of IPP “practice champions” to serve as experts on the IPP process and who will become responsible for on-going training, coaching, and supporting the implementation of the IPP after the contract with CWG is completed (anticipated by June 30, 2023).

9. *Quality Assurance, Improvement, and Evaluation Plan* (App. A, TO 5.1)

<i>FSA Requirement</i>	<i>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</i>
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⁵⁹ The Co-Neutrals approved the State’s IPP Plan on August 17, 2022, and subsequently approved a change to the Plan on September 19, 2022. To review the State’s IPP plan, see https://cyfd.org/docs/FINAL-APP_A_TO_4dot1_IPP_clean_final_8-9-22bp_CYFD_Website_Links.pdf

⁶⁰ The New Mexico Practice Model is the model used by the State to guide their service delivery for all New Mexicans. To review the New Mexico Practice Model, see https://cyfd.org/docs/New_Mexico_practice_model_1.pdf

⁶¹ CWG is a national policy and practice organization that provides technical assistance to improve outcomes for children and families. For more information, see <https://childwelfaregroup.org/>

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 June 1, 2021 and fully implement it by December 1, 2021. (June 1, 2021)

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

The State provided an initial draft of its Quality Assurance, Improvement, and Evaluation Plan (QAIEP) to the Co-Neutrals in March 2021. Between April and December 2021, the Co-Neutrals received and provided feedback on drafts of the Plan provided by the State and met with the Plaintiffs’ team to discuss and obtain their comments. The Co-Neutrals did not approve the QAIEP as of December 31, 2021. Although the State worked continuously on the development of their QAIEP in 2021, a significant barrier to developing an approvable Plan was the State’s inability to identify and dedicate the necessary staff positions and resources, including data capacity, that will be required. The State most recently submitted an updated QAIEP draft to the Co-Neutrals in August 2022.

10. *Quality Assurance, Improvement, and Evaluation Plan Implementation*
(App. A, IT 5.2)

***FSA
Requirement***

CYFD and HSD will develop the Quality Assurance, Improvement, and Evaluation Plan by December 1, 2020 and fully implement it by December 1, 2021. (December 1, 2021)

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard in 2021.

Discussion

As discussed above, the Co-Neutrals did not approve the QAIEP in 2021, and implementation consistent with an approved Plan did not occur by the required due date in 2021. The State most recently submitted an updated QAIEP draft to the Co-Neutrals in August 2022.

ii. Appendix B: Least Restrictive and Appropriate Placements

The commitments in Appendix B of the FSA require CYFD and HSD to, “build a system for placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment.”⁶² The parties describe this system in Appendix B as including:

- Caregivers who understand the strengths and needs of children, and who are able to support children to grow and heal;
- Placements that are the least restrictive, most connected, and most family-like as appropriate to meet the unique needs of children;
- An acknowledgement that children ages 14 and older should be consulted on their express placement preferences; and
- Stable placements that meet children’s needs and protect from the harm caused by multiple placement moves.

The State’s foster care system should be used, “as temporary an arrangement as possible, with the goal of being [able] to provide children in out-of-home placements a safe, nurturing, and permanent home quickly.”⁶³

Implementation Targets due December 1, 2020, June 1, 2021, and December 1, 2021 that were not previously achieved

In the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021), the Co-Neutrals assessed the State had met the Performance Standard for the following IT – *development of a grievance procedure for resource families* (App. B, IT 3.3). Thus, that IT will not be reassessed in this or future reports.

1. Development of Recruitment and Retention Plan (App. B, IT 1.1)

FSA Requirement	<i>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. (Due June 1, 2021)</i>
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⁶² FSA, pg. 5a.

⁶³ Ibid.

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State has met the Performance Standard for this IT in 2021.

Discussion

In March 2021, CYFD provided the Co-Neutrals with a draft Recruitment and Retention Plan to increase the number of resource parents interested in and licensed to provide care for children in foster care. After several rounds of review and feedback, and in an effort to progress the State’s work from planning to implementation, in December 2021 the Co-Neutrals communicated to the State that they had no further comments on the Plan.⁶⁴

The State’s Recruitment and Retention Plan emphasizes the priority of placing children with their relatives and in family settings. Strategies within the Plan focus on retaining current resource parents by:

- Development of Individualized Retention and Training Plans (IRTP).
- Establishment of “support and sustain” teams to provide a team of staff that resource parents can contact in a crisis or when their regularly assigned staff is unavailable. Each team is supposed to consist of two CYFD staff – a worker, supervisor, or manager.
- Development of a Resource Parent Handbook⁶⁵ which was published in March 2022.

In their Recruitment and Retention Plan, CYFD commits to numerous strategies including use of family finding and other protocols to identify kin early and ongoing through a child’s experience in care, and targeted recruitment media and messaging plans. CYFD partnered with the New American Foundation and University of Chicago to conduct a data-driven gap analysis between available resource families and need. The analysis found that approximately half of children in the sample had experienced an adverse placement setting – including sibling separations, group homes, and out-of-county placements – and identified that five counties accounted for more than

⁶⁴ In June 2022, the State submitted a slightly revised final version of the Recruitment and Retention Plan, identifying where modest changes had been made. The Co-Neutrals responded later that month that they had no further comments on the Plan. To access CYFD’s Recruitment and Retention Plan, see https://cyfd.org/docs/App_B_T_1dot1_Retention_and_Recruitment_of_Resource_Families_-3-28-2022.pdf

⁶⁵ To access CYFD’s Resource Parent Handbook, see https://cyfd.org/docs/Resource_Parent_Guide_Final_3_3_22.pdf

CYFD reported the Handbook has been translated into Spanish and Navajo (Diné), and would be available in those languages on CYFD’s website by September 1, 2022. The Co-Neutrals reviewed CYFD’s website on October 1, 2022, and were unable to find the translated versions.

50 percent of adverse placements and were in need of recruitment resources.⁶⁶ These counties include Lea, Eddy, San Miguel, Dona Ana, and Bernalillo.⁶⁷

2. *Publish Guidance Prohibiting Retaliation* (App. B, IT 2.1)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2020)</i> ⁶⁸
<i>Co-Neutrals' Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State has met the Performance Standard for this IT.

Discussion

On March 15, 2021, CYFD finalized guidance prohibiting retaliation, which CYFD reports has been incorporated into the CYFD Employee Handbook, and is included in CYFD's Human Resource Administration Procedure, Chapter 1, Part 9: Retaliation. The procedure specifically states,

“It is unlawful for any CYFD employee, contractor, stipend student, student intern or volunteer to retaliate against anyone who has expressed a concern or made a complaint about any form of harassment, sexual harassment, or discrimination. Retaliation against an employee, client, contactor, stipend student, student intern, or volunteer alleging harassment, sexual harassment, discrimination or for participating in an investigation is prohibited. CYFD employees will not retaliate against any person, including resource parents or biological parents, for raising concerns related to the unmet needs of children in CYFD custody or their caregivers.”

⁶⁶ To access the New American Foundation and University of Chicago's report, see https://cyfd.org/docs/B5-IT_1-1-New_America_Foundation_and_University_of_Chicago_February_2022_Report.pdf

⁶⁷ According to Co-Neutral analysis of data submitted by CYFD, in 2021, three new non-relative homes were recruited in Lea (a decline from 8 in both 2019 and 2020), four in Eddy (an increase from 3 in 2020), three in San Miguel (consistent with 2019 and 2020), 12 in Dona Ana (down from 19 in 2020), and 41 in Bernalillo (an increase from 35 in 2020). See Table 12 that shows the number of homes recruited, by county, in each of the reporting periods.

⁶⁸ The State did not discuss this IT in the *State of New Mexico, 2021 Annual Progress Report*. It is included within this report as the Performance Standard had not been previously met.

The State published this procedure on CYFD’s *Kevin S.* webpage, which is available to the public.⁶⁹

3. Development and Promotion of Warm Line for Resource Parents
(App. B, IT 3.1)

FSA Requirement	<i>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. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State has met the Performance Standard for this IT.

Discussion

Since July 2020, CYFD has contracted with ProtoCall Service Inc. – the company that also operates New Mexico Crisis and Access Line (NMCAL) and the Peer-to-Peer Warmline – to operate a resource family warmline. Warmline staff who answer calls are certified, or eligible to become certified, as a Peer Support Worker (CPSW), Family Peer Support Worker (CFPSW), or are a resource parent licensed or previously licensed in New Mexico. Additional training for warmline staff is provided by New Mexico State University (NMSU) and CYFD.

In collaboration with CYFD, ProtoCall developed and implemented a public awareness campaign to promote the service within the community. The campaign included print advertising in 23 New Mexico newspapers across the state, messaging on multiple radio outlets, outdoor posters in several counties, television spots, and a digital campaign through texts and social media.

ProtoCall collects and reports data on the number of callers to the Warmline center each month, and delineates the type of caller (e.g., parent, legal guardian, resource parent, foster child, other caregiver), presenting problem, and outcome.⁷⁰ In the fourth quarter of calendar year 2021, ProtoCall reports a total of 293 resource parents called the Warmline. CYFD reported the number of calls from resource parents in October 2021 was 42; in November 2021 was 144; and in December 2021 was 107.

⁶⁹ To access CFYD’s procedure prohibiting retaliation, see https://cyfd.org/docs/CYFD_Retaliation_Policy_March_15_2021_3.pdf

⁷⁰ ProtoCall and CYFD did not provide information on the presenting problems and outcomes delineated by type of caller.

4. Promotion of Internal Grievance Procedure for Youth (App. B, IT 3.2)

FSA Requirement	CYFD will promote its internal Grievance Procedure for youth. (Due December 1, 2020)
Co-Neutrals' Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021. CYFD developed a grievance procedure for youth in 2021, but evidence of the State's promotional efforts in 2021 was insufficient to meet the Performance Standard. Promotional efforts of the procedure, as required by this IT, are now underway.

Discussion

CYFD reported 30 grievances were filed since the policy was enacted in March 2021.⁷¹ CYFD indicated one grievance was assigned to the formal three-person panel process described below,⁷² but CYFD reported the remainder were handled less formally by CYFD's Office of Children's Rights (OCR).⁷³

The State did not put in place a tracking system for youth grievances in 2021 and was unable to provide the Co-Neutrals with material information on its handling of the reported cases in 2021. The Co-Neutrals were unable to verify any of the reported 30 grievances, who filed the grievances, the nature of the grievances, or the resolution of the grievances. There is inadequate information and data for 2021 to support that CYFD made good faith efforts to achieve substantial and sustained progress toward promoting the youth grievance procedure.

The Co-Neutrals confirmed in the second half of 2022 that CYFD has now put in place a tracking process for youth grievances, which the Co-Neutrals will use to inform assessment of the State's efforts in 2022.

One of the State's key promotional strategies, as detailed below, committed permanency planning workers (PPW) to review with children the New Mexico Foster Child and Youth Bill of Rights during each placement change in 2021. The Co-Neutrals reviewed 169 placement changes for

⁷¹ CYFD did not provide information on who filed the grievance – either the child or youth, or someone on their behalf – for the 30 grievances referenced. The Co-Neutrals were unable to independently validate the number of grievances filed.

⁷² The OCR Director reported that the grievance addressed by the three-person panel occurred prior to establishment of OCR.

⁷³ The Office of Children's Rights (OCR), created in January 2021, is within CYFD, and the Director of OCR reports to the Secretary of CYFD. OCR's goal is to ensure New Mexico's most vulnerable children and youth receive the services and supports to which they are entitled.

children in 2021 (discussed below within App. B, TO 1-5), and observed no documentation within FACTS reflecting adherence to that procedure in connection with any of the reviewed placement changes.

CYFD issued its PIG to staff (03-2021-#5) outlining revisions to CYFD’s Placement Services Procedures on March 19, 2021; these procedures included *PR13: Application of the Reasonable and Prudent Parent Standard*, and *PR14: Child or Youth Grievance Process, the Foster Child and Youth Bill of Rights, and the Foster Youth Document of Responsibilities*.⁷⁴

The revised procedures provide processes by which youth can request a review of a foster care providers’ decisions in applying the prudent parenting standard,⁷⁵ or to report a violation of their rights under the New Mexico Foster Child and Youth Bill of Rights.⁷⁶ Specifically, any youth ages 14 and older who disagrees with a foster care provider’s decision on the youth’s involvement in certain activities (i.e., prudent parenting standard) can contact the Director of CYFD’s OCR to request a review of the foster care providers’ decision within 15 days after the decision was made. Upon receipt of the request, the Director of OCR is expected to determine whether review of the decision should be conducted through a mediated discussion among the individuals involved in the decision, or if the review will be conducted by a three-person panel.⁷⁷

If a youth wants to report a violation of their rights under the New Mexico Foster Child and Youth Bill of Rights, the process begins similar to the one outlined above for prudent parenting standard decisions. The child, youth, or person acting on their behalf contacts the OCR, and OCR staff will assist the child or youth in making the grievance, including providing the child or youth with the necessary forms. The OCR is responsible for investigating the grievance, developing a file for the grievance within the OCR (which includes assigning a case number), and determining if the grievance can be addressed by informal resolution, or should be assigned to a three-person panel.

As a component of promoting the grievance procedure for youth – the activity required by this IT – CYFD committed to post the New Mexico Foster Child and Youth Bill of Rights at all times within eye-level range in public spaces in all CYFD PSD offices, and in all placements, including

⁷⁴ To view CYFD’s PIG outlining the grievance procedure for youth, see

https://cyfd.org/docs/PIG_Revised_youth_grievance_and_bill_of_rights.pdf

⁷⁵ The Reasonable and Prudent Parenting standard – a requirement of the federal Sex Trafficking and Strengthening Families Act of 2014, Supporting Normalcy for Children in Foster Care – is the standard caregivers should apply when determining whether to allow a child in foster care to participate in extracurricular, cultural, or social activities. Efforts should be made to normalize the lives of foster children.

⁷⁶ To view the New Mexico Foster Child and Youth Bill of Rights, see

https://cyfd.org/docs/Youth_Bill_of_Rights_final_english.pdf

⁷⁷ CYFD reports the three-person panel is comprised of one PSD worker who has been employed by CYFD for at minimum one year, one caregiver, and one current or former foster youth (who could be a Youth Advocate employed by CYFD). All members of the panel must be from counties outside of where the youth’s case originated, and where the youth is currently placed. OCR must make efforts to convene a panel that does not have knowledge of the youth or caregiver, or supervision of the PSD workers involved in the decision process.

congregate care settings, resource homes, and treatment foster care homes.⁷⁸ Though after the period under review, the Co-Neutrals consistently observed the New Mexico Foster Child and Youth Bill of Rights posted within the CYFD PSD offices in seven locations visited in September 2022.

Pursuant to the updated procedures, the youths' PSD workers are required to provide a copy of the New Mexico Foster Child and Youth Bill of Rights to all children entering foster care, upon every placement change that occurs while the child is in foster care, and, at minimum, every three months while the child is in foster care. The revised procedure also requires that the child sign an acknowledgement that they have received and understand the information presented in the document, and that they have been given an opportunity to ask any questions about their rights.⁷⁹

CYFD reports other methods of promotion included hosting Youth Drop-In events, training regional and county office staff, and outreach on social media. In 2021, a total of 15 Drop-In events geared toward youth were held by CYFD's Fostering Connections Bureau via Zoom. CYFD reports these events were held in the evenings and on weekends to promote attendance, however, over the course of six months, fewer than a "dozen"⁸⁰ youth in total attended. In October 2021, an in-person event was scheduled at Montgomery Park in Albuquerque, but no youth attended.

CYFD reports four Drop-In training events specifically for PSD staff were held between March and December 2021.⁸¹ Staff training material was revised in early 2022, and CYFD reports as of July 15, 2022, there have been 22 mandatory staff trainings presented to CYFD Regional Offices, Children Court Attorneys, the Office of Tribal Affairs, and Behavioral Health Services.

⁷⁸ PR14, paragraph 5.

⁷⁹ CYFD is expected to ask the caregiver to sign an acknowledgment verifying receipt and understanding. For children under the age of five, the procedure requires the child's caregiver to sign the acknowledgment on the child's behalf. Copies of signed acknowledgements are expected to be provided to the caregiver and all youth ages 14 or older, with copies maintained in the youth's PSD case file, the resource parents' provider file, and are documented in the narrative of the FACTS case management system to include the date of review and acknowledgement, and the names of the caregivers notified.

⁸⁰ CYFD did not provide the exact number of youth who attended, but referenced "less than a dozen."

⁸¹ CYFD did not provide data on Drop-In attendance for staff.

5. Prohibition of Placements in Hotels/Motels, Out-of-State, and in Offices Except in Extraordinary Circumstances (App. B, TO 1.1)

FSA Requirement	<i>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. (Due December 1, 2020)</i>
Co-Neutrals’ Finding	As discussed further below, quantitative and qualitative data for this TO reflect children were placed in out-of-state placements and within CYFD offices in 2021 without meeting the extraordinary circumstances standard, and without the consistent approval of the CYFD Secretary or PSD Director as set forth in the FSA. ⁸³ Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021. ⁸⁴

⁸² App. B, TO 7.1 – *Children Placed with Kin* – is due in December 1, 2022, and App. B, TO 9.1 – *Timely Permanency for Children in Care* – is due in December 2023; validated performance data for these metrics in 2019-2021 are included in Appendix A of this report.

⁸³ In assessing extraordinary circumstances determinations, the Co-Neutrals assess whether documentation in the child’s record demonstrated the placement was necessary to protect the safety and security of the child, and that the placement was approved by the CYFD Secretary or PSD Director prior to the placement occurring. The Co-Neutrals do not interpret a lack of alternative or available placements as sufficient to meet the extraordinary circumstances standard set forth in the FSA.

⁸⁴ Following a finding in the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021) that the State had not met the required performance standard for this TO, the Plaintiffs invoked the alternative dispute resolution process set forth in the FSA. The parties thereafter agreed to a Memorandum of Understanding (MOU), which included several commitments related to this TO. As of the writing of this report, the parties are continuing to discuss final resolution of the dispute. To view the Parties’ MOU, see

https://cyfd.org/docs/Intro_1_2022-06-14_Kevin_S_Settlement_Dispute_Resolution_MOU_PC_signed.pdf

DVP Metrics and Validated Performance Data

BTO1.1(i) – secondary metric: The percent of children with any office, hotel/motel, or out-of-state RTC/group placements in the cohort during reporting year.*

In 2019, 83 of 3,881 children in state custody (2%) experienced at least one placement to a setting covered by this commitment, specifically a hotel/motel, office (including the Receiving Center),⁸⁵ or an out-of-state facility. As shown in Table 7, children experienced similar placements in 2020 (63 of 3,344, or 2%) and these placements increased in 2021 – largely due to an increase in reported placements to the Receiving Center, to which Secretary Vigil ceased placements in December 2021. In 2021, 102 of 2,949 children (4%) experienced a placement to at least one of the settings covered by this commitment.

Table 7: Number of Children with any Placement to a Hotel/Motel, Office, and Out-of-State Facility in 2019, 2020, and 2021

Category	2019 (N = 3,881)		2020 (N = 3,344)		2021 (N = 2,949)	
	Number	%	Number	%	Number	%
Children with any placement in applicable setting⁸⁶	83	2%	63	2%	102	4%
<i>Children with placement to any applicable setting, by type of setting</i>						
Out-of-state facility	57	1.3%	31	0.9%	27	0.9%
Office (including Receiving Center)	34	0.9%	32	1.0%	85	2.9%
Hotel/motel	0	0%	2	0.1%	3	0.1%

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-22); manual *Hotel Stays* file submitted 3/31/22 (2020); and manual *Named Plaintiff – Office Stay Manual Record* file submitted 5/2/22.

While this metric is reported at the child-level (i.e., a child with multiple placements to a hotel/motel, office, including Receiving Center, and/or out-of-state residential facility is counted only once), as additional contextual information to inform the Co-Neutrals’ assessment of the State’s efforts, the Co-Neutrals also examined the total number of placements to each placement type by month.

⁸⁵ The Receiving Center is located within a CYFD office building; it was not licensed as a facility for children to be placed. As noted on pg. 62 of the *State of New Mexico, 2021 Annual Progress Report*, the State began categorizing Receiving Center placements as office stays subject to App. B, TO 1.1 in January 2021. CYFD leadership closed the Receiving Center in December 2021.

⁸⁶ Some children had placements to more than one setting covered by this TO, therefore, numbers by setting or placements do not add to total numbers of unique children.

Table 8: Number of Placements to Hotel/Motel, Office, and Out-of-State Facility by Month, in 2021

Month (2021)	Total placements ⁸⁷	Placements by setting		
		Out-of-state facility	Office (including Receiving Center)	Hotel/motel
January	7	2	6	0
February	9	3	6	0
March	9	2	7	0
April	13	3	10	0
May	15	1	14	0
June	17	2	15	0
July	21	4	17	0
August	24	2	22	0
September	18	3	13	2
October	21	3	18	0
November	30	6	24	0
December	4	2	1	1
Total	188	32	153	3

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-22); manual *Hotel Stays* file submitted 3/31/22 (2020); manual *Named Plaintiff – Office Stay Manual Record* file submitted 5/2/22

BTO1.1(i) – primary metric: Percentage of children who had a placement in hotel/motel/office settings, or with out-of-state providers, that include required finding and approval of “extraordinary circumstances” and meet all notification requirements. For out-of-state RTC care settings, metric will include appropriate triage meetings.

In addition to the qualitative case record review described below, the Co-Neutrals examined data collected in FACTS for each congregate placement that indicated the allowable circumstance for that placement (e.g., “extraordinary circumstance,” “medical necessity,” or “best interest”) and the date that determination was made. These data are based on categorization recorded in FACTS by caseworkers at the time of placement and may or may not align with a qualitative assessment, discussed below, of whether the indicated standard was met.

Caseworkers recorded in FACTS that an “extraordinary circumstance” determination was made on or before the date of placement for 65 (35%) of the 188 placements to a hotel/motel, office/Receiving Center, and/or an out-of-state facility in 2021. A determination of extraordinary circumstance was recorded for nine additional placements to one of these settings, but the date provided for the determination was after the date of placement.⁸⁸ Caseworkers documented 29

⁸⁷ Ibid.

⁸⁸ The most-delayed determination in 2021 was recorded nine days after the date of placement; six of the nine extraordinary circumstances determinations made after the date of placement were made the day after the child was placed.

placements to one of these settings reflected “best interest” and five reflected “medical necessity.” No congregate care determination was provided for the remaining 80 placements.⁸⁹

The metric, as described in the DVP, is calculated at the child level (i.e., how many children with *any* hotel/motel, office, or out-of-state residential placements received a timely extraordinary circumstance determination for *all* hotel/motel, office, or out-of-state residential placements during the period). These criteria were documented in the data for 22 of the 102 children with placements applicable to this TO in 2021 (22%).

BTO1.1(ii) – qualitative metric: Qualitative review of extraordinary circumstance determination for placements to hotels, motels, or offices⁹⁰

For this qualitative metric and the others discussed below, the Co-Neutral team developed protocols and instruments to conduct reviews of documentation available in FACTS to assess if CYFD made placements pursuant to the extraordinary circumstances, medical necessity, and best interest standards in the FSA. The Co-Neutrals provided these instruments to the State for feedback, and all of the State’s suggestions were incorporated. The Co-Neutral team participated in an initial orientation and training on the FSA standards and review instrument, and participated in a FACTS training conducted by CYFD staff. The Co-Neutral team implemented a quality control process during the reviews, including completing second level reviews of identified surveys, and elevating select surveys for third level review. Findings from these reviews were provided to the State for review and feedback within a 30-day timeframe. The Co-Neutrals did not receive any response from the State related to the review findings.

The Co-Neutral team reviewed 99 placements in hotels/motels and offices (inclusive of the Receiving Center) from 2021. Specifically, the placements reviewed included all (3) hotel/motel placements, all (6) placements identified as in CYFD county offices,⁹¹ and 90 Receiving Center office placements.⁹²

⁸⁹ This includes office placements not reflected in the Sandbox *Placement* file as submitted May 2, 2022, but described in separate manual files submitted by the State on the same date that did not include information about congregate care determinations.

⁹⁰ In assessing extraordinary circumstances determinations, the Co-Neutral team assessed whether documentation in the child’s record demonstrated the placement was necessary to protect the safety and security of the child, and that the placement was approved by the CYFD Secretary or PSD Director prior to the placement occurring. The Co-Neutrals do not interpret a lack of alternative or available placements as sufficient to meet the extraordinary circumstances standard set forth in the FSA. Plaintiffs’ counsel indicates they agree with the Co-Neutrals’ application of the standard, but the parties have not yet reached an agreement on the definition of extraordinary circumstances necessary to protect the safety and security of the child.

⁹¹ Although six placements were identified in FACTS as being in county offices, FACTS documentation in the record for three of these placements suggests those placements were within the Receiving Center.

⁹² There were a total of 147 Receiving Center placements in 2021; sampling represents a 95% confidence interval with a 6.5% margin of error.

CYFD informed the Co-Neutrals that all hotel/motel placements were for children who had tested positive for Covid-19. However, none of these placements had documented prior approval by the CYFD Secretary or PSD Director as required by the FSA for this TO.

For the 96 office (inclusive of Receiving Center) placements reviewed, none (0%) had documentation of specific safety and security threats which necessitated the office placement. In 15 (16%) of the 96 office placements, documentation in FACTS indicated a Memorandum for Decision (MFD) was submitted to, and approved by, the CYFD Secretary or PSD Director prior to the placement. Table 10 below reflects the months in which these placements and MFD approvals occurred.

Table 9: MFDs Approved Prior to Office/Receiving Center Placements in 2021
N=96⁹³

Month (2021)	Number of Office/Receiving Center Placements Reviewed	MFD submitted prior to placement and approved by CYFD Secretary or PSD Director
January	3	1
February	5	1
March	6	1
April	6	0
May	6	0
June	10	0
July	11	5
August	11	5
September	8	1
October	13	0
November	17	1
December	0	0
Total	96	15

Source: Case record review of FACTS documentation conducted by Co-Neutral staff and consultants

Nearly half (45) of the office placements lasted for one day, 18 office placements were for two days, 14 placements lasted three to six days, and 19 placements lasted more than six days. Nearly one-third (31) of office placements in 2021 occurred following a child’s discharge from a shelter; almost a quarter (23) of office placements occurred after discharge from a non-relative resource home, and eight office placements served as the child’s first placement upon entering foster care.

⁹³ The N (number of cases reviewed) represents a random sample of office placements reviewed between January and September 2021, not the full universe. All office placements made between October and December 2021 were reviewed.

BTO1.1(iii) – qualitative metric: Qualitative review of extraordinary circumstance and medical necessity determinations for placements to out-of-state congregate settings⁹⁴

The Co-Neutral team reviewed a total of 32 out-of-state facility placements⁹⁵ in 2021; none (0%) had documentation of specific safety and security threats which necessitated the out-of-state facility placement. Documentation reflects an MFD was submitted to, and approved by, the CYFD Secretary or PSD Director prior to 12 (38%) of the placements.

**Table 10: MFDs Approved Prior to Out-of-State Facility Placement in 2021
N=32**

Month (2021)	Number of Out-of-State Facility Placements	MFD submitted prior to placement and approved by CYFD PSD Director or Cabinet Secretary
January	1	0
February	3	1
March	2	2
April	3	1
May	1	1
June	2	0
July	4	2
August	2	2
September	3	1
October	3	0
November	6	1
December	2	1
Total	32	12

Source: Case record review of FACTS documentation conducted by Co-Neutral staff and consultants

Over half (59%) of the out-of-state facility placements in 2021 were to institutions in Texas (19 placements), followed by nine (28%) in Utah, and one each in the following states – Georgia, Colorado, Michigan, and Oklahoma. Although the FSA only allows for placement of children in out-of-state facilities when it is necessary to protect their safety and security, some of the facilities in which CYFD and HSD placed children in 2021 presented significant safety concerns, and the Co-Neutrals were unable to locate evidence that CYFD and HSD had considered critical

⁹⁴ In assessing extraordinary circumstances determinations, the Co-Neutral team assessed whether documentation in the child’s record demonstrated the placement was necessary to protect the safety and security of the child, and that the placement was approved by the CYFD Secretary or PSD Director prior to the placement occurring. The Co-Neutrals do not interpret a lack of alternative or available placements as sufficient to meet the extraordinary circumstances standard. Findings from a qualitative review of medical necessity determinations is discussed within in App. B, TO 3.1.

⁹⁵ The 32 placements were experienced by 26 unique children; three children experienced two out-of-state placements in 2021, and one child experienced three out-of-state placements in 2021.

information such as licensing history and confirmed maltreatment prevalence prior to placing children in the facilities.

Discussion

Following the period under review, CYFD and HSD have begun to take measures in 2022 to address the frequency and oversight of office and out-of-state placements. In January 2022, CYFD leadership sent guidance to county offices requiring staff to designate certain rooms within the office as available for children to have a comfortable and private environment if they have to remain in the office overnight. CYFD leadership instructed that the rooms should be furnished with beds, linens, clothing, and access to a bathroom with showers. CYFD leadership reports that data are collected to produce daily reports on all office placements, and daily staffings are required to occur for as long as children are placed in offices. Pursuant to the FSA, and CYFD policy and procedure, all office stays require approval by the CYFD Secretary or PSD Director prior to placement.

The State reports implementing new procedures to reduce out-of-state placements for children in care in 2022. In addition to requiring a triage meeting prior to requesting approval from both CYFD and HSD Cabinet Secretaries for the out-of-state facility placements, the State reports that CYFD's Interstate Compact on the Placing of Children (ICPC) Office and Community Behavioral Health Clinician (CBHC)⁹⁶ staff are required to contact the receiving State's licensing authorities and child welfare/protective services offices to determine if there have been any corrective actions or concerns regarding licensure or use of the facility. Additionally, staff are required to include the following within the MFD submitted to the Secretaries:

- Justification that the out-of-state placement is needed, including how it meets the extraordinary circumstances that pose a threat to the safety and security of the child, and medical necessity for the placement;
- Explanation of why the out-of-state placement most appropriately meets the safety and security needs of the child;
- Evidence from the triage team on the licensing status of the out-of-state facility, and whether the facility is in good standing;
- A list of all prior placements for the child while in CYFD custody, including discharge plan recommendations and reasons for prior discharges from those placements;
- A list of all efforts to secure appropriate in-state placement in a less restrictive setting, including TFC, with dates and reasons for denial of placements;
- CANS and CAT screenings;
- Date of last assessment and current diagnosis;
- Recommendations from the triage team meeting; and

⁹⁶ The Community Behavioral Health Clinician (CBHC) is a behavioral health clinician who works with CYFD to provide clinical behavioral health consultation, referral, and review for children in state custody.

- Identification of other New Mexico foster children placed in the facility.

Beginning in February 2022, CYFD reports that a team was formed to conduct ongoing inspections and evaluations of out-of-state facilities, acquire information about the content and quality of the programs, assess how the programs can meet the specific needs of children in care, build a portfolio on the quality of out-of-state facilities and programs, and monitor the facilities for licensing complaints and violations so CYFD can respond to ensure the safety of children placed there. CYFD reports this team had visited 10 facilities as of the end of July 2022.

CYFD intensified its efforts to return children placed in out-of-state facilities to New Mexico in the second half of 2022, spearheaded by Secretary Vigil. The State reports that on December 31, 2021, there were 26 children in state custody placed in out-of-state facilities; as of September 30, 2022, CYFD and HSD report there were 18 children, a reduction of 31 percent in 2022. (The Co-Neutral team reviewed child-level data that supports these counts; full validation for all placements in 2022 will be presented in the next Co-Neutral report.)

6. *Joint Clinical Reviews of Out-of-State Placements* (App. B, TO 2.1)

<i>FSA Requirement</i>	<i>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. (Due June 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data

BTO2.1(i) – primary metric: Of all the joint clinical reviews required during the reporting year, the percent that were conducted timely.

There are not sufficient data to calculate this metric as described in the DVP, as the State has not yet begun to collect detailed information on IPP-style meetings, including joint clinical reviews.

However, as additional contextual information to inform the Co-Neutrals’ assessment of the State’s efforts, the Co-Neutrals examined data that indicate from July to December 2021, just under half of the 30-day Joint Clinical Reviews for children in out-of-state facilities were completed timely (20 of 41 reviews due in this period).

BTO2.1(ii) – qualitative metric: Qualitative review of Joint Clinical Reviews for children in out of state placements

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

Discussion

The Joint Clinical Review (JCR) process is currently outlined in paragraph 11.4 of CYFD’s PIG 01-2022-#3⁹⁷ which includes revisions to *Procedure PR10 – Out of Home Placements*, and was a reissuance of the prior PIG (12-2021-#22) distributed to staff in December 2021. The PIG states that the JCR is a process utilizing the IPP framework that is required for children who are placed in out-of-state facilities to provide a forum to: review their treatment plan and updates; review or create a discharge plan, including identification of in-state resources that need to be developed and in place for the child to return to New Mexico; identify any gaps in the medical and behavioral health care being provided; and create strategies to address any identified gaps. JCR meetings are expected to occur every 30 days, are to be coordinated by the CYFD PPW caseworker, and specified participants must be provided. These participants include the child or youth, PPW caseworker, PPW supervisor, CBHC staff, MCO care coordinator or other care coordinator representative, and GAL or Youth Attorney. The PPW may also include the child or youth’s parent and family members, case manager from the out-of-state facility, mental health professional assigned to the child or youth, tribal representative (as applicable), and Office of Tribal Affairs (OTA) (as applicable).

HSD reports that the LOD relevant to this TO which requires IPP meetings at specific points in a case or decision-making processes, such as the JCR, was issued to Centennial Care 2.0 MCOs on October 29, 2021, and went into effect on November 1, 2021.⁹⁸

Implementation of this TO was required to begin on June 1, 2021, and although CYFD reports that the procedures and guidance to staff integrating this FSA commitment into practice were completed in late-2021, the State did not collect or provide sufficient performance data to demonstrate that JCR meetings were occurring as required for children placed in out-of-state facilities.

⁹⁷ To view PIG 01-2022-#3, see

https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

⁹⁸ LOD #69, titled *MCO Requirements for Children in State Custody (CISCs)*, requires MCOs to participate in team meetings as requested by CYFD. LOD #69 was replaced with LOD #69-1 on February 28, 2022. LOD #69-1 continues to incorporate the same requirements for required meetings for children in state custody, such as the JCR. To review LOD #69-1, see

https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf

7. Known Caseworker Visits to Children Placed in Out-of-State Facilities
(App. B, TO 2.2)

FSA Requirement	<i>A CYFD caseworker known to the child will conduct in-person visits every month. (Due June 1, 2021)</i>
Co-Neutrals' Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data⁹⁹

BTO2.2(i) – secondary metric: For all of the in-person visits to any child in an out-of-state placement that is not part of a child’s permanency plan required during the reporting year, the percent that were conducted timely.*

Children placed in out-of-state facilities are required to receive monthly visits from a caseworker known to the child. Per the DVP, the first visit is due by the end of the month following the child’s placement and visits with the child are due once every month thereafter until the placement ends. For this analysis, the number of visits due was calculated based on the start of the placement¹⁰⁰ until the end of the period placed out of state (or end of the reporting year).¹⁰¹

In 2019, State data show there were 101 children in out-of-state facilities for at least 30 days during the reporting year, with a total of 631 visits required; State data show 561 of those visits (89%) were conducted on time. For 2020, State data show 70 children resided in out-of-state facilities with 407 visits due; State data show 402 visits (99%) were conducted on time. In 2021, State data show that 41 children resided in out-of-state facilities with 236 visits due; 232 visits (98%) were conducted on time.¹⁰²

⁹⁹ Results presented in this section differ slightly from results presented in the *State of New Mexico, 2021 Annual Progress Report* due to cohort consistency issues in the files submitted by the State, as described above. The State also presented the primary metric for the entire 2021 calendar year; the results in this report focus only on the period of implementation (July through December 2021).

¹⁰⁰ If the placement began before the start of the reporting year, the first visit was due in January.

¹⁰¹ The data provided do not distinguish between visits that were conducted virtually (i.e., during the State’s Covid-19 travel ban for staff in portions of 2020 and 2021), and visits that were conducted in person by a caseworker.

¹⁰² The Co-Neutrals’ results matched the State’s within rounding distance, likely due to cohort consistency issues.

BTO2.2(i) – primary metric: For all of the in-person visits to any child in an out-of-state placement that is not part of a child’s permanency plan required during the reporting year, the percent that were conducted timely by a caseworker known to the child.

The requirement that visits be conducted by workers known to the child began in June 2021. The Co-Neutrals examined data from July to December 2021 (allowing one month for implementation), and found that the quantitative data on 117 visits due for 29 children placed in out-of-state facilities showed 110 (94%) visits were completed on time and by a worker recorded in FACTS as “known to the child.”¹⁰³ CYFD did not conduct a qualitative review of the data as originally planned to confirm how many of these 110 visits were, in fact, conducted by a worker known to the child.

BTO2.2(ii) – qualitative metric: Validation of known worker indicator

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

Discussion

On October 19, 2021, CYFD issued PIG 10-2021-#19¹⁰⁴ which revises CYFD *Procedures PR10 – Out of Home Placement*, and *PR19 – Visitation*, and provides that “known to child” is defined as the child’s primary PSD worker or their supervisor. Paragraph 10.6 specifically states:

“If the decision is to place a child or youth in an out of state congregate placement, the PSD Worker or Supervisor must visit the child monthly to assess the child/youth’s safety and wellbeing and ensure the child/youth’s needs are being met. When that is impossible, the PSD Worker’s Supervisor may approve the monthly worker-child visit be conducted by a worker who has a relationship to the child/youth to assess the child/youth’s safety and wellbeing and ensure the child/youth’s needs are being met. PSD Worker and Supervisor will ensure contact is maintained between the child and their family.”

Quantitative data discussed above reflect that most children placed in out-of-state facilities in 2019, 2020, and 2021 were being visited on a monthly basis by CYFD staff. While CYFD has collected data on the occurrence of worker visits with children, the agency has not historically tracked the identity of the visiting staff. In addition, the State altered its guidance in 2021 on the definition of “caseworker known to the child.” Thus, a review of individual case records is required

¹⁰³ The quantitative data indicate that three visits due in this period were missed, and four visits were made by a person described in the quantitative data as other than a “Prim worker/other staff known to child,” specifically one by “CYFD not previously known to child,” two by “Guardian,” and one by “Parents & siblings.”

¹⁰⁴ To view PIG 10-2021-#19, see

https://cyfd.org/docs/10-2021-no19_PIG_RE-ISSUE_of_Worker_Child_Visitation.pdf

This language is also included in paragraph 11.6 of PIG 01-2022-#3 dated January 21, 2022. To view PIG 01-2022-#3, see https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

to confirm whether a particular visit to a child placed in an out-of-state facility was conducted by a *worker known to the child*. CYFD did not conduct this review for its 2021 performance as originally planned, and now intends to conduct this review for its 2022 performance, which the Co-Neutrals will assess and validate. It may, in fact, be the case that most of these visits were conducted by a worker known to the child, as defined by CYFD in its October 2021 PIG. Until the State conducts a qualitative review of the data confirming the identities of the visiting workers and their relationships to the children they visited, the Co-Neutrals are unable to confirm that the State’s efforts are aligned to achieve substantial and sustained progress toward this TO.

8. Out-of-State Individualized Planning Process (IPP) Meeting and Development of Discharge Plans (App. B, TO 2.3)

FSA Requirement	<i>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. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data

BTO2.3(i) – primary metric: Of all the discharge plans required for an Out-of-State placement not consistent with the child's permanency plan, the percent that were done timely (within 30 days of placement).

BTO2.3(iii) – primary metric: Of all the discharge review IPM meetings required for an Out-of-State placement not consistent with the child's permanency plan, the percent that were done timely (every 30 days of placement).

This metric was not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA, including the creation or review of discharge plans.

BTO2.3(ii) – qualitative metric: Qualitative review of discharge plans for children in out-of-state placements

BTO2.3(iv) – qualitative metric: Qualitative review of IPP meetings for children in out-of-state placements

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for these metrics.

Discussion

CYFD’s PIG 01-2022-#3¹⁰⁵ provides that discharge planning is a required component of the monthly JCR meeting for children placed in out-of-state facilities. Specifically, paragraph 11.4 states, in relevant part:

“Within 30 days of a child’s placement out of state, the child’s Triage Team for Out of State placement will develop a discharge plan. The discharge plan is defined as a process which gives children/youth, their guardians and families’ access to information that will help them to make informed decisions about their post care, while addressing their goals of care and treatment preferences, which may help to stabilize them post-placement and ultimately reduce their chances of being readmitted. The discharge plan should include identification of in-state resources that need to be developed and in place for the child to return to New Mexico.”

The PIG provides that the JCR team should plan for the child or youth’s discharge to a less restrictive placement in New Mexico, and that the plan should be documented in the Joint Clinical Review Audit Tool (JCRAT) which is uploaded to FACTS.

A qualitative review of FACTS records is required to assess performance with this TO, and ensure that the State has developed discharge plans with the required components. CYFD reported plans to conduct this review in August 2022. Although CYFD reports that the procedures and guidance to staff integrating this FSA commitment into practice were completed, CYFD has not produced data or information to demonstrate compliance with this TO in 2021.

¹⁰⁵ To view PIG 01-2022-#3, see https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

9. Prohibition of Clinical Congregate Care Placements Except When Medically Necessary (App. B, TO 3.1)

FSA Requirement	<i>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 a 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 have been provided. (Due December 1, 2021)</i>
Co-Neutrals' Finding	As discussed below, quantitative and qualitative data for this TO show that there were three new clinical congregate placements in December 2021, when App. B, TO 3.1 took effect. Documentation in FACTS does not show that the medical necessity standard was met for these placements. Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).

DVP Metrics and Validated Performance Data

BTO3.1(i) – primary metric: Of all clinical reviews required for placements in congregate care settings due to medical necessity, the percent that occurred timely (every 30 days) and reviewed the medical necessity determination.

This metric was not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA, including whether a medical necessity determination was reviewed.

*BTO3.1(ii) – qualitative metric: Qualitative review of medical necessity determinations for placements to congregate settings*¹⁰⁶

There were three clinical congregate placements – one in-state and two out-of-state – that occurred in December 2021 that were reviewed by the Co-Neutrals. Documentation in FACTS did not indicate that the medical necessity standard was met for these placements.¹⁰⁷

Discussion

In December 2021, the Co-Neutrals requested the State share examples of appropriate placements of a child in congregate care due to medical necessity, but none were provided. On January 21, 2022, CYFD issued PIG 01-2022-#3, which requires placements in clinical congregate care facilities occur only when determined to be medically necessary.^{108,109}

10.30-Day IPP Meetings for Clinical Congregate Care (App, B. TO 3.2)

<i>FSA Requirement</i>	<i>Individualized Planning Meetings will be held every 30 Days for any child placed in a congregate care setting due to a medical necessity determination to support the child and identify steps necessary to promote discharge. (Due December 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	The Co-Neutrals do not make a Performance Standard determination for this TO in 2021, as the data to assess performance in December 2021 (when this TO took effect) are unavailable until 2022. ¹¹⁰

¹⁰⁶ In assessing medical necessity determinations, the Co-Neutral team utilized the definition provided within the New Mexico Administrative Code; information outlined in CYFD PIG 12-2021-#22 which states medical necessity must be determined by the child’s behavioral health provider or MCO; and the FSA requirement that a “...finding of medical necessity must take into consideration whether community-based mental health services have been or could be provided.”

¹⁰⁷ Data provided by CYFD coded four additional placements as in-state clinical congregate care in December 2021. However, upon review, the Co-Neutrals determined all four of these placements were to the same facility, and the child specific case record information in FACTS revealed the placement or program did not provide clinical care. Two of the children were placed within the facility following a 48-hour hold, and their case was closed by CYFD and transferred to tribal court jurisdiction shortly thereafter.

¹⁰⁸ To view PIG 01-2022-#3, see

https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

¹⁰⁹ Pursuant to section II.D. of the Parties’ June 10, 2022 MOU, the parties agreed to meet in an effort to reach agreement on definitional terms within FSA Appendix B. As of the writing of this report, the parties are continuing to discuss final resolution of the dispute.

¹¹⁰ In calendar year 2021, this analysis would have assessed the timeliness of one meeting per child – i.e., for children in a congregate care setting due to a medical necessity determination on December 1 who remained in that placement on December 31, the number for whom a complete IPP meeting was conducted by the end of the year.

DVP Metrics and Validated Performance Data

BTO3.2(i) – primary metric: Of all IPP meetings required for placements in congregate care settings due to medical necessity, the percent that were timely (every 30 days) and reviewed steps necessary to promote discharge.

This metric was not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA.

BTO3.2(ii) – qualitative metric: Qualitative review of discharge planning for children in congregate placements due to medical necessity

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

Discussion

CYFD’s PIG 01-2022-#3¹¹¹ requires in paragraph 10.1 that IPP or teaming meetings occur when a child is placed in a congregate care setting due to medical necessity. Similar to the JCR monthly meetings for children placed out-of-state, meetings pursuant to this commitment are expected to be held to identify the steps necessary to promote discharge and ensure the team reviews available community-based behavioral health services and supports that could be provided. The PPW caseworker is responsible for coordinating these meetings, and is required to invite specific participants to the meeting. The content of the meetings is required to be documented within the JCRAT tool, and uploaded into FACTS.

11. Prohibition of Non-Clinical Congregate Care Placements Except When in a Child’s Best Interest (App. B, TO 4.1)

FSA Requirement	<i>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 IPM 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 IPM team, including a mental health professional, at least every 90 Days, or more frequently as needed. (Due December 1, 2021)</i>
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¹¹¹ To view PIG 01-2022-#3, see https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

***Co-Neutrals’
Finding***

As discussed below, qualitative data for this TO show that there were eight new non-clinical congregate care placements in December 2021, when App. B, TO 4.1 took effect. Documentation in FACTS does not show that the best interest standard was met for these placements, and the required procedure was not followed. Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).

DVP Metrics and Validated Performance Data

BTO4.1(i) – primary metric: Of all the required IPP meetings for children in congregate care for reasons other than medical necessity during the reporting year, the percent that were held timely and reviewed the best interest determination.

This metric was not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA.

BTO4.1(ii) – qualitative metric: Qualitative review of best interest determinations for placements to congregate settings¹¹²

A total of eight non-clinical congregate placements occurred in December 2021 – when App. B, TO 4.1 took effect – and were reviewed by the Co-Neutrals. These placements included five group homes, two community homes, and one supervised independent living placement. Documentation in FACTS for each of the eight placements was reviewed; none (0%) showed that the best interest standard was met and affirmatively determined by an IPP team, inclusive of a mental health professional, prior to the placement under review. Documentation within most of the records focused on a prior placement disruption, the need to find placement after a child ran away from a prior placement, and/or challenges locating and securing an appropriate placement for the child.

For only one of the non-clinical congregate placements was there documentation that a meeting occurred prior to the placement, and the existing documentation provided the reason for the placement was “due to no available resource homes.”

¹¹² In assessing best interest placement determinations, the Co-Neutral team used the FSA App. B, TO 4 requirements (specifically, best interest determination by the IPP team, including a mental health professional), in addition to the best interest definition outlined in CYFD PIG 12-2021-#22. As required for all placements, the Co-Neutral team also utilized guidance from New Mexico’s Children’s Code, which articulates that placement in the least restrictive environment is a right of children, and to the maximum extent possible, children should be placed with families.

BTO4.1(iii) – qualitative metric: Qualitative review of IPP meetings for children in congregate placements due to best interest determination

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

Discussion

In December 2021, the Co-Neutrals requested the State share examples of what it assessed to be appropriate application of placement of a child in non-clinical congregate care due to a best interest determination, but none were provided. On January 21, 2022, CYFD issued PIG 01-2022-#3.¹¹³

Paragraph 10.3 of the PIG defines best interest as, “...assurance that the health, safety, and protection of the child or youth are a priority, and the child or youth will be given care, treatment, and guidance that will assist the child or youth in developing into a self-sufficient adult. Best interest also takes into consideration the importance of maintaining cultural connection, sibling connections, and other close family bonds as well as the wishes of the child or youth.”¹¹⁴

12. Prohibition of Shelter Placements Except in Extraordinary Circumstances and 48-Hour IPP Meetings (App. B, TO 4.2)

<i>FSA Requirement</i>	<i>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 notify the child's legal representative of the result of the review. (Due December 1, 2021)</i>
Co-Neutrals’ Finding	As discussed below, quantitative and qualitative data for this TO show there were 30 new shelter placements in December 2021, when App. B, TO 4.2 took effect. Documentation in FACTS does not show that the extraordinary circumstances standard was met for these placements. Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).

¹¹³ To view PIG 01-2022-#3, see https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

¹¹⁴ Pursuant to section II.D. of the parties’ June 10, 2022 MOU, the parties agreed to meet in an effort to reach agreement on definitional terms within FSA Appendix B. As of the writing of this report, the parties are continuing to discuss final resolution of the dispute.

DVP Metrics and Validated Performance Data

BTO4.2(i) – primary metric: Of all required 48-hour meetings for children in a shelter, the percent that occurred timely.

There were 30 placements to emergency shelters in December 2021. According to Co-Neutral analysis of State data, two 48-hour meetings were completed (7%).¹¹⁵

BTO4.2(iv) – primary metric: Of all required 48-hour meetings for children in a shelter, the number for which the child's legal representative was notified of the result of the review.

This metric was not calculated as the State has not yet begun to use the data collection tool developed to document whether IPP-style meetings reflect the core elements required by the FSA, including legal notification of the result of the review.

BTO4.2(ii) – qualitative metric: Qualitative review of extraordinary circumstance determinations for placements to emergency shelter¹¹⁶

A total of 30 shelter placements occurred in December 2021. The Co-Neutral team reviewed documentation in FACTS for all 30 placements, including those within the Albuquerque Girls Reintegration Center.¹¹⁷ None (0%) of the shelter placements identified specific safety and security threats which necessitated the shelter placement. Documentation within most of the records focused on a prior placement disruption and/or challenges locating and securing an appropriate placement for the child.

Of the 30 shelter placements reviewed, the child's prior placement was another shelter 12 times (40%).

¹¹⁵ The *State of New Mexico, 2021 Annual Progress Report* presented data for this metric for the entire 2021 calendar year.

¹¹⁶ In assessing extraordinary circumstances determinations, the Co-Neutral team assessed whether documentation in the child's record demonstrated the shelter placement was necessary to protect the safety and security of the child. The Co-Neutrals do not interpret a lack of alternative or available placements as sufficient to meet the extraordinary circumstances standard.

¹¹⁷ CYFD reports the Albuquerque Girl's Reintegration Center (ARGC) was utilized as a temporary, licensed multi-service group home from December 1, 2021 (when placements ceased at the Receiving Center) through January 14, 2022. CYFD categorized ARGC inconsistently in the data - sometimes as a shelter and sometimes as a non-clinical congregate setting. For qualitative review purposes, the Co-Neutrals categorized ARGC as a shelter for consistency purposes.

BTO4.2(iii) – qualitative metric: Qualitative review of 48-hour IPP meetings for children with emergency shelter placements

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

Discussion

In December 2021, the Co-Neutrals requested the State share examples of what it assessed to be appropriate application of placement of a child in a shelter due to extraordinary circumstances, but none was provided. On January 21, 2022, CYFD issued PIG 01-2022-#3.^{118,119}

13. Children in Out-of-Home Care in Licensed Foster Home Placements

(App. B, TO 5.1)

FSA Requirement	<i>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. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in December 2021 (the one month in the reporting period when this TO was due).

DVP Metrics and Validated Performance Data

BTO5.1(i) – secondary metric: Of all children in state custody during a reporting year, the percent that had any placement which was not a licensed foster home.*

In 2019, 462 children (12%) experienced at least one placement to a setting that was not a licensed foster home (licensed foster homes include relative, non-relative, fictive kin, pre-adoptive or Treatment Foster Care placements). The percentage decreased in 2020 to 11 percent (373 children), before increasing in 2021 to 13 percent (395 children).

¹¹⁸ To view PIG 01-2022-#3, see

https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

¹¹⁹ Pursuant to section II.D. of the parties' June 10, 2022 MOU, the parties agreed to meet in an effort to reach agreement on definitional terms within FSA Appendix B, including application of "extraordinary circumstances." Meetings were held in August 2022, but the parties have not yet reached agreement. To view the Parties' MOU, see https://cyfd.org/docs/Intro_1_2022-06-14_Kevin_S_Settlement_Dispute_Resolution_MOU_PC_signed.pdf

Table 11: Children with Placements to Settings Other Than Licensed Foster Homes in 2019-2021¹²⁰

Placement setting	2019 N=3,881		2020 N=3,344		2021 N=2,949	
	Children who experienced any placement other than a licensed foster home	462	12%	373	11%	395
By Setting						
<i>Congregate settings</i>						
Emergency Shelter	263	7%	182	5%	152	5%
Group Home	95	2%	79	2%	105	4%
In-state Facility	92	2%	80	2%	90	3%
Out of State Facility	57	1%	30	1%	27	1%
Community Home	20	1%	24	1%	44	1%
Office (including Receiving Center)	34	1%	32	1%	84	3%
Supervised Independent Living	14	0%	12	0%	14	0%
Hotel/Motel	0	0%	2	<1%	3	<1%
<i>Foster home without a valid license</i>						
Foster Family Home (Relative)	35	1%	45	1%	69	2%
Foster Family Home (Non-Relative)	5	<1%	5	<1%	0	0%
Foster Family Home (Fictive Kin)	1	<1%	2	<1%	8	<1%
Pre-Adoptive Family	0	0%	1	<1%	0	0%

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-22); Manual *Hotel Stays* file submitted 3/31/22 (2020); Sandbox *Provider License* files submitted 3/31/22 (2019 and 2020), and 8/25/22 (2021).

BTO5.1(i) – primary metric: Of all children in state custody during a reporting year, the percent that had any placement which was neither a licensed foster home, nor a congregated care setting with an appropriate determination (medical necessity, best interest, or extraordinary circumstance).

BTO5.1(ii) – primary metric: Of all children that do not have a finding of medical necessity, determination that a non-clinical setting is in the child's best interest, or determination of extraordinary circumstance, the percent that are in licensed relative or non-relative foster homes.

As discussed above, the Co-Neutrals determined that adequate practice and documentation does not yet exist to identify in FACTS those congregated placements that meet the extraordinary circumstances, medical necessity, and best interest standards; therefore, these metrics could not be calculated.

¹²⁰ Rows do not add to total because some children had placements in more than one type of setting.

Discussion

CYFD incorporated this FSA requirement into its procedures through issuance of a PIG. Paragraph 10 in PIG 01-2022-#3¹²¹ states:

“Every child or youth 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 Process meeting determines that a non-clinical setting is in the child’s best interest.”

Although the State developed procedures and guidance to staff, performance data discussed throughout this section do not document that the practice occurred consistently in December 2021 as required.

14. Annual Target for New Culturally Reflective Resource Homes

(App. B, TO 6.1 and 6.2)

<i>FSA Requirement</i>	<i>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. (Due December 31, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data¹²²

BTO6.2(i) – secondary metric: The number of foster care resource homes newly licensed during the reporting year.*

The DVP defines newly licensed resource homes as: in-state non-relative resource homes licensed during the reporting period.¹²³ In 2019, 190 non-relative resource homes were recruited and licensed in New Mexico. This number declined to 133 newly licensed homes in 2020, and 127 newly licensed homes in 2021.

¹²¹ To view PIG 01-2022-#3, see

https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

¹²² The Co-Neutrals are not able to validate the State’s data provided for these metrics.

¹²³ This is a point in time comparison of homes. The methodology counts the number of homes that are licensed, active, and available for placement at the end of the reporting period (e.g., December 31st) that did not have an active license at the end of the prior reporting period (e.g., December of the prior year).

Table 12: New Active Non-Relative Resource Homes Recruited in New Mexico, by Reporting Period, Statewide and by County 2019-2021¹²⁴

	Recruited in 2019	Recruited in 2020	Recruited in 2021	Recruited from July - Dec. 2021 (target period)
Statewide	190	133	127	59
Bernalillo	64	35	41	15
Dona Ana	26	19	13	6
Santa Fe	16	9	9	2
Sandoval	9	5	11	7
Valencia	10	6	4	2
Otero	8	3	8	6
Lea	8	9	3	3
Chaves	1	8	5	1
San Juan	4	5	5	1
Eddy	5	3	4	2
Rio Arriba	3	6	2	2
San Miguel	3	3	3	1
Curry	7	1	1	0
Grant	3	4	1	1
Los Alamos	4	2	2	0
Lincoln	3	0	4	3
Cibola	2	2	3	1
Torrance	4	2	1	1
Mora	3	1	1	1
Taos	1	3	1	1
Socorro	3	1	0	0
Roosevelt	0	2	1	1
McKinley	2	1	0	0
Union	0	1	2	0
Quay	0	1	1	1
Colfax	0	0	1	1
Sierra	1	0	0	0
Luna	0	1	0	0

Source: Analysis of monthly *Active Provider* batch reports submitted 3/31/22 (2019 and 2020), 5/2/2022 (2021), and 7/29/22 (2018).

¹²⁴ The number recruited includes active homes (i.e., no placement hold) with effective “Foster Home” or “Specialized Foster Home” licenses on December 31 of the reporting year that were not licensed on December 31 of the prior year (or in June 2021 for the target period), and did not have an active effective license at any time in the prior 12 months. Data reflect the county at the time the provider was licensed. The Table includes only counties with homes recruited during the period. Treatment Foster Care (TFC) homes are not included.

BTO6.2(i) – primary metric: Percent of yearly target reached statewide for newly licensed foster homes by race/ethnicity.

The Co-Neutrals approved a recruitment target for the last six months of 2021 (July to December) of 89 newly licensed non-relative resource homes. This target was based on the average number of homes recruited each quarter in 2019 and 2020, plus a “stretch factor” of 10 homes. From July to December 2021, CYFD recruited 59 homes (66% of the target).

Table 13: New Active Non-Relative Resource Homes Recruited in New Mexico During Target Period (July - December 2021), by Month License was First Active and Effective¹²⁵

Homes Recruited from July to December 2021	59
July	9
August	8
September	5
October	13
November	9
December	15

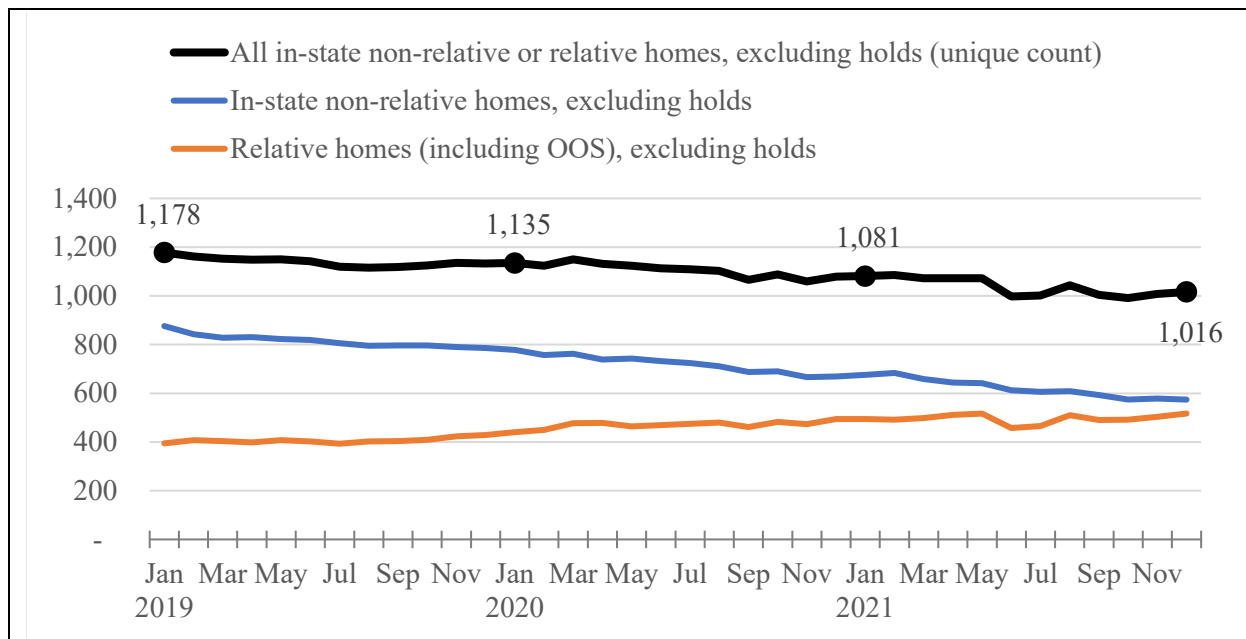
Source: Analysis of monthly *Active Provider* batch reports submitted 3/31/22 (2020), and 5/2/2022 (2021).

As additional contextual information to inform the Co-Neutrals’ assessment of the State’s efforts, the Co-Neutrals examined the total number of homes available in this period, including relative homes. As shown in the figure below, the total number of homes with a foster care, specialized foster care, or relative foster care license has not increased since 2019; the decline in non-relative resource homes has not been offset by the increase in relative placements.¹²⁶

¹²⁵ The number of active homes (i.e., no placement hold) with effective "Foster Home" or "Specialized Foster Home" licenses on December 31, 2021 that were not licensed on June 30, 2021, and did not have an active effective license at any time in the prior 12 months. Treatment Foster Care homes were not counted.

¹²⁶ The number of non-relative homes includes homes with effective “Foster Home” or “Specialized Foster Home” licenses, excluding homes not in New Mexico. The number of relative homes includes out-of-state homes. Monthly counts exclude homes with placement holds during the specified month (“NO OOHP PLACE REC”). Homes with both relative and non-relative licenses are counted only once in the total, but appear separately in each count.

Figure 2: Total Number of Resource Homes with Active Effective Licenses by Month and Type 2019-2021¹²⁷



Source: Analysis of monthly *Active Provider* batch reports submitted 3/31/22 (2019 and 2020), and 5/2/2022 (2021).

Discussion

The array of non-relative placements in New Mexico diminished in 2020 as the Covid-19 pandemic took hold, worsened in 2021, and by the end of that year contributed to a placement crisis in parts of the State that led to children sleeping in offices and experiencing placements inconsistent with the State’s commitments in Appendix B.

15. Annual Target for New Treatment Foster Care Placements

(App. B, TO 6.3 and 6.4)

FSA Requirement

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 ... HSD to approve a specified number of new treatment foster care placements during the following year. (Due December 31, 2021)

¹²⁷ Ibid.

**Co-Neutrals’
Finding**

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data

BTO6.4(i) – secondary metric: The number of new TFC placements during the reporting year.*

BTO6.4(i) – primary metric: Percent of yearly target reached for new licensed treatment foster care (TFC) placements statewide.

The State did not provide performance data with sufficient detail to calculate these metrics prior to the Co-Neutrals' deadline for this report.¹²⁸

Discussion

The State has not produced data or information to demonstrate compliance with this TO in 2021.

16. Creation of CYFD Workforce Development Plan (App. B, TO 10.1)

**FSA
Requirement**

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

¹²⁸ The Co-Neutral team identified a data production issue in the State’s Sandbox *Placement* files submitted on March 31, 2022, and May 2, 2022, that affects TFC placements, including the results for this metric presented in prior reports.

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. (Due June 1, 2021)

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.¹²⁹

Discussion

Between March and October 2021, the Co-Neutrals received and provided feedback to the State on draft versions of the CYFD Workforce Development Plan. As of December 31, 2021, the Co-Neutrals had not approved the Plan. More recently, the State submitted an updated draft to the Co-Neutrals in October 2022.

The draft Plans submitted by the State in 2021 did not include an empirical caseload standard, which is required by this TO and is necessary to determine whether CYFD has a sufficient number of caseworkers to meet a caseload standard. Additionally, versions of the draft Plan did not include the number of casework staff CYFD needs, detailed by county, to implement the standard, as well as the detailed methodology used to determine the number of needed positions.

In the final DVP, the State and Co-Neutrals agreed to caseload standards for Investigation Case Workers, Permanency Planning Workers (PPW), In-Home Services Providers, and agreed to continue standard-setting discussions regarding Placement Workers. Specifically:

- *Investigation Case Workers*¹³⁰ – in 2022, the standard will be no more than 17 active cases, in 2023 and beyond, the standard will be no more than 12 cases (families) total; no primary assignments for first two months after completion of New Employee Training (NET), no more than three primary assignments at a time during months three and four after NET, and no more than six primary assignments at a time during months five and six after NET.

¹²⁹ Following a finding in the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021) that the State had not met the required performance standard for this TO, the Plaintiffs invoked the alternative dispute resolution process. The parties reached agreement on an MOU, which included several commitments related to this TO including, for example, monthly data sharing on filled and vacant full-time equivalent (FTE) positions, by county, and staff survey responses. To view the Parties’ MOU, see

https://cyfd.org/docs/Intro_1_2022-06-14_Kevin_S_Settlement_Dispute_Resolution_MOU_PC_signed.pdf

¹³⁰ Investigation Case Workers take on the investigation of alleged child abuse and/or neglect after receiving a report from Statewide Central Intake (SCI). The Investigation Case Worker completes the initial child protective service investigation and is the primary worker on the case through the disposition decision of the investigation, (normally up to 45 days). (DVP, pg. 6)

- *Permanency Planning Workers (PPW)*¹³¹ – no more than 15 children on a caseload at a time; assigned as primary for no more than five children at a time for first two months after completion of NET (only transferred cases), no more than eight primary assignments at a time during months three and four after NET (can include new cases), and no more than 12 primary assignments at a time during month five and six after NET.
- *In-Home Services Providers*¹³² – no more than eight cases (families).
- *Placement Workers*¹³³ – the State and the Co-Neutrals agreed the caseload standard for Placement Workers would be finalized in collaboration by July 1, 2022.

17. Implementation of Workforce Development Plan (App. B, TO 10.2)

<i>FSA Requirement</i>	<i>CYFD will fully implement the CYFD Workforce Development Plan. (Due December 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data

BTO10.2(i) – secondary metric: the average number of cases carried by casework staff, by county by quarter.*

¹³¹ Permanency Planning Workers (PPW) manage cases for children who are in state custody or a legal intervention, including foster care, as well as a “maintain at home” determination, where the child is not removed from the home. The PPW is assigned at the conclusion of the investigation, through a case transfer staffing from the primary Investigation Case Worker. They are responsible for assessment and case planning and providing ongoing support to the children and family. They assess the unique circumstances of each case and work with the family to establish a plan. These plans may include timely reunification with the child’s family or another permanency situation, such as guardianship, adoption, or Other Planned Permanent Living Arrangement. (DVP, pgs. 6-7)

¹³² In-Home Service Workers promote the safety of children, reduce the risk, and reduce the recurrence of maltreatment of children by their parent and/or guardian without the intervention of the courts, providing intense in-home service supports to the family. (DVP, pg. 7)

¹³³ Placement Case Workers are responsible for initial and ongoing licensure of resource families and provide ongoing support to each family. They may conduct a home study assessing resource family applicants, support placements with families to whom they are assigned, assist in matching children with families, and provide supports to the resource families following placement to ensure needs are met and retention of the family as a resource family. Placement Case Workers also complete the final adoption case work and serve as a child’s primary caseworker once a child is placed for adoption following the termination of parental rights. (DVP, pg. 7)

The Co-Neutrals did not review the results for this secondary metric for this report given the structure and completeness of the State’s data submission, and the date it was provided for validation.

BTO10.2(iii) – primary metric: In a given reporting year, the rate of voluntary separations among caseworker staff positions per 100 days worked.

In 2019, there were 492 caseworker staff with at least one day of employment with CYFD; of these, 88 staff voluntarily terminated employment resulting in a turnover rate of 0.10 per 100 workdays. The number of caseworker staff decreased by eight, to 484 in 2020, but the same number of staff (88) voluntarily terminated employment. As a result, the turnover rate in 2020 was slightly lower than in 2019.

In 2021, the number of caseworker staff decreased slightly to 481, however, there were more voluntary separations (116). This increased the turnover rate to 0.12, the highest rate among the three reporting years.

Table 14: Voluntary Turnover Rate for Protective Services Workers 2019-2021

Year	Workers	Total Workdays	Number of Voluntary Separations	Turnover Rate
2019	492	86,884	88	0.10
2020	484	94,437	88	0.09
2021	481	94,356	116	0.12

Source: Analysis of *CYFD list calendar 2019c* and *CYFD list calendar 2020c* SHARE files, submitted 6/28/22; *DT82522-2021-Staff* SHARE file, submitted 8/25/22.

Discussion

As discussed above, the CYFD Workforce Development Plan has not been approved, thus, implementation consistent with an approved Plan did not occur by the required due date.

iii. Appendix C: Indian Child Welfare Act

The commitments in Appendix C of the FSA require CYFD and HSD to, “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 must, “comply with ICWA and shall make every effort to ensure that all Native Children and families receive appropriate support and services.”^{134, 135}

The State’s actions to achieve the ITs and TOs in Appendix C were slow to start as the State built internal capacity and strategies. As a result, the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021) determined that the State had not met the required Performance Standard for seven FSA Appendix C ITs and TOs, specifically:

1. Development of Assessment Tool, Processes, and Procedures (App. C, IT 2.1)¹³⁶
2. Pursue Federal Funding through Medicaid and Title IV-E (App. C, IT 3.1)¹³⁷
3. Native Resource Family Recruitment and Retention Plan (App. C, IT 5.1)¹³⁸
4. Collection and Analysis of Data to Understand Needs of Native Children, and State’s Capabilities to Meet those Needs (App. C, IT 7.1)¹³⁹

¹³⁴ FSA, pg. 8a.

¹³⁵ Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-63.

¹³⁶ “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.” (Due June 1, 2021) (FSA, pg. 8a)

¹³⁷ “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.” (Due June 1, 2021) (FSA pg. 8a)

¹³⁸ “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.” (Due June 1, 2021) (FSA, pg. 9a)

¹³⁹ “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,

5. Identification, Access, and Expansion of Culturally Responsive Services (App. C, TO 2.1)¹⁴⁰
6. Policies to Ensure Native Children receive Traditional or Culturally Responsive Services (App. C, TO 2.3)¹⁴¹
7. Policy to Provide/Ensure Direct Assistance for Traditional Ceremonies (App. C, TO 3.1)¹⁴²

In response to the Co-Neutrals' November 2021 Report, the Plaintiffs invoked the FSA's alternative dispute resolution (ADR) process¹⁴³, and on June 10, 2022, a Memorandum of Understanding (MOU)¹⁴⁴ was reached by the parties which includes various agreements to improve compliance toward these commitments, and to increase and improve communication between the State and Plaintiffs on this work. The MOU includes general agreements as a foundation to the work ahead which recognizes the intersection of terms, concepts, and strategies to achieve implementation of all FSA Appendix C commitments.

As these seven ITs and TOs have been subject to mediation and negotiation by the parties for the majority of the last 12 months following the Co-Neutrals' prior report, the Co-Neutrals will not newly assess 2021 performance toward these ITs and TOs within this current report. The Co-Neutrals will report on and assess 2021 performance toward commitments that were not part of the ADR process (discussed later in this section). Although pertaining to actions after the period

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.” (Due June 1, 2021) (FSA, pg. 9a)

¹⁴⁰ “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.” (Due June 1, 2021) (FSA, pgs. 9a-10a)

¹⁴¹ “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. 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 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.” (Due June 1, 2021) (FSA, pg. 10a)

¹⁴² “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.” (Due June 1, 2021) (FSA, pg. 10a)

¹⁴³ See FSA, Section IX.A.

¹⁴⁴ To view the Parties’ MOU, see

https://cyfd.org/docs/Intro_1_2022-06-14_Kevin_S_Settlement_Dispute_Resolution_MOU_PC_signed.pdf

under review, the discussion below provides a summary of the MOU agreements that were developed and agreed upon as part of the ADR process in 2022 to move the State toward achievement of the Performance Standards.

Agreements

The MOU General Agreements begin by emphasizing that the *Kevin S. FSA Appendix C* commitments require communication, partnership, and consultation, when necessary, with the 23 Nations, Pueblos, and Tribes in New Mexico; and meaningful engagement of affected Native American children, youth, and families. To accomplish this, the MOU includes a specific agreement for CYFD to confer with sovereign leaders of each Nation, Pueblo, and Tribe to identify who will formally provide the position and perspective of the Nation, Pueblo, or Tribe on all matters related to child welfare and culturally responsive services.¹⁴⁵ Additionally, the State committed to create a plan – with input from spokespeople identified by Nations, Pueblos, and Tribes – for directly engaging Native children, youth, and families on culturally responsive treatments, interventions, and supports.¹⁴⁶ The parties recognize and acknowledge that neither the FSA nor the MOU are in any way binding on the Nations, Pueblos, or Tribes, and that the parties must respectfully engage with but cannot commit the Nations, Pueblos, or Tribes to any activity or decision.¹⁴⁷

Through its collaborative work on the Appendix C commitments, the parties have now agreed to descriptions for specific terms used within FSA Appendix C to ensure common understanding and agreement on where there are similarities and differences.¹⁴⁸ The definitions as outlined in the MOU are as follows:

- ***Traditional Interventions*** (as referenced in App. C, IT 2.1 and TO 2.1): “Traditional practice accepted by the Native American child, family, and/or Nation, Pueblo, or Tribe.”¹⁴⁹
- ***Culturally Responsive Treatments and Services*** (as referenced in App. C, TO 2.1): “Identified by the Native American child, family, and/or Nation, Pueblo, or Tribe; and community-based services and programs that are provided in the tribal community such as home visiting, treatment foster care, wraparound services, that incorporate tribal values.”¹⁵⁰

¹⁴⁵ MOU IV.B.5.a.i.

¹⁴⁶ MOU IV.B.7.a.

¹⁴⁷ MOU IV.A.3.

¹⁴⁸ MOU IV.A.4.

¹⁴⁹ MOU IV.A.4.a.i.

¹⁵⁰ MOU IV.A.4.b.

- ***Culturally Responsive Treatments, Services, Interventions, and Supports*** (as referenced in App. C, IT 3.1, and TOs 2.1 and 2.3): “Identified by the Native American child, family, and/or Nation, Pueblo, and/or Tribe; and culturally responsive services that are related to child welfare that are provided in the Native American child’s community, including in urban settings, such as culturally responsive substance abuse treatment, domestic violence counseling, individual counseling, wrap around, home visiting, and treatment foster care. These culturally responsive treatments, services, interventions and supports are not necessarily grounded in the tradition of a specific Nation, Tribe or Pueblo, and should be discussed with the child’s Nation, Pueblo or Tribe; and include broader wellness and recreational activities that incorporate cultural values or social gatherings, in areas such as the arts, music, and sports or other physical activities.”¹⁵¹

Several additional MOU agreements and updates related to ITs and TOs within ADR are bulleted below:

- CYFD has continued work on developing an assessment tool, processes, and procedures to promote traditional interventions as first-line interventions and services for Native children and families. An initial draft of a tool developed by CYFD, titled the *Cultural Assessment Questionnaire*, has since been modified and is now named *Cultural Strengths Inquiry*, and might undergo a further title and other changes following collaborative work with the Nations, Pueblos, and Tribes. The intent of the tool is not to assess children and families with respect to cultural ties and needs but to support efforts to effectively respond to requests by children, families, and Nations, Pueblos, or Tribes for assistance in meeting identified needs and requests for support. Recognizing the unique identity and characteristics of each Nation, Pueblo, and Tribe, CYFD agreed to submit an updated proposal for the tool and processes after conferring with tribal partners. Pursuant to the MOU, the processes, as outlined in the accompanying PIG, will clarify, in addition to other topics, that a child may request cultural interventions and traditional ceremonies at any time. The child’s request will not be limited to the process of formal administration of an assessment. CYFD committed to foster consistent contact and communication with Native children and parents, and Nations, Pueblos, and Tribes on the availability of State assistance as requested to have a child participate in cultural interventions, traditional services, and ceremonies.¹⁵²
- To recruit and retain Native resource families, the State agreed to a number of actions, including affirming in its licensing policy that a foster care license may not be denied based on poverty alone, or practices or housing consistent with the prevailing social and cultural standards of the applicant’s Tribe; incorporating into licensing rules and regulations an opportunity for Native applicants to provide information and input to CYFD before an

¹⁵¹ MOU IV.A.4.c.

¹⁵² MOU IV.B.4.a.

application for a license is denied; and providing staff training on cultural responsiveness and humility in the licensing process.¹⁵³

- The State contracted with the Coalition to Stop Violence Against Native Women (CSVANW) to engage Native resource families, Tribal ICWA workers, and Tribal leaders to conduct surveys and listening sessions to better understand the needs of Native resource families when engaging with CYFD.¹⁵⁴ CSVANW’s full survey findings and report includes detailed and valuable information in understanding the experiences of those surveyed regarding their interactions with CYFD and their efforts to collaboratively support children and families. CSVANW’s recommended solutions for consideration by CYFD include:¹⁵⁵
 - ***Culturally Sensitive Communication***: “to create a systemic environment of inclusion and reflective practice which embraces diversity, active listening, clear and concise expectations, respect, integrity, and the incorporation of core values which drive culturally relevant decision making.”¹⁵⁶
 - ***Effective Communication***: “to ensure that all communication with Resource Families is clear, concise, respectful and ongoing. Highlight the importance of regular communication with families and to respond in a timely fashion...Provide accurate information to families and explain any delays that may occur.”¹⁵⁷
 - ***Resource Family Recruitment and Retention***: “to actively engage in meaningful consultation with each of the tribes regarding the number of children in care, the number of Native Resource Families from each tribe and develop a specific plan for recruitment from each of those tribes based on need. To embrace the culturally relevant resource family training that is offered by the tribes...to invite the active involvement of the trainers from the tribes to deliver and facilitate the training...also consider how to effectively address the issue of family member’s history that results in the disqualification of the entire household to serve as a Resource Family.”¹⁵⁸
 - ***Resources and Support***: “to develop readily available resources for families to engage with in their efforts to help Native children to maintain connection to their tribal customs and traditions, to maintain connection to their Native families and to develop

¹⁵³ MOU IV.B.6.

¹⁵⁴ CSVANW reports a total of 22 social workers, 16 Native resource families, and 10 tribal leaders were surveyed and/or interviewed.

¹⁵⁵ These citations are abbreviated from the Report’s full recommendations. To access CSVANW’s Report, see https://cyfd.org/docs/C8-IT_5-1-Coalition_to_Stop_Violence_Against_Native_American_Women_Survey_and_Report.pdf

¹⁵⁶ CSVANW Report, pgs. 69-70.

¹⁵⁷ CSVANW Report, pg. 70.

¹⁵⁸ Ibid.

a plan for ongoing sibling contact. Incorporate and follow the Cultural Compact between tribes and state for all Native children in placement...consider the identification and inclusion of Tribal Cultural Mentors from each of the New Mexico Tribes to be available for families and to also be available during training sessions.”¹⁵⁹

- **Resource Family Data:** “to develop a plan for how Native Resource Family Data will be maintained across the CYFD offices for easy access and accuracy.”
- **Evaluation:** “ongoing evaluation is important in that it captures important information readily as experiences occur and during closure of an ICWA case. It tells the story of how well things went and also the area that could be improved upon. Having access to this information sooner than later allows for immediate remedies to be applied and to develop ongoing best practices.”¹⁶⁰

The full content of Appendix C agreements can be found within section IV of the Parties’ MOU.¹⁶¹

Implementation Targets Due December 1, 2020, June 1, 2021, and December 1, 2021 that were not previously achieved

In the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021), the Co-Neutrals assessed the State had met the Performance Standard for the following ITs – *maintain a full-time employee responsible for developing, maximizing, coordinating, and overseeing provision of culturally responsive services* (App. C, IT 4.1); and *create and maintain a dedicated ICWA unit in the 2nd Judicial District* (App. C, IT 8.1) Thus, these ITs will not be reassessed in this or future reports.

There is one significant update relevant to App. C, IT 4.1 that is beyond the period of review for this report, but is noteworthy. CYFD has increased staffing and support within its Office of Tribal Affairs (OTA), to now include a Director and three staff members who coordinate with CYFD’s Office of General Counsel, Office of Children’s Rights (OCR), Protective Services Division (PSD), and Behavioral Health Services Division (BHSD). CYFD has also dedicated an Assistant General Counsel exclusively to tribal matters. Additionally, Governor Lujan-Grisham appointed the former Governor of Nambe Pueblo, Philip Perez, to serve as CYFD’s Special Projects Coordinator for Tribal Affairs. The increased capacity within OTA, as well as the creation of new critical and supportive positions, should improve the State’s ability to respectfully and effectively collaborate with Nations, Pueblos, and Tribes, and move forward on FSA Appendix C commitments and other priorities.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ To view the Parties’ MOU, see

https://cyfd.org/docs/Intro_1_2022-06-14_Kevin_S_Settlement_Dispute_Resolution_MOU_PC_signed.pdf

1. Draft and Promote Passage of State ICWA Law (App. C, IT 1.1)

FSA Requirement	<i>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 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. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State has met the Performance Standard for this IT in 2021.

Discussion

One of the most significant accomplishments for New Mexico’s Nations, Pueblos and Tribes, and the State of New Mexico was passage in the 2022 legislative session of a State Indian Child Welfare Act (ICWA) law, entitled the *Indian Family Protection Act (IFPA)*. Prior efforts, supported by the State and others, to develop and pass a statute had been ongoing before the *Kevin S. Settlement*, and was led for many years by the Nations, Pueblos, and Tribes. The State encouraged passage of the law, which was introduced during the 2021 legislative session in the House (sponsored by Representative Georgene Louis) and in the Senate (sponsored by Senator Benny Shendo). Although the bill ultimately was not heard in the Senate Judiciary Committee before the end of the 2021 legislative session, following the session, Representative Louis convened a workgroup to redraft and refine the bill with representatives from the Nations, Pueblos, and Tribes; Bold Futures; the Coalition to Stop Violence Against Native Women; and representatives from CYFD.

As a result of this work, House Bill 135 – known as the *Indian Family Protection Act (IFPA)*¹⁶² – was introduced during the 2022 legislative session by Representative Louis, Senator Soto, and Representative Cadena. The State, including CYFD in particular, continued its support of the legislation by identifying witnesses to testify on behalf of the bill; providing an overview of the bill to members of the Senate Indian, Rural, and Cultural Affairs Committee; writing a supportive Fiscal Impact Report; and recommending to the Governor that the bill be signed. The New Mexico Legislature passed IFPA and on March 3, 2022, Governor Michelle Lujan Grisham signed the bill into law.

IFPA codifies into state law provisions of the federal ICWA, and provides new language within New Mexico’s Children’s Code which directs CYFD to, among other requirements, make the following efforts for Native children who come to the attention of the child welfare agency: conduct affirmative efforts to determine a child’s Tribal affiliation; coordinate with the relevant Tribe when conducting an investigation involving a Native child; provide active notification to the relevant Tribe for any custody proceeding relating to a Native child; provide Tribal courts the option to assume jurisdiction of the matter; meaningfully collaborate with Tribal courts to ensure appropriate jurisdiction; give Tribes the right to intervene in proceedings subject to IFPA; work with families and Tribes to reunite a Native child with their Tribe; and follow language access requirements for proceedings. The law also requires “active efforts” to maintain or reunite a child with their family, which are defined as: “efforts that are affirmative, active, thorough and timely and that represent a higher standard of conduct than reasonable efforts.”¹⁶³ Passage of the IFPA law is a major accomplishment.

2. *New Mexico Tribes and Pueblos Access to IV-E Funding* (App. C, IT 6.1)

FSA Requirement	<i>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. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021.

¹⁶² To view the full text of the *Indian Family Protection Act*, see <https://www.nmlegis.gov/Sessions/22%20Regular/bills/house/HB0135.PDF>

¹⁶³ See Section 2, paragraph A.

Discussion

CYFD is committed to and is working to demonstrate its commitment by creating additional opportunities for New Mexico Nations, Pueblos, and Tribes to leverage Title IV-E federal funding for children in foster care or who are at risk of entering foster care.¹⁶⁴ CYFD's primary strategy for this action has been through development of Joint Power Agreements (JPAs)¹⁶⁵ between the State and New Mexico Nations, Pueblos, and Tribes which would allow the State to pass through Title IV-E federal funds to tribal nations for reimbursable costs. The Navajo Nation is the only New Mexico tribe with a Title IV-E direct plan, which allows them to draw down funds directly from the federal government for approved activities and costs.¹⁶⁶

CYFD is diligently moving forward to accelerate this work and reports that since September 2020, the State has reserved one day a week to meet with Nations, Pueblos, and Tribes, as requested, to provide an overview of Title IV-E, eligibility requirements, and available technical assistance. To date, CYFD reports meeting with 18 Nations, Pueblos, and Tribes including Taos Pueblo, Santa Ana Pueblo, San Ildefonso Pueblo, Isleta Pueblo, Pojoaque Pueblo, Nambe Pueblo, Laguna Pueblo, Pueblo de Cochiti, San Felipe Pueblo, Jemez Pueblo, Zuni Pueblo, Jicarilla Apache, Mescalero Apache Tribe, Acoma Pueblo, Zia Pueblo, Santa Clara Pueblo, Picuris Pueblo, and Ramah Navajo. Efforts are continuing in 2022.

There are 10 Tribes with JPAs with the State that date back to 1997; however, CYFD has acknowledged that these agreements would benefit from revision as they do not address Title IV-E funds for foster care maintenance payments. More recently, CYFD reports that in September 2021, the Pueblo of Zuni entered into a Title IV-E agreement with the State for foster care maintenance, and guardianship and adoption assistance. After multiple meetings with the Pueblo of Laguna in 2021, the State entered into a Title IV-E Agreement with the Pueblo in May 2022.

Decisions about whether to enter into JPAs rest with the Nations, Tribes, and Pueblos, and access to Title IV-E funding by the Nations, Pueblos, and Tribes remains low as of this report writing in the Fall of 2022. CYFD notes that some reasons cited by the Nations, Pueblos, and Tribes for this include that they do not take many children into custody as they pursue other options to keep children safe; they do not have the infrastructure or funding for formal foster care programs; and the process for negotiating such Agreements is complex and time consuming and changes in Tribal

¹⁶⁴ CYFD is the designated Title IV-E agency for New Mexico, and can pass Title IV-E funds to Tribes or Pueblos for the care of Native children who meet the eligibility criteria, and who are in the custody of the Tribe or Pueblo as a result of parental or other caregiver abuse or neglect. Title IV-E reimbursement is available for: monthly maintenance payments for the daily care and supervision of eligible children; administrative costs to manage the program; training of staff and resource parents and recruitment of resource parents; and costs related to design, implementation, and operation of the statewide data collection system.

¹⁶⁵ CYFD updated the JPA template, titled, "Pass Through of Title IV-E Foster Care Maintenance, Adoption Assistance, and Guardianship Assistance Payment", and dated March 2022. The JPA requires additional revisions and updates following passage of IFPA earlier this year.

¹⁶⁶ Although the Navajo Nation is its own Title IV-E agency, the Ramah Navajo (Pine Hill) is not.

leadership can delay successful completion of collaborative work with the State. Tribal representatives cite the need for more hands-on technical assistance (TA) to overcome some of the barriers. This work is ongoing and as the State’s increased capacity to offer TA is operationalized, the State expects that additional Nations, Tribes, and Pueblos will be supported to access Title IV-E funding. The next phase of the State’s work in meeting this IT is offering more individualized TA and support to interested Tribes and Pueblos, something that should be feasible with the additional capacity recently developed within the OTA.

Target Outcomes Due December 1, 2020, June 1, 2021, and December 1, 2021

3. Assessments of Native Children within 30 Days of Entering Care
(App. C, TO 1.1)

FSA Requirement	<i>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. (Due December 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data¹⁶⁷

CTO2.1(i) – primary metric: Number of Native American children in CYFD custody receiving Traditional Medicine Benefits (TMB) during the reporting year.

Data for this metric are not included in the *State of New Mexico, 2021 Annual Progress Report* due to the State’s concerns about data quality, and are also not included here.¹⁶⁸

*CTO1.1(i): qualitative metric: Qualitative review of practice for screening and referrals to traditional and culturally-responsive services*¹⁶⁹

¹⁶⁷ The metric for CTO2.1(i) is presented here, within the section on CTO1.1, as CTO2.1 is currently subject to ADR and is not newly assessed in this report.

¹⁶⁸ The State’s MCOs can support Traditional Medicine Benefits (TMB) as a value-added service and the State received limited data from the MCOs. However, the State could not validate the accuracy of the data and is working to clarify the instructions to the MCOs on how to report TMB disbursement.

¹⁶⁹ This qualitative metric will be used to validate multiple related commitments, specifically CTO2.1, CTO2.2, CTO2.3, and CTO3.1.

The State has not yet finalized the qualitative instrument and methodology to collect data and assess performance for this metric.

Discussion

As discussed earlier, the State has not yet finalized the tool or processes that will be utilized to assess screening and referrals for traditional and culturally responsive services. The related commitment – App C, IT 2.1 – was assessed as not met in the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021), and has been subject to ADR and the June 2022 MOU between the parties. MOU paragraphs IV.B.3 & 4 outline specific agreements related to this commitment. The Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

4. Development of Protocols for 30-Day Review Process¹⁷⁰ (App. C, TO 4.2)

<p>FSA Requirement</p>	<p><i>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. (Due December 1, 2020)</i></p>
<p>Co-Neutrals’ Finding</p>	<p>Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021. Protocols were developed and approved by the Co-Neutrals, however, compliance with the protocols, as required by this TO, did not occur in 2021.</p>

¹⁷⁰ Although out of sequence, this report discusses App. C, TO 4.2 prior to discussion of App. C, TO 4.1 in order to provide an explanation of the process and procedure established by CYFD prior to presentation of the data in App. C, TO 4.1.

Discussion

On January 16, 2021, the Co-Neutrals approved the State's process and procedure for this TO as outlined in a Guidance Memorandum titled, *ICWA – Foster and Adoptive Placement of American Indian/Alaskan Native Children*, and later in PIG 03-2021-#7,¹⁷¹ dated March 24, 2021. These materials describe the legal requirements pursuant to the federal ICWA on the placement of Native children in foster care, and establish a process by which CYFD will conduct regular reviews of Native children who are not placed according to ICWA placement preferences in order to identify and secure preferred placements for the Native child.

Pursuant to federal law, Native children in foster care should be provided placements that allow them to remain connected to their families, culture, and communities. Preferred placements for Native children as outlined in federal ICWA are listed below, in descending order of preference:

- 1) A member of the Indian child's extended family;
- 2) A foster home that is licensed, approved, or specified by the Indian child's tribe;
- 3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- 4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.^{172,173}

The Nation, Pueblo, or Tribe can establish a different order of placement preferences to that outlined above. CYFD's process requires that when a Native child enters custody, efforts are first made to identify and secure a relative placement for the child. If these efforts are unsuccessful, and the child is placed in a non-ICWA preferred placement, the caseworker must notify the OTA within 48 hours. The Director of OTA is responsible for documenting these notifications, and scheduling and conducting an out-of-preferred placement (OOPP) meeting for each Native child in such placements at least every 30 days until the child is placed in a preferred placement.

Pursuant to the approved procedure, the OOPP meeting must include a representative from OTA, the PPW, and the PPW supervisor. Other meeting attendees should include the resource family, the GAL or Youth Attorney, the Native child's parents, the parents' attorneys, grandparents and other extended family members, and the child, as appropriate. The Children's Court Attorney

¹⁷¹ To view PIG 03-2021-#7, see https://cyfd.org/docs/03-2021-no7_PIG_-_ICWA_30_Day_Review_Policy.pdf

¹⁷² 25 U.S.C. § 1915 (b)

¹⁷³ Section 21.A.(4) of IFPA, which was passed in 2022 after CYFD issued PIG 03-2021-#7, provides for the following placement preferences: (a) an extended family member of the Indian child; (b) a foster home licensed, approved or specified by the Indian child's tribe; or (c) a foster home licensed or approved by a licensing authority in New Mexico in which one or more of the licensed or approved foster parents is Indian. CYFD's procedure will need to be amended to comply with current state law.

(CCA) is encouraged to attend, and a representative from the child’s Nation, Pueblo, or Tribe must be made aware of the meeting and be invited to participate in a meaningful manner. The topics and issues for discussion within the meeting are outlined within the *Process* section of the FIG.

CYFD developed a phased implementation plan and timeline by which all Native children in an out-of-preference placement would have their placements reviewed. CYFD reported that in January 2021, OTA began identifying and tracking Native children currently in foster care in a non-ICWA preferred placements. Beginning that same month, the Director of OTA was required to develop a staffing plan, including how many cases will be reviewed each month, with a goal of having all Native children in non-ICWA preferred placements who entered foster care prior to February 2021 reviewed by July 1, 2021.

While CYFD has been moving forward to schedule and conduct OOPP meetings, performance data from the case record review discussed below with respect to App. C, TO 4.1 found that practice in 2021 was not compliant with established protocols and procedures as required by this TO.

5. 30-Day Review of Native Children in Non-ICWA-Preferred Placements
(App. C, TO 4.1)

FSA Requirement	<i>By December 1, 2020, when a Native Child is in a non-ICWA-preferred placement, the placement will be reviewed every 30 Days. (Due December 1, 2020)</i>
Co-Neutrals’ Finding	As discussed further below, qualitative data for this TO show that placement meetings to review non-ICWA preferred placements did not consistently occur when required. Of those that did occur, none documented the inclusion of all required team members or discussion topics. Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data

CTO4.1(i) – secondary metric: Length of time Native American children spent in non-ICWA preferred placements made after December 2020*

CTO4.1(i) – primary metric: Length of time Native American children spent in non-ICWA preferred placements

CTO4.1(ii) – primary metric: Percent of 30-day reviews for non-ICWA preferred placements conducted on time

There are not sufficient data to calculate these metrics as described in the DVP, as the State had not yet begun to record in FACTS which ICWA placement preferences apply for any placements for ICWA eligible children. The State’s reports relied on placements with relatives or fictive kin as a proxy for ICWA preferred placements; based on the findings of the qualitative review of placements discussed below, the Co-Neutrals do not agree that this is an appropriate proxy. The Co-Neutrals understand that CYFD will modify FACTS to allow workers to indicate whether a placement is ICWA-preferred, and what type of preferred placement it is. This system enhancement is expected to be launched October 3, 2022.

CTO4.1(iii): qualitative metric: Qualitative review of ICWA-preferred placements for Native children

CTO4.1(iv): qualitative metric: Qualitative review of IPP meetings for Native children in non-ICWA preferred placements

To collect data for these qualitative metrics, CYFD and Co-Neutral staff collaborated in developing protocols and instruments for reviews of documentation available in FACTS to assess if Native children who were placed in non-ICWA preferred placements received timely reviews inclusive of the required participants and discussion topics outlined in CFYD’s procedures. CYFD utilized contracted reviewers who were familiar with CYFD and FACTS to review selected cases. Reviewers participated in an orientation and training on the FSA standards and review instrument, observed several OOPP staffings, and met with OTA to inform their understanding of the process. A CYFD contractor and Co-Neutral staff implemented a quality control process during the reviews, including completing second level reviews of identified surveys.

CYFD reported that consistent implementation of the OOPP process was scheduled to begin in April 2021; thus, the period selected for the case record review was April through December 2021. Applicable cases were those in which a Native child was placed in a non-ICWA preferred placement for at least 30 days during the review period. The initial sample of 193 children represented a 95 percent confidence interval with a five percent margin of error. However, after reviewing approximately 50 children and finding that none of the children’s case records documented compliance with CYFD’s procedure, CYFD and the Co-Neutrals decided to reduce the sample size to 74 children to ensure geographic diversity.¹⁷⁴

¹⁷⁴ Additional challenges related to sampling and data quality were identified during the review process. Specifically, as reported by CYFD, current data collection in FACTS does not reliably identify all children to whom ICWA applies and are not placed in accordance with ICWA placement preferences. There were also challenges identifying whether non-relative resource homes consisted of resource parents who were Native, which may be consistent with ICWA placement preferences.

Of 74 children reviewed, 19 (26%) children were determined to be placed in an ICWA preferred placement during the period under review and were not reviewed further as an OOPP meeting would not have been required. The remaining 55 Native children reviewed experienced a total of 113 placements, of which 101 placements were not in accordance with ICWA placement preferences. A total of 332 OOPP staffings were required between April and December 2021, ranging from 31 to 42 each month. Documentation in FACTS showed that of the 332 required OOPP staffings, 132 (40%) OOPP staffings were held, and 66 (20%) of the required OOPP staffings were held timely (within 30 days of the prior staffing). Table 19 below shows the number of required monthly OOPP staffings, the number held, and the number held timely.

**Table 15: Out-of-Preferred Placement Staffings Timely Completed
April – December 2021¹⁷⁵**

Month (2021)	Number of Staffings Required	Number of Staffings Held	Number of Staffings Held Timely
April	40	20	19
May	37	16	11
June	37	7	4
July	42	7	2
August	40	14	3
September	34	20	9
October	37	19	2
November	34	10	9
December	31	19	7
Total	332	132 (40%)	66 (20%)

Source: Case record review of FACTS documentation conducted by CYFD consultants and Co-Neutral staff

Documentation for all 132 OOPP staffings completed between April and December 2021 were reviewed, and none (0%) documented that invitations had been extended to all necessary

¹⁷⁵ Data are based on random sampling and do not include the full universe of applicable Native children and placements during the period under review.

participants,¹⁷⁶ nor that all required discussion topics and issues were addressed within the meeting.¹⁷⁷

Discussion

Although beyond the period under review for this report, to improve performance in this area, CYFD reports that in April 2022, PSD Director Emily Martin and Deputy Secretary Beth Gillia held listening sessions with the Northwest Region's PSD staff, OTA staff, and tribal representatives who had participated in the OOPP staffings. Some of the strengths reported include:

- OTA's practice of scheduling and staffing OOPPs on the same day and at the same time each month for each county office has allowed tribal representatives to participate on a regular basis.
- There is open discussion of ways to transition the child into an ICWA preferred placement and increased accountability with next steps established with clear timeframes.
- Better transition planning occurs when a child moves into a relative placement or back to their home, including identification of resources to help support a changed placement.
- The OOPP staffing has created a platform for tribal representatives and other parties to be heard and have their concerns addressed.
- Staff in some counties have sought additional guidance from OTA and rely on OTA for additional support in their ICWA cases.

Some of the challenges reported, which are consistent from what was observed in FACTS documentation during the above referenced case record review, include:

- Staff in some counties are consistently unprepared and unable to accurately report what has been accomplished between staffings.
- Although next steps are identified, there are significant delays in completing these tasks and limited oversight between OOPP staffings to ensure completion.
- OTA is not always made aware of new ICWA cases and/or informed when a child is in an

¹⁷⁶ CYFD's procedure requires that the OOPP staffing must include a representative from the OTA, the PPW, and the PPW supervisor. Other meeting attendees should include the resource family, the GAL or Youth Attorney, the Native child's parents, the parents' attorneys, grandparents and other extended family members, and the child, as appropriate. The CCA is encouraged to attend, and a representative from the child's Nation, Pueblo, or Tribe must be made aware of the meeting and be invited to participate in a meaningful manner.

¹⁷⁷ See pgs. 3-5 of PIG 03-2021-#7 for the issues that should be addressed and documented in FACTS during the OOPP meeting.

out-of-preferred-placement.

- Documentation from the OOPP staffing is not consistently entered into the same place in FACTS or into FACTS at all.

Finally, CYFD reports currently considering revising the PIG to allow for more flexibility in the topics being discussed, required participants, and forum for the discussion, as well as to develop processes to improve accountability. The FSA requires the Co-Neutrals to approve the processes used for the 30-day reviews; the Co-Neutrals expect to receive for review, comment, and approval any proposed modifications to the PIG or procedure prior to changes being made to the process and practices that were previously approved by the Co-Neutrals.

6. Procedures to Enhance Accountability for ICWA Placement Preferences

(App. C, TO 4.3)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2020)</i>
<i>Co-Neutrals’ Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021. CYFD has begun to implement these procedures and enhance its accountability in this area, including additional efforts to ensure that tribal placement preferences that deviate from ICWA are identified and honored.

Discussion

CYFD has included requirements regarding mandatory participants in meetings involving children’s placements and other decision-making forums. Specifically, as discussed above, PIG 03-2021-#7, which establishes a process to review non-ICWA preferred placements for Native children, requires that OTA schedule and conduct the OOPP meeting, and ensure that a representative of the child’s Nation, Pueblo, or Tribe is aware of the meeting and is invited to participate in a meaningful manner. Other attendees in the meeting should also include, for example, the child’s parents, grandparents and other extended family members and the child, as appropriate.

CYFD’s PIG 01-2022-#3,¹⁷⁸ dated January 21, 2022, identifies required participants in meetings to discuss initial and ongoing placements of children in out-of-state and in-state congregate facilities. Pursuant to PIG 01-2022-#3, the triage meeting (to discuss placing a child out-of-state), and joint clinical review meeting (a monthly meeting to review a child’s ongoing placement out-of-state) require participation by the child or youth, family members, and tribal representatives.¹⁷⁹ For placement decisions related to in-state congregate care facilities, paragraph 10.1 in PIG 01-2022-#3 indicates the PPW must invite the child or youth, and “may also include” the child or youth’s parent or other family members, and a tribal representative.

As described above, the case record review of practice in 2021 does not document that a Native child’s family or Nation, Pueblo, or Tribe were consistently invited to participate in OOPP meetings.

7. Development of ICWA Training Plan (App. C, TO 5.1)

FSA Requirement	<i>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. (Due December 1, 2020)</i>
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¹⁷⁸ To access PIG 01-2022-#3, see https://cyfd.org/docs/B11-InterrelatedTOs-01-2022-no3_PIG_RE-ISSUE_Congregate_Care_Settings.pdf

¹⁷⁹ See PIG 01-2022-#3 paragraph 11.2 for triage team members, and paragraph 11.4 for joint clinical review team members.

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

Between October 2020 and September 2021, the Co-Neutrals received and provided feedback on draft plans provided by the State relevant to this TO. The Co-Neutrals last provided feedback to the State in September 2021. As of September 2022, the Co-Neutrals have not received any updated material for review and approval.

The draft Plan submitted in September 2021 – titled *CYFD Training and Coaching Plan for Increase in Knowledge, Skills and Abilities on Indian Child Welfare Act* – is ambitious. It describes the Advisory Group that has been involved in developing the Plan;¹⁸⁰ four levels of certification (Novice, Proficient, Advanced, and Distinguished) for different types of staff; the course titles and information included within each type of certification level; trainings for CCAs; training for resource parents; training for external partners; plans for curriculum development and coaching of staff; plans for evaluating completion of trainings; and an implementation plan with timelines, activities, and measurable targets.

The draft Plan reflects the State’s commitment to vastly expand training content and opportunities for training. However, the Plan lacked the necessary specificity regarding training for CYFD’s existing workforce. The Co-Neutrals provided this feedback to the State, and are awaiting an updated submission for review and consideration of approval.

In the *State of New Mexico, 2021 Annual Progress Report*, the State reports they have contracted with the National Indian Child Welfare Association (NICWA) for consultation, training, and resource materials to be used in developing and implementing the ICWA Training Plan. The State’s Report also includes additional details regarding its proposed Plan, including a timeline for implementation; however, the Co-Neutrals are unable to fully assess it at this time without a current submission of the full draft Plan.

¹⁸⁰ CYFD reports the ICWA Training Advisory Group members include the following representatives: ICWA manager for the Pueblo of Nambe; ICWA worker for the Pueblo of Taos; the Director for the Pueblo of Isleta Social Services; ICWA worker for the Jicarilla Apache Tribe; case worker for the Pueblo of Pojoaque Social Services; the Director of Navajo Nation Department of Social Services; and the Director for the Isleta Pueblo Social Services.

8. Implementation of ICWA Training Plan (App. C, TO 5.2)

FSA Requirement	<i>CYFD will develop an ICWA training plan by December 1, 2020, and implement it by December 1, 2021. The Co-Neutrals will evaluate implementation of the training plan. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

As discussed above, the Co-Neutrals have not received an updated version of the State's proposed ICWA Training Plan, and the last draft of the Plan has not been approved; therefore, implementation consistent with an approved Plan had not occurred by the required due date in 2021.

iv. Appendix D: Behavioral Health Services

Appendix D of the FSA requires the State to rebuild the behavioral health system for children and families in New Mexico into one that provides, “prompt access to necessary services for all children in state custody and their families.” The system must be a “statewide, community-based mental health system that all children and families will be able to access,” and is meant to help reduce reliance on restrictive in-state and out-of-state residential and congregate care settings. The FSA requires the State to provide a “diverse and full-spectrum of community-based services,” including medically necessary behavioral health services, with a goal of those services being provided, “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.”¹⁸¹

Implementation Targets due December 1, 2020, June 1, 2021, and December 1, 2021 that were not previously achieved

In the *Co-Neutrals’ Baseline and 2020 Annual Report* (November 15, 2021), the Co-Neutrals assessed the State had met the Performance Standard for the following ITs – *Detailed Progress Report on Reimbursement Methodology, Billing Rate Information, and Guidance for Providers (App. D, IT 3.1a)*¹⁸²; *Publishing Medication Protocols for Public Comment (App. D, IT 4.1a)*¹⁸³; *Adopt Regulations Governing Medication Protocols (App. D, IT 4.1)*; and *Producing a Detailed Progress Report on the State’s Efforts to Build High-Fidelity Wraparound Capacity (created by the Parties’ Extension Agreement)*. Thus, those ITs will not be assessed in this or future reports.

1. Behavioral Health Care Workforce Development Review (App. D, IT 1.1)

FSA Requirement	<i>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.</i>
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¹⁸¹ FSA, pg. 12a.

¹⁸² App. D, IT 3.1a was created and agreed upon by the parties in the August 8, 2020 Parties’ Extension Agreement.

¹⁸³ App. D, IT 4.1a was created and agreed upon by the parties in the August 8, 2020 Parties’ Extension Agreement.

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. (Due June 1, 2021)

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021.

Discussion

The State submitted an initial draft of its Behavioral Health Care Workforce Development Review in March 2021 for the Co-Neutrals’ review. The State has described its efforts to meet this commitment as a two-phased approach. Phase 1 involves data collection and assessment to inform the State’s knowledge of current service availability, current workforce capacity, provider expansion capacity, and current and expected service utilization. Phase 2 involves use of the data gathered in Phase 1 to create a specific hiring and contracting plan as required in the FSA.

As of December 31, 2021, the Co-Neutrals had not been able to approve the State’s Behavioral Health Care Workforce Development Review. Although the State did not meet the Performance Standard in 2021, they have been making efforts to achieve this standard and completed Phase 1 in 2022. To accomplish Phase 1, the State contracted with Myers and Stauffer (M&S)¹⁸⁴ to design and disseminate a survey to various stakeholders during early 2022 for necessary data collection. M&S completed a written workforce assessment dated June 13, 2022.¹⁸⁵ Efforts toward Phase 2 were underway as of the writing of this report in the Fall of 2022 but the Co-Neutrals have not yet determined the sufficiency of either Phase of this IT.

2. Initial Expected Service Utilization (App. D, IT 2.1)

***FSA
Requirement***

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

¹⁸⁴ For additional information on Myers and Stauffer, see <https://myersandstauffer.com/>

¹⁸⁵ To view the States’ M&S Workforce Assessment report, see https://cyfd.org/docs/D1-IT_1-1_and_D_TO_1-1-Myers_Stauffers_NM_Provider_Assessment_Report_6-13-2022_FINAL.pdf

intensive home-based services. The Co-Neutrals must approve the methodology for predicting expected utilization of these services. (Due June 1, 2021)

***Co-Neutrals’
Finding***

Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT, as the State did not have an approved methodology by the end of 2021.

Discussion

The State provided an initial draft of its methodology to the Co-Neutrals in March 2021. The Co-Neutrals provided feedback to the State throughout 2021, resulting in an approved methodology in April 2022.¹⁸⁶ By the end of 2021, however, the State did not have an approved methodology in place and had not begun to define the initial expected service utilization required by this IT. The State’s methodology for projecting initial service utilization is described as consisting of four steps, specifically:

“Step 1: Identify the current state of service utilization for the children in state custody (CISC) as reported in calendar year 2019 Medicaid and other state funded data, i.e. Home and Community Based Services Waiver (HCBS services), Individualized Education Plan (IEP) services, non-Medicaid services by state general or federal funding sources through CYFD, care coordination through the Managed Care Organizations and CareLink New Mexico Health Homes (CLNM), and the Child and Adolescent Needs and Strengths (CANS) screen.

Step 2: Compare New Mexico service provision with the second National Survey of Child and Adolescent Well-Being (NSCAW II) which is specific to children having encountered the child welfare system... The study cohort included 5,873 children involved with child welfare ranging from birth to 18 years of age across 83 counties nationwide. For purposes of this deliverable, we draw from the mental health/behavioral health aspects of the NSCAW II study, which is both descriptive and predictive in scope.

Step 3: Identify qualifying considerations in projecting, assessing, tracking, and adjusting the future utilization of selected EBP services. The State will use the Child and Adolescent Needs and Strengths (CANS) screen and its built-in decision-making tools to identify which members of the CISC cohort would benefit from a comprehensive behavioral health assessment which includes a diagnostic evaluation. On December 1, 2021, the Crisis Assessment Tool (CAT) and the CANS were implemented for all CISC. This step will also examine the evidence for use of each of the selected trauma-based therapies. The State is

¹⁸⁶ To view the approved methodology, see https://cyfd.org/docs/App_D_IT_2dot1_Service_Utilization_FINAL_Updated032822.pdf

also working with Mercer, their actuarial firm, to project service utilization for rate development.

Step 4: Survey the New Mexico behavioral health providers and practitioners to determine both capacity and interest in pursuing the evidence-based practices through a State sponsored/funded training and certification roll-out. Establish a process to track and incentivize participating practitioners. Educate Managed Care Organizations on the effort and recruit qualified practitioners and provider organizations.”¹⁸⁷ The State considers this to be their initial methodology to gather baseline information. In future years, they plan to project service utilization for children in state custody using information gathered from the CAT and CANS screening recommendation results.¹⁸⁸

3. Develop and Publish Reimbursement Methodology, Billing Rates, and Provider Guidance (App. D, IT 3.1)

FSA Requirement	<i>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. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021.

Discussion

In efforts to meet this commitment, the State created a cross-departmental workgroup in 2021 to develop and assess reimbursement methodology, billing rates, and provider guidance for each of the following services or interventions:

- CANS and CAT screenings;

¹⁸⁷ See pg. 1 of document titled *Appendix D IT 2.1 Service Utilization* at https://cyfd.org/docs/App_D_IT_2dot1_Service_Utilization_FINAL_Updated032822.pdf

¹⁸⁸ CANS screenings were not required to be completed for all children in state custody until December 1, 2021.

- Early and Periodic Screening, Diagnosis and Treatment (EPSDT);
- Assessments, specifically comprehensive multidisciplinary team evaluations for people with serious mental illness (SMI) or serious emotional disorder (SED), and comprehensive mental health assessments for individuals who do not have SMI/SED;
- High-Fidelity Wraparound services;
- Evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma as specified in the FSA:
 - trauma-focused cognitive behavioral therapy (TF-CBT),
 - multi-systemic therapy (MST),
 - functional family therapy (FFT),
 - eye movement desensitization and reprocessing (EMDR), and
 - dialectical behavior therapy (DBT);
- Mobile crisis response services;
- Intensive case management; and
- Intensive home-based services.

The State has also developed and issued a set of guidance documents for necessary recipients to meet this commitment. These documents include:

- A Provider Alert with the updated definition of Serious Emotional Disturbance (SED) (originally issued to providers on March 11, 2021);
- Updates to the Behavioral Health Policy and Billing Manual¹⁸⁹;
- Updates to the Medicaid Behavioral Health Fee Schedule¹⁹⁰; and
- Updates to the non-Medicaid fee schedule¹⁹¹.

Following the period under review for this report, in August 2022, the State provided an update on the workgroup’s progress, and also committed to ensuring these updated reimbursement methodologies, billing rates, and provider guidance are added to the next iteration of the Behavioral Health Policy and Billing Manual. As the State continues this work in 2022, the Co-Neutrals will review additional guidance to providers about utilizing evidence-based, well-

¹⁸⁹ The Behavioral Health Policy and Billing Manual provides guidance on service provision and reimbursement for behavioral health services to Medicaid and non-Medicaid providers, MCOs, and other interested parties. The Manual is updated on an annual basis and includes a 30-day period for public comment. The next Manual is estimated to be available for public comment by October 31, 2022. To view the current manual, see <https://www.hsd.state.nm.us/wp-content/uploads/BEHAVIORAL-HEALTH-POLICY-AND-BILLING-MANUAL-FINAL-12.23.21-1.pdf>

¹⁹⁰ The Medicaid Behavioral Health Fee Schedule provides detailed information about codes, rates, and eligible Medicaid providers. Changes to the fee schedule involve a 30-day public comment period. To review the current fee schedule, see www.hsd.state.nm.us/providers/fee-schedules/

¹⁹¹ Maintained by BHSD, the non-Medicaid fee schedule largely mirrors Medicaid rates and will also be updated. To review the current fee schedule, see www.bhsdstar.org. The website is managed by BHSD’s administrative services organization, Falling Colors. As of the writing of this report, only providers who are registered with Falling Colors can view the fee schedule, however, BHSD reports it is in the process of publicizing the fee schedule.

supported, or promising therapeutic treatment for children with complex trauma, as well as the implementation of the billing modifiers into upcoming revisions of the Behavioral Health Policy and Billing Manual once the modifiers are finalized and adopted.

4. *Monitor Implementation of Care Coordination in Contracts* (App. D, IT 5.1)

FSA Requirement	<i>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. (June 1, 2021)</i>
Co-Neutrals' Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021.

Discussion

Care coordination is defined in the State’s 1115 demonstration waiver¹⁹² as a service available to all MCO-enrolled members, which includes:

- “Assessing each member’s physical, behavioral, functional, and psychosocial needs;
- Identifying the specific medical, behavioral, and Long-Term-Services and Supports (LTSS) and other social support services (e.g., housing, transportation, or income assistance) necessary to meet a member’s needs.
- Ensuring timely access and provision of services needed to help each member maintain or improve their physical and behavioral health status or functional abilities while maximizing independence; and
- Facilitating access to other social support services needed to promote each member’s health, safety, and welfare.”¹⁹³

¹⁹² Section 1115 of the Social Security Act provides the federal Centers for Medicare and Medicaid Services (CMS) with the authority to approve experimental, pilot, or demonstration projects that are likely to assist in promoting the objectives of the Medicaid program. If approved, these projects allow states flexibility to design and improve programs by demonstrating and evaluating state-specific strategies and policy approaches for specific populations.

¹⁹³ *State of New Mexico, 2021 Annual Progress Report*, pg. 191.

The State issued LOD #69, titled *MCO Requirements for Children in State Custody (CISCs)* on October 29, 2021 (effective November 1, 2021). This LOD was replaced by LOD #69-1 in early 2022.¹⁹⁴ The LOD requires MCOs to assign all children in state custody as a Level Two or Level Three member to receive care coordination as defined above, with the possibility to step down to a lower level not requiring care coordination when appropriate as assessed by the MCO (Section 4.43). Additionally, LOD #69 (and subsequently LOD #69-1) requires the MCO to contact the child’s PPW within three business days after a child in state custody is enrolled, and to assign a care coordinator to begin initial outreach and engagement in services at that time (Section 4.41).

To monitor care coordination, HSD proposed a quarterly review process for children in state custody who are enrolled with an MCO, and who receive or are eligible for care coordination. The process was a collaboration between CYFD and HSD, with CYFD providing a quarterly list of children in state custody to HSD, which HSD then uses to identify children’s affiliated MCOs and request reports on care coordination activities for those children. The State reports quarterly audits occurred for children in state custody beginning in quarters two, three, and four in 2021, but did not provide the results of those audits to the Co-Neutrals until 2022.¹⁹⁵ For all children in state custody with an identified MCO, HSD committed to also monitor the MCO assessments (health risk assessment [HRA], and CNA) and instances where it is reported that care coordination services were refused or the member is reportedly difficult to engage or unreachable. The Co-Neutrals have asked to review quarterly audits and reviews as they are available for 2022 to assess for appropriate on-going monitoring in fulfillment of the Performance Standard.

5. Reinstate “No Reject, No Eject” Language in Medicaid Contracts (App. D, IT 6.1)¹⁹⁶

FSA Requirement	<i>HSD will reinstate language in its Medicaid contracts to prevent children from being rejected or removed from behavioral health services providers. HSD will</i>
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¹⁹⁴ LOD #69 was replaced with LOD #69-1 on February 28, 2022. LOD #69-1 incorporated new requirements related to commitments ATO1, ATO1a, ATO1b, ATO1c, and DTO4, and continues to incorporate the same requirements for care coordination for children in state custody. To review LOD #69-1, see https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf

¹⁹⁵ The results of 2021 and 2022 quarterly monitoring results were included within the *State of New Mexico, 2021 Annual Progress Report*. To view the results, see https://cyfd.org/docs/D10-IT_5-1-HSD_Care_Coordination_audits_and_activities_2021_2022.pdf

¹⁹⁶ This commitment requires the State to specifically “reinstate” language regarding the no reject, no eject concept to Medicaid contracts. This language was not originally in the State’s contractual language with MCOs, but was in the State’s previously carved out behavioral health MCO contract language with only a subset of its providers authorized to provide a full range of behavioral health services. While the State has not applied this renewed requirement of MCOs for all providers or all services, it has expanded the number of providers to which the MCOs will have to apply this concept by applying this to all Comprehensive Community Support Services (CCSS) and HFW providers for children in state custody.

work with providers to identify and remove other administrative barriers to providing services. (Due June 1, 2021)

**Co-Neutrals’
Finding**

Based upon review and consideration of all available information, the Co-Neutrals assess the State met the Performance Standard for this IT in 2021.

Discussion

The State issued LOD #69 (replaced by LOD #69-1 in early 2022), titled *MCO Requirements for Children in State Custody (CISCs)* on October 29, 2021 (effective November 1, 2021).¹⁹⁷ LOD #69 (and subsequently LOD #69-1) defines “No Reject/No Eject” as guidance for Comprehensive Community Support Services (CCSS) and HFW providers as:

“4.9.2.48.1 No reject means that the provider must accept the referral for eligibility and medical necessity determination. If the member is Medicaid eligible, meets the Serious Emotional Disturbance (SED) criteria, and meets medical necessity, the provider must coordinate all needed services through CCSS and HFW service providers for CISC. A provider will not discriminate against nor use any policy or practice that has the effect of discriminating against an individual on the basis of health status or need for services.

4.9.2.48.2 No eject means that the provider must continue to coordinate services and assist members in accessing appropriate services and supports.”¹⁹⁸

LOD #69 also requires MCOs to alter provider contracts with in-state accredited residential treatment centers (ARTCs), residential treatment centers (RTCs), group homes, and treatment foster care (TFC) providers if a child in state custody who is enrolled with an MCO experiences being “rejected” or “ejected” from services. Data on these occurrences are required to be reported to HSD on a quarterly basis.

Regarding identifying and removing administrative barriers, HSD has been working with the New Mexico Behavioral Health Providers Association (NMBHPA)¹⁹⁹ since 2019 on this effort. Some

¹⁹⁷ LOD #69 was replaced with LOD #69-1 on February 28, 2022. LOD #69-1 incorporated new requirements related to commitments ATO1, ATO1a, ATO1b, ATO1c, and DTO4, and continues to incorporate the same no reject/no eject requirements for providers serving children in state custody. To review LOD #69-1, see https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf

Additionally, the State provided the Co-Neutrals with a finalized deliverable document detailing the background and formal development process for the LODs in 2022, for purposes of publicizing the process.

¹⁹⁸ LOD #69, pg. 4

¹⁹⁹ The NMBHPA is a collaborative advocacy group – led by a volunteer Board of Directors and a staff Executive Director – that represents various types of providers (e.g., agencies, individual practitioners, group practice plans, and professional associations) in New Mexico. The NMBHPA provides behavioral health policy advocacy and education to support continuous system improvements. For additional information, see <https://www.nmbhpa.org/>

administrative barriers identified thus far include provider credentialing and payment/reimbursement issues. HSD has committed to implement a Medicaid Management Information System Replacement (MMISR) project, scheduled to be in place by May 2024, that will reduce barriers to provider credentialing efforts and timelines. The MCOs worked with providers to identify denied or unpaid claims and implemented changes and additional provider training to decrease the number of barriers to provider reimbursement. Moving forward, HSD has committed to continuing its work with providers on any additional identified administrative barriers, including simplifying the credentialing process as the State develops their new information system over the next couple of years.

6. *Notice of Action and Grievance Protocols* (App. D, IT 7.1)

<p>FSA Requirement</p>	<p><i>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. (June 1, 2021)</i></p>
<p>Co-Neutrals’ Finding</p>	<p>Based upon review and consideration of all available information, the Co-Neutrals assess the State met the Performance Standard for this IT in 2021.</p>

Discussion

The State issued LOD #69, titled *MCO Requirements for Children in State Custody (CISCs)* on October 29, 2021 (effective November 1, 2021).²⁰⁰ LOD #69 requires MCOs to provide a Notice of Action to the requesting provider, youth, youth’s caregiver, legal custodian, and authorized representative²⁰¹ of any recommended service that is either denied or reduced from the recommended amount made by either the provider or the youth’s IPP team.²⁰² LOD #69 requires

²⁰⁰ LOD #69 was replaced with LOD #69-1 on February 28, 2022. LOD #69-1 incorporated new requirements related to commitments ATO1, ATO1a, ATO1b, ATO1c, and DTO4, and continues to incorporate the same requirements for the Notice of Action and grievance protocols for children in state custody. To review LOD #69-1, see https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf

²⁰¹ For children in state custody, the authorized representative is identified as CYFD.

²⁰² To review LOD #69-1, see https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf. Additionally, the State provided the Co-Neutrals with a finalized deliverable document detailing the background and formal development process for the LODs in August 2022.

notification within 10 days of the service being denied or reduced. This Notice of Action includes details on the process for filing a grievance.²⁰³

7. Developing a Joint Process for Offering Services and Supports (App. D, IT 8.1)

FSA Requirement	<i>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. (June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT in 2021.

Discussion

Between March and October 2021, the Co-Neutrals received and provided feedback to the State on drafts of a CYFD and HSD joint process proposal. In September 2022, the State provided an updated joint process proposal to the Co-Neutrals which is currently under review.

In the *State of New Mexico, 2021 Annual Progress Report*, the State reports staff from CYFD and HSD have revised the draft from prior proposals to ensure it reflects a child’s involvement in services and supports. Specifically, page 188 of the State’s report identifies five key areas where joint processes were identified as crucial for children in state custody:

1. Medicaid Coverage for CISC;
2. Screenings;
3. Service Planning;
4. CISC Transitions; and
5. Discharge Planning.

²⁰³ To view the process and form to file a grievance, see <https://www.hsd.state.nm.us/to-file-a-grievance-select-on-of-the-following/>

The *State of New Mexico, 2021 Annual Progress Report* also includes additional details regarding its proposed joint process. However, the Co-Neutrals are unable to assess or validate what is included in the State’s Report without thorough review of the more current submission of the full draft proposal. Although the Co-Neutrals see evidence of increased interagency collaboration, the revised document describing their joint process has not yet been completed.

8. Contractually Require Training for Care Coordination Providers
(App. D, IT 9.1)

FSA Requirement	<i>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. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this IT.

Discussion

Section 3.3.5 of the Centennial Care 2.0 MCO contracts with HSD requires contactors to, “provide regular and ongoing comprehensive training,” including targeted training in the areas of care coordination, nursing facility Level of Care determinations, setting of care submissions, community benefit services and supplemental questionnaire, and behavioral health services.²⁰⁴ Section 4.4 of the Centennial Care 2.0 MCO contracts describes the process for care coordination for those enrolled with MCOs. Specifically, it requires contactors, for example, to complete specified assessments to determine the enrolled client’s specific needs, including determining physical, behavioral health, and/or long-term care needs. Care coordination activities also include the development of a comprehensive care plan (CCP), monthly or quarterly engagement for disease management interventions, coordination with providers, identification of service gaps, and facilitation of access to care.

²⁰⁴ To view the Centennial Care 2.0 MCO contracts with HSD, see https://www.hsd.state.nm.us/wp-content/uploads/WSCC_A2-Completed-signed.pdf. The State is currently undergoing the request for proposals (RFP) process for the next managed care contracts to be effective in 2024. For details, see <https://www.hsd.state.nm.us/lookingforinformation/open-rfps/>

The State issued LOD #69, titled *MCO Requirements for Children in State Custody (CISCs)* on October 29, 2021 (effective November 1, 2021).²⁰⁵ LOD #69 reiterates requirements stated in Sections 3.3.5 and 4.4 of the Centennial Care 2.0 MCO contract, and further specifies that MCOs are required to complete required trainings on an annual basis specific to CANS and for care coordination for children in state custody based on the required trauma-responsive training.^{206,207}

The Co-Neutrals have requested the State provide the Co-Neutrals with the care coordination training curriculum being used to train all MCO care coordinators. Without reviewing the curriculum being used or required, the Co-Neutrals are unable to determine whether the State’s contract requirements are sufficient and are being appropriately enforced. As of the writing of this report in the Fall of 2022, the State has provided a more recent description of the care coordination process which is under review by the Co-Neutrals.

Target Outcomes Due December 1, 2020, June 1, 2021, and December 1, 2021

9. Workforce Development (App. D, TO 1)

FSA Requirement	<i>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. (Due December 1, 2021)</i>
Co-Neutrals’ Finding	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

As discussed above in App. D, IT 1.1, the Behavioral Health Care Workforce Development Review has not been approved, thus, implementation consistent with an approved Workforce Development Review has not occurred by the required due date. As of the writing of this report, the State has provided a more recent description of its Behavioral Health Care Workforce Development Review and Plan which is under review by the Co-Neutrals.

²⁰⁵ LOD #69 was replaced with LOD #69-1 on February 28, 2022. LOD #69-1 incorporated new requirements related to commitments ATO1, ATO1a, ATO1b, ATO1c, and DTO4 and continues to incorporate the same requirements for care coordination training for MCOs. To review LOD #69-1, see https://pulltogether.org/uploads/documents/LOD_69-1_Children_in_State_Custody_clean.pdf

²⁰⁶ LOD #69, pg. 2

²⁰⁷ LOD #69-1 further requires MCOs to include training on the IPP approach.

10. *Employing Sufficient Staff* (App. D, TO 1a)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

The work required in this TO is to be guided by App. D, IT 1.1, the Behavioral Health Workforce Development Review. As the Review and Plan have not been approved, implementation of this TO has not occurred by the required due date. The State has verbally suggested an approach to determining what “sufficient staff” and “internal capacity” might be to meet this TO. However, the Co-Neutrals do not yet have a specific written proposal about this from the State.

11. *Sufficient Provider Network* (App. D, TO 1b)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

The work required in this TO is to be guided by App. D, IT 1.1, the Behavioral Health Workforce Development Review. As the Review and Plan have not been approved, implementation of this TO has not occurred by the required due date. The State has verbally suggested an approach to determining how they might work with MCOs on this effort and have released an RFP for MCOs

to be selected in 2023 for a 2024 start date. However, the Co-Neutrals do not yet have a specific written proposal from the State about how it will implement this effort.

12. *Incentives for Provider Training* (App. D, TO 2)

<i>FSA Requirement</i>	<i>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. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

Discussion

Between December 2021 and September 2022, the Co-Neutrals reviewed and provided feedback on the State’s proposed process for developing provider incentives for training in the specific evidence-based practices defined in the FSA. More recently, the State submitted an updated draft to the Co-Neutrals in October 2022. Currently, the State is focusing their provider incentives into three areas: 1) training and certification, 2) reimbursement, and 3) value-based purchasing (VBP).²⁰⁸ The State’s efforts have focused on identifying funding streams to aid providers with the initial startup costs associated with obtaining training and certification, as well as identifying which New Mexico providers are currently providing the evidence-based practices identified in the *Kevin S. FSA*.

For reimbursement, the State in 2022 has been engaging in a rate development process in collaboration with the State’s actuarial firm, Mercer, and with the NMBHPA. The State has also been in the process of developing billing modifiers to be used when providers are billing for an

²⁰⁸ VBP is typically used in the medical field, and provides a bundled reimbursement rate that essentially incentivizes providers of a specific service that also results in a member using least-restrictive services.

evidence-based intervention that does not have distinct billing codes. The addition of the billing modifiers will further help the State identify which services are being provided, how often, and by whom, and will allow providers to eventually be reimbursed at different rates depending on the service they are providing. The State has previously indicated the billing modifiers will be available for providers to use in 2022. However, CMS will have to approve such modifiers and revised billing rates, so the timing of this change is uncertain.

13. Well-Child Checkups (App. D, TO 4)

<i>FSA Requirement</i>	<i>By December 1, 2021, every Child in State Custody will receive a comprehensive well-child checkup within 30 Days of entering state custody. (December 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon review and consideration of all available information, the Co-Neutrals assess the State did not meet the Performance Standard for this TO in 2021.

DVP Metrics and Validated Performance Data

DTO4.1(i) – primary metric: Of all episodes of custody longer than 30 days that began during the reporting year, the percent that included a well-child checkup within 30 days of the child entering State custody, as recorded by casework staff or reflected in Medicaid billing data.

The data show that of the 43 episodes of custody that reached their 30th day in December 2021 (the period of review for this metric since the commitment began on December 1, 2021), 20 (47%) included a well-child check-up within the period. This performance was lower than in prior calendar years, and lower than the average for all of 2021.

Table 16: Number of Children in State Custody with a Well-Child Checkup Within 30 Days of Entry into Care 2019-2021

Year	Total Number of Children who Entered Custody During the Reporting Year and Who Remained for 30+ Days	Number of Children in Custody who Received a Well-Child Checkup within 30 Days of Entry	Percent
Dec 2021	43	20	47%
<i>Full year performance, 2019-2021</i>			
2019	752	433	58%
2020	779	441	57%
2021	656	346	53%

Source: Analysis of Sandbox *Encounters* files submitted 3/31/22 (2019 and 2020) and 7/19/22 (2021); Sandbox *Cohort Entries* files submitted 3/31/22 (2019 and 2020) and 5/2/22 (2021).

Discussion

The State issued PIG 12-2021-#21, *Children in State Custody (CISC) CATS/CANS Requirements, Medicaid/Medical Coverage and Well-Child Checkup*, on December 1, 2021²⁰⁹ which requires, “[e]very child or youth in state custody will receive a comprehensive well-child checkup within 30 days of entering state custody.” Although the State developed and issued guidance to staff, performance data do not document that the practice occurred consistently in December 2021 as required.

²⁰⁹ The State replaced PIG 12-2021-#21 with PIG 08-2022-#5 titled Re-ISSUE *CATS/CANS Requirements, Medicaid/Medical Coverage and Well-Child Checkups* on August 30, 2022. To review the updated PIG, see https://cyfd.org/docs/08-2022-no5_PIG-RE-ISSUE_CATS_CANS_and_Medicaid.pdf

V. Appendices

Appendix A: 2019-2021 Data for Select Kevin S. FSA Target Outcomes (TOs) Not Yet Due in 2021

1. *Expansion and Availability of Services* (App. A, TO 2.2)

FSA Requirement

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. (Due December 1, 2022)

DVP Metrics and Validated Performance Data²¹⁰

ATO2.2(i) – secondary metric: The sum number of children in the cohort who received either High Fidelity Wraparound services, MST, MCR or FFT during the reporting year.*

Of the 3,881 children in state custody in 2019, State data show that 175 (5%) received at least one session of the indicated trauma-responsive modalities – High Fidelity Wraparound (HFW),²¹¹ Multi-Systemic Therapy (MST),²¹² Mobile Crisis Response, or Functional Family Therapy (FFT)²¹³ – during their time in custody. Performance slightly increased from 2019 to 2020; of the 3,344 children in state custody in 2020, 196 (6%) children completed at least one session during a child’s time in state custody. From 2020 to 2021, performance slightly decreased; of the 2,949 children in state custody in 2021, the data show that 144 (5%) children completed at least one

²¹⁰ The Co-Neutrals are unable to calculate the primary metric for this commitment until modifiers to identify DBT, TF-CBT, or EMDR services are added to Medicaid and STAR data sets (expected in 2022). The modifiers have been in development with HSD and are discussed earlier in this report within Appendix D.

²¹¹ High-Fidelity Wraparound (HFW) is an approach to service delivery rather than an intervention; it “provides a comprehensive, holistic, youth and family-driven way of responding when children or youth experience serious mental health or behavioral challenges.” For more detailed information on High-Fidelity Wraparound, see <https://nwi.pdx.edu/wraparound-basics/#whatisWraparound>

²¹² Multisystemic Therapy (MST) is an intensive family and community-based treatment for youth involved with juvenile justice and/or with substance abuse issues. For more detailed information on MST, see <https://www.cebc4cw.org/program/multisystemic-therapy/detailed>

²¹³ Functional Family Therapy (FFT) is a family-based intervention specifically utilized for youth experiencing significant behavioral health and/or substance use issues. For more detailed information on FFT, see <https://www.cebc4cw.org/program/functional-family-therapy/>

session during a child’s time in state custody.

Table 1: Children Receiving at Least One Session of HFW, MST, MCR or FFT, by Modality in 2019 - 2021

Year	Number/% of Children in State Custody Who Received Any Indicated Modality		Number of Children who Received Listed Modality			
	Total ²¹⁴	Percent	HFW	MST	MCR	FFT
2019	175	5%	149	35	0	2
2020	196	6%	171	20	0	8
2021	144	5%	127	19	0	0

Source: Analysis of Sandbox *Encounters* files submitted 3/31/22 (2019 and 2020) and 7/19/22 (2021); Sandbox *EpisodeOfCustody* files submitted 3/31/22 (2019 and 2020) and 5/2/22 (2021), and Sandbox *Cohort* files submitted 3/31/22 (2019 and 2020) and 5/2/22 (2021).

2. ***Children Placed with Kin*** (App. B, TO 7.1)

FSA Requirement

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. (Due December 1, 2022)

DVP Metrics and Validated Performance Data²¹⁵

BTO7.1(i) – primary metric: Percent of children in state custody in out-of-home care on December 31st of the reporting year who are placed with kin, including fictive kin.

Of 1,950 children in care for eight or more days on December 31, 2019, who were in an out-of-home placement, 605 (31%) were placed with relatives or fictive kin. The share placed with kin increased in 2020 to 36 percent (658 of 1,820), and increased again in 2021 to 44 percent (699 of 1,601), exceeding the target required by the FSA.

²¹⁴ The total is less than the sum of each modality as some children had more than one type of service.

²¹⁵ Results reflected below differ slightly from results presented in the *State of New Mexico, 2021 Annual Progress Report* due to cohort consistency issues in the files submitted, as described earlier in this report.

**Table 2: Children Placed with Kin on December 31
in 2019-2021**

	2019 N=1,950		2020 N=1,820		2021 N=1,601	
	#	%	#	%	#	%
Placed with kin	605	31%	658	36%	699	44%
<i>By type of placement:</i> ²¹⁶						
Foster Family Home (Relative)	564	29%	626	34%	640	40%
Foster Family Home (Fictive Kin)	35	2%	26	1%	51	3%
Treatment Foster Care (Relative)	6	<1%	6	<1%	8	<1%

Source: Analysis of Sandbox *Cohort_Dec31* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-22)

As supplemental information, nine percent of the 605 children in kin placements on December 31, 2019 (169) were in their first placement. That share increased to 14 percent (257) in 2020, and to 18 percent (281) in 2021.

3. *Timely Permanency for Children in Care* (App. B, TO 9.1)

FSA Requirement

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. (Due December 2023)

DVP Metrics and Validated Performance Data²¹⁷

BTO9.1(i) – primary metric: Of all children in care on the first day of a 12-month period who had been in care (in that episode) between 12 and 23 months, the percentage that are discharged to permanency within 12 months of the first day.

²¹⁶ Per the DVP (and consistent with federal reporting requirements developed by the United States Department of Health and Human Services, Administration for Children and Families), the analytic universe excludes children in care fewer than eight days; therefore, counts do not match counts shared in the contextual summary (section III of this report), which includes all children in state custody on December 31st of each reporting year, regardless of length of episode.

²¹⁷ These results differ slightly from results presented in the *State of New Mexico, 2021 Annual Progress Report* due to cohort consistency issues in the files submitted, as described earlier in this report.

On January 1, 2019, 619 children had been in care for one to two years; of these, 229 (37%) children reached permanency by the end of the year.²¹⁸ The share achieving permanency increased to 42 percent in 2020 (222 of 523 children who had been in care for 12 to 23 months at the start of the period). The share achieving permanency was 41 percent in 2021 (178 of 438 children who had been in care for 12 to 23 months at the start of the period).

Table 3: Discharge Reasons for Children Achieving Permanency 2019-2021

	2019		2020		2021	
	Count	%	Count	%	Count	%
Children achieving permanency	229	100%	222	100%	178	100%
<i>Discharge reason</i>						
Adoption	98	43%	85	38%	79	44%
Guardianship	9	4%	32	14%	44	25%
Reunification	122	53%	105	47%	52	29%
Court Dismissed Case ²¹⁹	0	0%	0	0%	3	2%

Source: Analysis of Sandbox *Cohort* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021); Sandbox *EpisodeOfCustody* files submitted 3/31/22 (2019 and 2020), and 5/2/22 (2021).

²¹⁸ Per the DVP, permanency includes discharges from foster care to reunification with the child’s parents or primary caregivers, living with a relative, guardianship, or adoption. Youth entering care at age 17 who turn 18 while in care or discharge at age 18 are not counted as achieving permanency.

²¹⁹ CYFD reports “court dismissed case” should be used when the court dismisses the case for reasons other than one of the statutorily created permanency plans (adoption, guardianship, reunification, or PPLA), including, for example, a stipulated dismissal or failure to hold an adjudication within statutory timeframes. CYFD believes that there may be a data entry problem related to use of "court dismissed case," as it is sometimes inappropriately selected when a child is on runaway status.

Appendix B: List of Acronyms

- ADR – Alternative Dispute Resolution
- AOC – Administrative Office of the Courts
- ARTC – Accredited Residential Treatment Centers
- BHSD – Behavioral Health Services Division
- CANS – Child and Adolescent Needs and Strengths
- CAT – Crisis Assessment Tool
- CBHC – Community Behavioral Health Clinician
- CCA – Children’s Court Attorney
- CCP – Comprehensive Care Plan
- CCSS – Comprehensive Community Support Services
- CFPSW – Family Peer Support Worker
- CFT– Child and Family Team
- CISC – Child in State Custody
- CMS – Centers for Medicare and Medicaid Services
- CNA – Comprehensive Needs Assessment
- CPSW – Peer Support Worker
- CSVANW – Coalition to Stop Violence Against Native Women
- CWG – Child Welfare Policy and Practice Group
- CWLA – Child Welfare League of America
- CYFD – Children, Youth, and Families Department
- DBT – Dialectical Behavior Therapy
- DRNM – Disability Rights New Mexico
- DVP – Data Validation Plan
- EMDR – Eye Movement Desensitization and Reprocessing
- EPSDT – Early and Periodic Screening, Diagnosis and Treatment
- FFSPA – Family First Prevention Services Act
- FFT – Functional Family Therapy
- FSA – Final Settlement Agreement
- FTE – Full-Time Equivalent
- GAL – Guardian ad Litem
- HFW – High-Fidelity Wraparound
- HRA – Health Risk Assessment
- HSD – Human Service Department
- ICWA – Indian Child Welfare Act
- ICPC – Interstate Compact on the Placing of Children
- IFPA – Indian Family Protection Act
- IPP – Individualized Planning Process (previously IPM – Individualized Meeting Plan)

- IRP – Individualized Retention Plans
- IT – Implementation Target
- JCR – Joint Clinical Review
- JCRAT – Joint Clinical Review Audit Tool
- JJS – Juvenile Justice Services
- JPA – Joint Power Agreement
- LOD – Letter of Direction
- MCO – Managed Care Organizations
- MFD – Memorandum for Decision
- MMISR – Medicaid Management Information System Replacement
- MOU – Memorandum of Understanding
- MST – Multi-systemic Therapy
- NADLC – Native American Disability Law Center
- NICWA – National Indian Child Welfare Association
- NMBHPA – New Mexico Behavior Health Providers Association
- NMCAL – New Mexico Crisis and Access Line
- NMCANS – New Mexico Child and Adolescent Needs and Strengths
- NMSU – New Mexico State University
- OCR – Office Children’s Rights
- OOPP – out-of-preference placements
- OTA – Office of Tribal Affairs
- PIG – Program Instruction Guideline
- PSD – Protective Services Division
- QAIEP – Quality Assurance, Improvement, and Evaluation Plan
- RTC – Residential Treatment Center
- SAMHSA – Substance Abuse and Mental Health Services Administration
- SCI – Statewide Central Intake
- SED– Serious Emotional Disturbance
- SMI – Serious Mental Illness
- TA – Technical Assistance
- TFC – Treatment Foster Care
- TF-CBT – Trauma Focused Cognitive Behavioral Therapy
- TMB – Traditional Medicine Benefits
- TO – Target Outcome
- VBP – Value-Based Purchasing