

# *Kevin S.*

## Resource Materials

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- INTRODUCTION TO *KEVIN S.*
- TRAUMA
- CAT/CANS
- EPSDT
- COMMUNITY-BASED SERVICES
- MEDICATION
- SELECTED CYFD DOCUMENTS

Kevin S. Implementation Team

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## ***Kevin S. Settlement and Implementation***

The *Kevin S.* settlement is a groundbreaking agreement that brings together foster youth, child advocates, nationally recognized experts, and New Mexico’s Children, Youth and Families Department (CYFD) and Human Services Department (HSD) to transform the State’s child welfare system

The settlement agreement sets forth a unique process that aims to unite advocates for children and youth with state agencies and nationally-recognized experts. It sets a number of specific and ambitious targets that CYFD and HSD agree to achieve in the coming years. Three experts on child welfare reform (the “Co-Neutrals”) will help reach the targets and will evaluate performance using data and input from the community. Each target will be evaluated until it has been met for at least 24 months.

The Co-Neutrals—Kevin Ryan, Pam Hyde, and Judy Meltzer—were selected by the *Kevin S.* litigation team and the state agencies for their expertise in the issues raised by the agreement as well as the process of turning around complex systems. The Co-Neutrals and the state agencies will produce public reports on settlement activities and progress toward achieving the targets in the settlement.

An implementation team made up of lawyers from Disability Rights New Mexico, Pegasus Legal Services, and Public Counsel will monitor the implementation of the settlement. Along with the Co-Neutrals, the implementation team will receive and analyze data from both state agencies and will seek input from community stakeholders as the implementation proceeds throughout the settlement implementation.

The targets are detailed in four appendices. They include:

### **A Trauma-Responsive System of Care**

- Screenings, including a functional trauma assessment, to identify which children need intensive home-based services
- A cross-departmental training and coaching plan that will help staff understand the impacts of trauma and what they can do to support children who have been affected by trauma
- Access to trauma-responsive services, supports, and treatment for every child for whom the services are medically necessary
- Individualized planning meetings for each child—a process informed by Child and Family Teaming (CFT), collaborative decision-making, and High Fidelity Wraparound models
- A Quality Assurance, Improvement, and Evaluation plan to ensure capacity to meet children’s needs

### **Least Restrictive and Appropriate Placements**

- A plan to increase recruitment and retention of culturally reflective, community-based placements, and to support children and caregivers

- A commitment not to place any children in hotels, motels, offices, or out-of-state providers absent extraordinary circumstances and an approval/notification process
- Joint clinical reviews of out-of-state placements and congregate care placements on a monthly basis
- A workforce development plan that will ensure that the system's staff has the necessary qualifications, expertise, skills, and personnel
- Published guidance to prohibit retaliation against any person, including resource families, who raises concerns related to unmet needs of children in state custody or their caregivers

### **Indian Child Welfare Act**

- A State ICWA law that mirrors and expands upon the federal version and that will be drafted with New Mexico Tribes and Pueblos and other stakeholders
- Processes and procedures to promote traditional interventions as first-line interventions and services, developed with the input of New Mexico's Tribes and Pueblos
- Maximizing federal funding for traditional and culturally responsive treatments, interventions, and supports, including non-medicalized intervention as appropriate and in consultation with New Mexico Tribes and Pueblo
- A plan to increase recruitment and retention of Native resource families
- 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

### **Behavioral Health Services**

- A Behavioral Health Care Workforce Development Review to expand provider capacity to provide community-based mental and behavioral health services with reasonable promptness throughout the State, and particularly in rural areas
- Regulations governing medication protocols to ensure that children in state custody are not overmedicated, and a clinical review process for all children prescribed psychotropic medication
- Incentives for providers to be trained in evidence-based, well-supported, and promising trauma-responsive services
- A joint process for offering services and supports include screening, assessing, referring, treating and providing transition services to children in state custody, including those who are not removed from their homes
- Notice to caregivers, legal representatives, and legal custodians 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

## TRAUMA AND CHILDREN IN STATE CUSTODY

Developing and supporting a trauma responsive system of care is the first principle of the *Kevin S Agreement*. Every child in state custody is by definition a trauma victim, not only because of the circumstances that led to their custody, but also because of the separation from their caretakers (often worsened by a series of subsequent separations from substitute caregivers). Despite the possible physical and sexual trauma that a child may have experienced, attachment trauma is itself the most significant trauma that a child can experience. A child's early development is completely dependent upon the presence and devotion of a consistent caretaker, which is why the second pillar of the *Kevin S Agreement* is adequate, homelike and stable placements. A secure placement is the most critical and immediate aid for a child in custody.

Childhood trauma has been extremely well researched and described. Early brain development is fundamentally devoted to the establishment of regulatory neural pathways. The neurological development of the first five years constitutes the essential hardware that will be subsequently necessary to establish healthy peer relationships, to manage moods and anxiety, to attend successfully to schoolwork, to tolerate frustration, and to solve conflicts without resorting to aggression. All this early development requires the presence and attention of a consistent attachment figure.

In the absence of this regulatory neurological framework, a child will have lifetime problems with the management of mood, anxiety, attention and behavior, which is why children who have been in custody oftentimes have such a rocky course in school and in life. Moreover, since a person with trauma always seeks relief from what may be chronic hyperarousal, substance use poses a very high risk. Drug and alcohol use, for example, in severely traumatized individuals is found to be more than 40 times that of the general population, and suicide is more than 10 times as high. These are the findings and the basis of the ACE study, which found that as childhood trauma increased so do subsequent life problems over a vast range of physical and emotional disorders.

In addition to the requirements for improved placements and community-based supports, the *Kevin S Agreement* requires that every child in custody be assessed by the Child and Adolescent Needs and Strengths (CANS) screen. The results of the screen will be used to pull together a support team and to direct subsequent treatment. Finally, while medication and traditional therapies may be supportive for the traumatized child, evidence-based trauma therapies are recommended. Therefore, the *Kevin S Agreement* requires that a number of specific trauma therapies be developed and reimbursed by Medicaid. These include:

Eye Movement Desensitization and Reprocessing (EMDR)

Trauma Informed Cognitive Behavioral Therapy (TICBT)

Dialectical Behavior Therapy (DBT)

Multisystemic Therapy (MST)

Functional Family Therapy (FFT)

Mobile Crisis Response Services

All of these system improvements, including screening, placement enhancements and trauma therapies have timelines for implementation.

# CANS / CAT

## CHILD AND ADOLESCENT NEEDS AND STRENGTHS / CRISIS ASSESSMENT TOOL

### Description

The CANS and the CAT are screening tools that have been developed by CYFD in collaboration with the Praed Foundation to meet the requirements of the Kevin S Agreement. These instruments were specifically developed to identify areas of need for children in state custody and to inform decision making and service planning, support quality improvement initiatives and monitor progress and outcomes. The instruments are not intended as diagnostic tools, but instead assess the areas of need for support and treatment across a wide range of functional domains for children entering state custody. They are intended to identify deficits that impede a child's placement and recuperation regardless of the cause, and will sometimes require additional clinical assessment to determine diagnoses and appropriate therapies.

### Components

The CANS is the more comprehensive of the two screens and identifies areas of need within a prescribed number of functional domains, which are then incorporated into a treatment plan. There are domains that address how the child or youth functions in everyday life, specific emotional or behavioral concerns, trauma history and trauma responses, risk behaviors, strengths and skills needed to grow and develop. The CAT is a shorter version composed of a subset of questions taken directly from the CANS and is used for a rapid estimate of the most immediate needs of a child recently taken into custody. Both tests are scored using a 4-level rating scale that indicates some degree of recommended attention ranging from no problem at all to the need for immediate intervention. By the use of specific individualized modules the CANS and CAT are able to be applied to children of different ages and specific symptom clusters such as sexually reactive or aggressive behaviors. In summary:

- ★ Basic core items – grouped by domain – are rated for all individuals.
- ★ A rating of 1, 2 or 3 on key core questions triggers extension modules.
- ★ Individual assessment module questions provide additional information in a specific area.

### Usage

According to the terms of the Kevin S Agreement, the Crisis Assessment Tool is required to be administered between the time a child is first taken into custody and when the Ten Day Hearing occurs, and must be filed with the court 24 hours prior to that hearing. The CANS is required to be administered within the first 45 days of custody. The screens are most accurate when the child or youth is able to provide direct responses in addition to document review. Both of the screens are intended to be the shared informational basis of the treatment plan which is to follow. The CANS describes itself as a communication tool designed to gather multiple supports for the child into a single service plan. Therefore, given the appropriate consents, both screens will be shared with providers, the children's court, GALs, and Managed Care Treatment Coordinators.

# EPSDT in New Mexico: What You Need to Know About this Critical Medicaid Benefit and Behavioral Health

Medicaid is a federal program that provides health care coverage to low-income adults, children, pregnant women, elders, and people with disabilities. States that participate in the Medicaid program, like New Mexico, must with comply with federal program requirements including EPSDT.

## What is EPSDT?

By state and federal law<sup>1</sup>, **New Mexico’s Medicaid program must pay for all medically necessary health services for Medicaid-eligible children under the age of 21 through the EPSDT program.** This includes preventative health services, maintenance health services to prevent a condition from worsening, and treatment of medical conditions. It also includes a complete range of behavioral health services, including treatment for alcohol and substance abuse.

EPSDT stands for “Early and Periodic Screening, Diagnostic and Treatment,” and EPSDT services encompass:

- **Early:** assessing health care early in life so that potential disease and disabilities can be prevented or detected in their preliminary stages, when they are most effectively treated;
- **Periodic:** assessing a child's health at regular recommended intervals in the child's life to assure continued healthy development;
- **Screening:** the use of tests and procedures to determine if children being examined have conditions warranting closer medical or dental attention;
- **Diagnostic:** the determination of the nature or cause of conditions identified by the screening; and
- **Treatment:** the provision of services needed to control, correct or lessen health problems.<sup>2</sup>

## Well Child Check and Screenings

In New Mexico, the screening component of EPSDT is called the “Well Child Check” (or sometimes the “Tot to Teen Health Check”). The Well Child Check is performed by a Doctor, Nurse Practitioner, or Physician’s Assistant at regular intervals throughout childhood and adolescence, and should include a full assessment of both physical and behavioral/developmental health.<sup>3</sup>

Additional medical screens are also available under EPSDT. Behavioral health screens should be performed at “reasonable” regular intervals, or when medically necessary for the diagnosis or treatment of a behavioral health condition.<sup>4</sup>

## Diagnostic/Treatment Services Under EPSDT

When there is need for further evaluation or treatment based on a screen or other information, a child must receive the appropriate referrals without delay.

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<sup>1</sup> See [42 CFR 441.50 Subpart B](#); see also **8.320.2.9 NMAC**

<sup>2</sup> **NMAC 8.320.2.9 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES:**

<sup>3</sup> **NMAC 8.320.2.15 TOT TO TEEN HEALTHCHECK**

<sup>4</sup> **NMAC 8.320.2.15(b)(4) TOT TO TEEN HEALTHCHECK**

EPSDT provides that children are entitled to receive any Medicaid-coverable service, regardless of whether it is otherwise offered under the New Mexico Medicaid State Plan, when it is medically necessary to “correct or ameliorate any defects and chronic conditions discovered,” including both physical and mental illnesses or conditions.<sup>5</sup> **So if the service is necessary to prevent, diagnose or treat a condition or to help a child attain, maintain or regain functional capacity, the child is entitled to receive the service.**<sup>6</sup>

Available mental health services are a comprehensive suite that include case management, outpatient mental health counseling, psychiatric and medication support services, day treatment, crisis stabilization, therapeutic behavioral services, speech/physical/occupational services, early intervention for delays, and more. By regulation, New Mexico also includes comprehensive community support services, crisis services, family support services, behavior management, multi-systemic therapy and treatment foster care.<sup>7</sup>

### Children’s Code Requirements

New Mexico’s Children’s Mental Health Code also evinces an intent to “provide children with access to appropriate assessments, services, and treatment” for the purpose of “identification, prevention, and intervention for developmental and mental health needs.”<sup>8</sup>

The law provides that “**a child receiving mental health or habilitation services shall have the right to prompt treatment and habilitation pursuant to an individualized treatment plan and consistent with the least restrictive means principle**”.<sup>9</sup> This means a child’s treatment must be no more intrusive than necessary to accomplish the treatment objectives. Residential care should only be used when required for effective treatment or to protect from physical injury to the child or others.<sup>10</sup>

### EPSDT is a Child’s Right

EPSDT is not optional: it is a state and federal requirement that eligible children receive all medically necessary Medicaid-coverable services, and that requirement stands regardless of the child’s geographic area or particular needs. Therefore, **providers should recommend whatever services are medically necessary**, even if that service is perceived to be unavailable. **Parents and guardians and foster parents should familiarize themselves with EPSDT requirements, and work with their MCO Care Coordinator, advocate, or attorney** if help is needed to obtain a necessary service.

### For More Information or Help:

**New Mexico Human Services Department’s Keeping Kids Healthy website:**

<https://www.hsd.state.nm.us/lookingforinformation/keeping-kids-healthy/>

**Pegasus Legal Services for Children:** <https://pegasuslaw.org>

**Disability Rights New Mexico:** <https://www.drnm.org>

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<sup>5</sup> 42 C.F.R. § 440.40(b)

<sup>6</sup> NMSA § 32A-6A-4(T)

<sup>7</sup> NMAC Title 8, Chapter 308, Part 9

<sup>8</sup> NMSA § 32A-6A-2

<sup>9</sup> NMSA § 32A-6A-7

<sup>10</sup> NMSA § 32A-6A-4(M)

# Home/Community Based Behavioral Health Services in New Mexico: Centennial Care Covered Services<sup>11</sup>

**Applied Behavior Analysis (ABA) Therapy:** May be provided in coordination with other medically necessary services. Entails a three-part comprehensive approach.

*Stage 1:* Screening for Autism Spectrum Disorder (ASD), diagnostic evaluation, development of Integrated Service Plan (ISP), referral to Stage 2 services.

*Stage 2:* Behavior or functional analytic assessment, ABA service model determined, treatment plan developed.

*Stage 3:* Clinical management of treatment. If recipient's needs exceed expertise of clinical supervision, ABA Specialty Care Services are available (requires prior authorization). Patients in Treatment Foster Care (TFC) are eligible for ABA Therapy outside of the TFC agency.

**Assertive Community Treatment Services:** Generally for adults, but may also be provided to eligible individuals ages 15-30 years-old who are within two years of their first episode of psychosis. Voluntary medical, comprehensive case management and psychosocial intervention program.

**Behavioral Health Professional Services for Screenings, Evaluations, Assessments, and Therapy:** Screenings for high-risk conditions to provide early treatment or interventions. Covers psychological, counseling, and social work services that are diagnostic or active treatments. Services also include assessments. Services must be thought to "reasonably improve an eligible recipient's physical, social, emotional, and behavioral health or substance abuse condition," and the services can be expected to improve the individual's condition or level of functioning.

**Behavioral Health Respite Care:** Managed Care Organization (MCO) only. For individuals under age 21 with a diagnosis of Severe Emotional Disturbance (SED) who live with their primary caregivers or for youth in protective custody whose placement may be at risk whether or not they have a diagnosis of SED. Short-term direct care and supervision of the individual so as to afford caregivers/parents opportunity for rest/respite. Usually planned, but can also be used in an emergency or on an unplanned basis.

**Behavior Management Skills (BMS) Development Services:** Used to assist in reducing or preventing inpatient hospitalizations or residential placements. Not a stand-alone service, but delivered as part of an integrated service plan for individuals under the age of 21 years-old to help them acquire, enhance, or maintain life, social, behavioral skills needed to function in their community.

**Comprehensive Community Support Services (CCSS):** Culturally sensitive coordination of services and resources to promote recovery, rehabilitation, and resiliency in the individual. Must be under the age of 21 years-old and meet criteria for SED and/or neurobiological/behavioral disorders. Exceptions for individuals over 21 years-old, those with severe substance abuse disorder, or those with dual diagnoses with a primary diagnosis of mental illness.

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<sup>11</sup> For a complete list of approved services, see *Specialized Behavioral Health Services* (NMAC 8.321.2)

**Crisis Intervention Services:** For individuals experiencing breakdown of normal strategies/resources who are exhibiting acute problems, disturbed thoughts, behaviors, or moods that could threaten the safety of self or others. Four types of Crisis Intervention Services: (1) Telephone services, (2) Face-to-Face services in a clinic setting, (3) Mobile services, and (4) Outpatient Stabilization services.

**Crisis Triage Center:** Available for individuals 14 years-old and older. Voluntary stabilization of behavioral health crises including emergency mental health evaluation and treatment. Screening and evaluation available 24-hours a day, seven days a week. Discharge available seven days a week.

**Day Treatment:** EPSDT benefit for individuals under the age of 21 years-old. Must be identified in EPSDT health check or in another diagnostic evaluation to access services. Focus on the amelioration of functional and behavioral deficits.

**Family Support Services:** MCO reimbursed only. Community-based, face-to-face interactions with MCO member and their family. Enhance the family's strengths/capacities/resources to reach behavioral goals prioritized by the individual and their family. For MCO members who have parents, family members, legal guardians, or other primary caregivers who live or are closely linked with them. Available for MCO members with a diagnosis of SED or SMI.

**Intensive Outpatient Program (IOP) for Mental Health Conditions:** Available for individuals 11-17 years-old diagnosed with SED or adults diagnosed with SMI. Targets specific behaviors with individualized interventions. Before individual services can be accessed, the individual must have a treatment file with: (1) one diagnostic evaluation with a diagnosis of SED or SMI for which IOP is approved, and (2) one individualized service plan that includes IOP as an intervention.

**Multi-Systemic Therapy (MST):** Available for individuals ages 10-18 years-old who meet the criteria of SED, involved in or at serious risk of involvement with juvenile justice; OR has antisocial, aggressive, violent, and substance abuse behaviors; OR is at risk for out-of-home placement; OR is returning from an out-of-home placement where the aforementioned behaviors were the focus of treatment. Must be identified in EPSDT health check or other diagnostic evaluation.

**Partial Hospitalization Services:** Available for individuals 5 years-old and older. Requires the individual be diagnosed with SMI, SED, or moderate/severe SUD. Individuals must be able to be safely managed in the community with high-intensity therapeutic interventions that are more intensive than outpatient services, but who risk inpatient care without such community-based services. Can be used to address deteriorating conditions or as a step-down strategy.

**Screening, Brief Intervention & Referral to Treatment:** For individuals 11-13 years-old (with parent consent), 14-18 years-old, or adults. Used to identify and reduce problematic substance use or abuse and co-occurring mental health disorders. Relies on early identification in a medical setting and aims to integrate behavioral health and medical care. Warm hand-offs for positive screening results.

**Treatment Foster Care I (TFC I):** TFC I services must be identified in the individual's EPSDT health check or other diagnostic evaluation(s). TFC I provides for therapeutic services to an individual experiencing emotional or psychological trauma. Individual must: (1) be at risk for placement in a higher level of care or is returning from a higher level of care; OR (2) have complex and difficult psychological, neurobiological, behavioral, psychosocial problems; AND (3) requires (and would optimally benefit from) the services and supervision of a treatment foster home.

**Treatment Foster Care II (TFC II):** TFC II services must be identified in the individual's EPSDT health check or other diagnostic evaluation(s). Provides therapeutic family living experiences as the centerpiece to treatment services. Other individualized services can be added. Individual must: (1) have successfully completed TFC I (as indicated by treatment team); OR (2) require the initiation or continuity of treatment and support of the treatment foster family; OR (3) require this treatment modality as an appropriate entry level service from which the individual will optimally benefit.

Taken from “*Questions for Parents, Guardians and Workers to Ask Doctors*” to guide discussion when obtaining medication information from the provider:

1. What is the medication being prescribed for? (Specific Target Symptoms)
2. What changes should we expect to see from the use of this medication?
3. How long before the medication begins to have a therapeutic effect?
4. What are the possible side effects that I should be watching for? What can I do to address any side effects from the medication?
5. Are there any drug interactions that I should be aware of while this child is on this medication?
6. How long will the child need to be on the medication? (Is this a long term medication, a trial medication, a short term fix or an emergency?)
7. Are there any alternatives that could be used instead of medication to treat the behavior or the symptoms that we could try at home?
8. What is the case formulation and hypothesis? For example “This is what I think is the cause of the symptoms we are seeing, and this is what the medication is intended to do.”

# PSYCHOTROPIC MEDICATION PROCEDURE

## Background and Rationale

Because trauma in early childhood, especially attachment trauma, tends to disrupt the normal development of regulatory brain functions, important milestones of brain development may be missed or altered. This dysregulation can present with symptoms as different as impulsivity, inability to regulate attention, difficulty regulating mood and anxiety, and sometimes even explosiveness and aggression. These symptoms are not infrequently diagnosed as a different disorder than trauma itself, and are oftentimes appropriately treated with psychotropic medication as part of their total treatment plan. However, failure to recognize the impact of trauma has resulted in many children and youth being misdiagnosed and overmedicated. By definition all children who have been taken into custody are trauma victims, and the Kevin S Agreement requires that CYFD monitor and review the use of psychotropic medication for all children in state custody.

## The Strategy

The legal guardian of children in custody is CYFD and the Permanency Planning Worker has the designated authority to give consent for all medications for children under age 14. New Mexico law recognizes the importance of partnering with children, youth and their families to ensure appropriate decisions are made. Youth aged 14 and older in New Mexico have the authority to consent to psychotropic medications unless their authority is limited; legal custodians are entitled to notice. See NMSA §32A-6A-15(B). The PPW additionally has the responsibility to refer any case for review that meets the criteria listed below. The criteria that warrant referral for second level review include:

1. Children prescribed more than three psychotropics simultaneously, excluding over the counter medications.
2. Young children of certain predetermined ages are prescribed medications determined to be of higher risk.
3. The required diagnostic medical assessment has not been performed before prescribing.
4. The medically necessary protocols for medication monitoring have not been performed when they are appropriate, such as vital signs and lab examinations.
5. The child is prescribed multiple medications from the same medication class.

When children in custody meet any of these criteria, the case is submitted for consultation and second level review. In certain instances all of these listed practices are acceptable, so the second opinion is employed primarily to assess the rationale employed by the prescriber. Sometimes medications are prescribed in an emergency, and in these cases the medication will be reviewed after the fact. The medication prescribed by practitioners of any licensure, no matter what the level of care (RTC, outpatient, TFC or hospital), both state and private programs, will be reviewed according to the stated criteria. This review also pertains to medication given by pediatricians or any prescriptions of psychotropics ordered outside a typical mental health setting. These procedures have already been written by CYFD and approved by public hearing, and should currently be in use. See NMAC 8.10.8.17



# YOUTH BILL OF RIGHTS & GRIEVANCE PROCESS DROP-IN

The Fostering Connections Bureau will be providing drop-ins open to youth and foster youth. By joining a drop-in, you will learn about the Youth Bill of Rights and the Youth Grievance Process. Each drop-in will be held via Zoom. At the time of the drop-in, simply use the information in this flyer. We look forward to talking with you soon!



**Friday February 26, 2021 | 1:30 PM-2:30 PM**  
**Saturday March 20, 2021 | 11:00 AM-12:00 PM**  
**Wednesday April 21, 2021 | 11:00 AM-12:00 PM**

- **Join online**  
[https://zoom.us/j/92449982185?](https://zoom.us/j/92449982185?pwd=cEJMVG5uL2lXWThZSjU1M05WYkpmUT09)  
[pwd=cEJMVG5uL2lXWThZSjU1M05WYkpmUT09](https://zoom.us/j/92449982185?pwd=cEJMVG5uL2lXWThZSjU1M05WYkpmUT09)

**OR**

- **Join by calling 1-669-900-9128**
- **Meeting ID: 924 4998 2185**
- **Passcode: 232124**

## **REMINDER:**

When you are not speaking, please mute your microphone to prevent audio feedback.

**FOR QUESTIONS OR  
TECHNICAL ASSISTANCE  
PLEASE CONTACT:**

Stephanie Chavez  
StephanieM.Chavez@state.nm.us  
505-250-8652

If you would like to file a grievance, please email [cyfd.youthgrievance@state.nm.us](mailto:cyfd.youthgrievance@state.nm.us)

In the past 3 months, CYFD has developed comprehensive grievance processes, one for resource families and another for children, youth, and young adults participating in Fostering Connections post-18 services, as well as a procedure to address claims of retaliation

## **Resource Families (PR 8.26.2.11)**

- Bill of Rights sets forth 24 rights including the right to: detailed and timely information about a child in the resource family's care; input concerning plans of service for the child; fair, timely and impartial investigation concerning referrals filed against them and access to fair and impartial appeals process free from retaliation; report misconduct by CYFD employees, service providers or contractors; expect and rely upon fact that CYFD's decisions regarding them and the children placed in their care will be in compliance with state and federal law; and, full and timely financial reimbursement
- Two-tiered grievance process – CYFD Constituent Affairs and then Office of Inspector General if not resolved

## **Children, Youth and Young Adults**

- Grievance filed by or on behalf of a child or youth by, and against, a wide range of individuals who have contact with the child or youth, alleging a violation of the Foster Youth Bill of Rights, and handled by the Office of Children's Rights (OCR)
- Informal resolution process for children and youth to voice their concerns and to create strong communication between themselves, Protective Services Division staff and other supports
- If the Office of Children's Rights determines cannot be decided by informal resolution, the grievance will be handled by 3-person panels
- Panel does not know the identity of the child or youth unless allowed in writing

## **Retaliation (PR 8.8.2.24)**

- Prohibits retaliation by any CYFD employee against anyone who has expressed a concern or made a complaint about harassment, sexual harassment or discrimination
- Complaint to CYFD Office of Constituent Affairs
- If meets criteria for retaliation, complaint sent to CYFD's HR Department for investigation by Employee Relations Bureau.

## **Denial, Revocation, Suspension, or Non-Renewal of a Foster Care Provider License (NMAC 8.26.24.20 and 8.8.4 NMAC)**

- CYFD must provide written notification of reason for revocation, suspension or non-renewal of a foster care license and provide the opportunity to request an appeal before an impartial hearing officer appointed by or approved by the CYFD Secretary
- Admin hearings in accordance with 8.8.4 NMAC
- Hearing officer makes recommended decision to CYFD Secretary, who makes a final decision either agreeing or disagreeing with the hearing officers recommended decision
- Final decisions by the Secretary may be appealed to the appropriate district court pursuant to Rules 1-074 or 1-075

## **SOCIAL SERVICES**

### **FOSTER CARE AND ADOPTION**

#### **PLACEMENT SERVICES PROCEDURE (8.26.2)**

#### **PR 11—RESOURCE FAMILY BILL OF RIGHTS AND GRIEVANCE PROCESS**

- 1**     **ISSUING AGENCY:** Children, Youth and Families Department (CYFD) Protective Services Division (PSD) [10-15-2009]
- 2**     **EFFECTIVE DATE:** December 23, 2020. [10-15-2009; 09-29-2015; 03-15-2016; 12-23-2020]
- 3**     **CORRESPONDING POLICY:** 8.26.2.11 NMAC
- 4**     **OBJECTIVE:** To implement PSD’s policy on zero tolerance for retaliation and provide information to Resource Families on grievances. [10-15-2009; 12-23-2020]
- 5**     **INFORMATION PROVIDED TO RESOURCE FAMILIES:** Sharing of information with Resource Families is a continuous process. Resource Families shall have access to current CYFD policies and procedures. The child’s PSD Worker provides the Resource Family updated information regarding the child’s social, medical, psychological and educational needs, and provides updated information regarding the status of the child’s case. Once a child is placed with the Resource Family, the child’s PSD Worker ensures they receive copies of medical/behavioral health records, dental records, educational records, all past allegations of abuse or neglect involving the child, and other relevant information so the family is robustly informed about the child/ren within a reasonable time of placement. The PSD Worker informs the Resource Family that all information regarding the child in care and the child’s family is confidential pursuant to the New Mexico Children’s Code, Section 32A-4-33 NMSA. Once a child is placed with the Resource Family, the PSD Worker schedules an Icebreaker meeting between the child’s family and Resource Family to establish consistent communication and information sharing. Disagreements are part of the collaborative process. Teams strive to continually share information without fear of retaliation. Retaliation will not be tolerated by CYFD employees.

In addition, the PSD Worker:

1.     Will share records or information about the social, medical, psychological or educational needs of a child in PSD custody to a Resource Family who is considering a child for placement to make an informed decision regarding the placement.
  2.     Will provide updated information regarding the status of a child’s case to Resource Parents, upon request of any confidential records or information concerning the child’s social, medical, psychological or educational needs pursuant to the New Mexico Children’s Code 32A-4-33 NMSA 1978.
  3.     Will inform Resource Parents of their right to receive notice of and be heard at any court proceeding held with respect to the child placed in the home.
  4.     PSD shall provide each Resource Parent with a copy of the “*Resource Family Bill of Rights and Grievance Process.*” [10-15-2009; 03-15-2016; 12-23-2020]
- 6**     **RESOURCE FAMILY BILL OF RIGHTS:** Prior to full licensure, the child’s PSD Worker will provide the Resource Family with a copy of the “*Resource Family Bill of Rights and Grievance Process,*” which is located on the internet. The PSD Worker will review the

*“Resource Family Bill of Rights and Grievance Process”* and *“Memorandum of Agreement for Resource Families”* with the family prior to full licensure. The Resource Family will sign the *“Memorandum of Agreement for Resource Families”* as an acknowledgment of receipt of the *“Resource Family Bill of Rights and Grievance Process.”* [12-23-2020]

**6.1 Bill of Rights:** Resource Families have the following rights:

1. Resource Families have the right to be treated with dignity, respect and consideration as integral members of the child welfare team.
2. Resource Families have the right to be notified of scheduled meetings concerning a child in their care in order to actively participate in the case planning and treatment process, unless the child is 14 and older, at which point, they may make their own decision on who attends and participates in their case plan as described in *“Foster Child and Youth Bill of Rights.”*
3. Resource Families have the right to provide input concerning the plan of services for the children in their care and to have that input given full consideration, in the same manner as information presented by any other member of the team, without fear of retaliation.
4. Resource Families have the right to communicate about the child/ren in their care with professionals who work with the child/ren including, but not limited to, their Guardian Ad Litem/Youth Attorney, therapists, physicians and school personnel, without fear of accusation of violating the Confidentiality Code or retaliation.
5. Resource Families have the right to receive a written copy of the child’s treatment and service plans, and any subsequent revisions on a timely basis.
6. Resource Families have the right to receive the completed Child Specific Placement Agreement within 24-hours of the time the child in care is placed in their home.
7. Resource Families have the right to be given pre-service training and appropriate on-going training, including upon request training relevant to the needs of the child in their care.
8. Resource Families have the right to be informed of, and have access to, all agency policies and procedures related to their role as Resource Families and related to any child for whom they provide substitute care.
9. Resource Families have the right to a fair, timely and impartial investigation concerning referrals filed against them, and access to a fair and impartial appeal process free from retaliation, pursuant to CYFD policy and procedure. The result of any referral or investigation will be provided to the Resource Family in writing and within 15 days of its conclusion.
10. Resource Families have the right to be free from acts of harassment and retaliation by CYFD staff.

11. Resource Families have the right to emergency access to CYFD staff on twenty-four hour, seven day-a-week basis. These CYFD staff have access to individual children's records and are specifically trained to support Resource Families in emergencies.
12. Resource Families have the right to report misconduct by CYFD employees, service providers, or contractors and to have such reports investigated and initiated within 10 days of the report. CYFD shall take immediate action to remedy any action taken against a Resource Parent in retaliation for exercising their rights under this section.
13. Resource Families have the right to expect and rely upon the fact that CYFD's decisions regarding them and the children placed in their care will be in compliance with state and federal law.
14. Resource Families have the right to be notified when a child in their care has a case scheduled to be reviewed by the Substitute Care Advisory Council (SCAC). Resource Families have the right to participate when a child in their care has a case reviewed by the Substitute Care Advisory Council (SCAC).
15. Resource Families have the right to receive adequate prior written notice and an opportunity to be heard at court hearings regarding a child in their care, as provided by law.
16. Resource Families have the right to submit factually based written statements to court, as provided by law.
17. Resource Families have the right to be informed of and receive available support services for a child in their care, as provided by CYFD policy and procedure.
18. Resource Families have the right to be notified and considered as a placement option when a child formerly in their home reenters the foster care system.
19. Resource Families have the right to receive full and timely financial reimbursement commensurate with the care and needs of the child, as provided by CYFD policy and procedure. Timely is defined as within 30 days of the resource families' request for reimbursement.
20. Resource Families have the right to reasonable assistance from CYFD in dealing with loss and separation when a child in their care leaves their home.
21. Resource Families of children with a plan of adoption placed in their home have the right to priority consideration as adoptive parents of those children, if relatives have not been identified and are viable placements.
22. Resource Families have the right to confidentiality regarding personal issues, as provided by law.
23. Resource Families have the right to full disclosure of all medical, psychological and behavioral issues of children in their care, as provided by CYFD policy and

procedure, and nothing in the Confidentiality Code shall be understood to require otherwise.

24. In matters concerning licensing, Resource Families have the right to be free from discrimination based on religion, race, color, creed, sexual orientation, national origin, age, marital status or physical disabilities. [12-23-2020]

**7 RESOURCE FAMILY GRIEVANCE PROCESS:** If the Resource Family feels at any point during their licensure they had their rights violated or they feel retaliated against, they have the right to file a grievance with the department and have it be reviewed in a timely manner. [03-03-2016; 12-23-2020]

**7.1 Who can make a grievance?** Any licensed Resource Family may file a grievance with the Department. [12-23-2020]

**7.2 Subject of a Resource Family Grievance:** A Resource Family may file a grievance if they witness any policy/procedure violations by PSD staff on their case or when they feel any of the “*Resource Family Bill of Rights*” have been violated (see paragraph 6.1 above) or they feel they have been retaliated against.

Any issues regarding denials, suspensions, revocation or non-renewal of licenses shall follow PR 8.26.4 Licensing Standards for Resource Families Procedures for an Administrative Hearing process (see PR 20—*Denial, Revocation, Suspension and Non-Renewal of Resource Family Licenses in 8.26.4 Licensing Standard Procedures*). [12-23-2020]

**7.3 How to file a grievance:** The Resource Family may take the following steps if they are first unable to resolve the conflict informally between their PSD Worker and Supervisor. When a Resource Family feels their rights have been violated the following steps take place:

1. Level One — CYFD Constituent Affairs Involvement: If the Resource Family is unable to informally resolve the grievance at the County level, they may choose to file a formal grievance with the CYFD Office of Constituent Affairs. CYFD Constituent Affairs reviews the complaint and provides a finding to the resource family, designated Regional Manager, and county office within 15 business days from the receipt of the complaint. The Regional Manager reviews the results and ensures the findings and resolution implemented within the county office.
2. Level Two—Office of the Inspector General (OIG): If the Resource Family does not believe the grievance has been resolved they can file a request for review by the Office of the Inspector General (OIG) under the Office of the Secretary. The request must be filed within ten days of the response from Constituent Affairs. OIG shall review the grievance and may take actions such as interviewing the individuals involved with the grievance and reviewing other documents and records. When conducting a review, the OIG shall have free, immediate and complete access to records maintained by CYFD, its divisions and any successor agencies or divisions, and by its contractors for children’s placements and services. In order to review the grievance, OIG shall also have free, immediate and complete access to the staff of CYFD, its contractors for children’s placements and services and other individuals that OIG deems relevant to their work. CYFD shall direct all employees and contract

providers to cooperate fully with OIG and shall assist the OIG in gaining free access to other stakeholders in the child welfare system if needed. OIG may also request information from the Office of Constituent Affairs related to their review.

- a) Submit a Written Request: Resource Families must complete the “*Request to File Grievance*” form, located on the internet. Once this form is completed, they e-mail their request and supporting documents (including the information from step one and two) to the Office of Constituent Affairs. Within two business days of receipt of the written request, the Office of Constituent Affairs reviews the request to ensure the criteria meets a grievance and notifies the Resource Family they have received a grievance and will conduct a review.

OIG must provide a finding to the Resource Family and copy the CYFD Constituent Affairs on the grievance within 30 business days of receipt of the grievance.

- b) Review of Findings: OIG provides their findings to CYFD Constituent Affairs and the Resource Family. The CYFD Constituent Affairs then provides the OIG finding to:

- i) PSD Director
- ii) PSD Field Deputy Director;
- ii) PSD Regional Manager;
- iii) PSD County Office Manager;
- iv) PSD Supervisor
- v) Resource Family’s PSD Caseworker (may be a placement worker or permanency planning worker).

- c) Grievance Resolution: If actions are recommended in the findings by the OIG, the Regional Manager ensures OIG’s findings and recommendations are carried out and provides a written response to the Resource Family, CYFD Constituent Affairs and OIG within five business days of receiving the findings, reporting on the timeframe for implementation of each of OIG’s recommended actions. The Regional Manager provides a subsequent response in writing to the Resource Family, CYFD Constituent Affairs and the OIG within 30 days of receiving OIGs findings, verifying that implementation of the SCAC’s recommended actions is complete.

- d) Disagreement with Recommendation or Outcome: The findings from the OIG are final. Nothing in this grievance process shall prevent a resource family from seeking legal remedy, if appropriate, when the grievance process did not satisfy or resolve the dispute. [12-23-2020]

**7.4 Ongoing Evaluation:** Quarterly meetings between the OIG, Constituent Affairs and CYFD PSD will take place to discuss grievance trends observed or any other issues experienced with the grievance process. [12-23-2020]

## New Mexico Foster Child and Youth Bill of Rights



Every child in the foster care system is endowed with the rights inherently belonging to all children. In addition, because of the unique circumstances facing foster children, special safeguards, resources and care are also necessary.

Below you will find a list of rights that are to be given to every child and youth in custody of the Children, Youth and Families Department. These rights must be explained by the caseworker to every child and youth in a manner in which they can understand. These rights are to be reviewed, in detail, upon entering custody and at a minimum of every six months. Additionally, these rights are to be clearly posted in all CYFD and service provider offices. They are to be provided to all staff working with foster children and youth, and to all foster parents.

- 1. To be informed of your rights in foster care by your caseworker and to receive a list of those rights in written form.**
- 2. To have your privacy protected and your right to confidentiality adhered to, as outlined in the New Mexico Children's Code.**
- 3. To be explained why you came into foster care and why you are still in foster care by a representative of CYFD.**
- 4. To be free from physical, sexual, emotional or other abuse, including corporal punishment.**
- 5. To stay safe and avoid exploitation.**
- 6. To advocate for yourself and to speak to persons involved with your case without negative repercussions.**
- 7. To make a report to Statewide Central Intake (1-800-797-3260) if you feel you are being abused and/or neglected.**
- 8. To be represented by a guardian ad litem or youth attorney in all judicial matters (hearings and mandatory meetings) conducted in your abuse/neglect case so that your interests are shared and safeguarded; to attend and participate in all court hearings as coordinated through your attorney.**
- 9. To be informed of how to contact your caseworker and other professionals involved in your case.**
- 10. To contact your attorney, caseworker and CASA when you want.**
- 11. To have a minimum of at least monthly visitation with your caseworker, which includes private time between yourself and the caseworker.**
- 12. To receive medical, dental, vision and behavioral health services.**
- 13. To refuse medical and behavioral health services and medications, unless court ordered, after age 14.**
- 14. To live in a safe, healthy and comfortable home where you are treated with respect.**

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15. To have foster parents who are screened, trained and licensed, and who receive adequate support and supervision from CYFD and/or private agencies.
16. To receive adequate and healthy food, adequate clothing and appropriate personal hygiene products.
17. To have all your personal belongings secure and transported with you.
18. To have a permanent plan for placement, to participate in developing this plan, and to have choice in placement or the right to request a placement change.
19. To be placed in a home with your siblings who are in custody unless it is contrary to your safety and/or well-being.
20. To maintain regular contact with your siblings, whether or not they are in custody, unless it is contrary to your safety and/or well-being.
21. To have regular and ongoing contact (by phone, through letters and in person) as soon as possible after entering custody with biological parents, relatives and other important people in your life, unless it is contrary to your safety and/or well-being and prohibited by a court order or you choose not to.
22. To be informed by a CYFD representative when contact with important people in your life is being monitored or prohibited, and the reasons it is being monitored or prohibited.
23. To remain in the same school you were enrolled in before entering into custody and to remain in the same school throughout your stay in custody; to be provided with transportation arrangements to ensure continued enrollment in the same school.
24. To attend and participate in school meetings, including parent/teacher conferences, Individual Education Planning (IEP) meetings and Next Step Planning meetings.
25. To participate in extracurricular, cultural, spiritual and personal enrichment activities.
26. To be involved in the development of your treatment plan, life skills plan, transition plan and visitation plan; to receive factual information about the treatment decisions made by the agency that affect your life.
27. To have a plan for your future, including a life skills plan and transition plan; to be offered services to help you prepare to become a successful adult.
28. To an annual credit check from age 14 to 18.
29. To initiate a review of any prudent parenting decision made by your foster parents, at 14 and older.

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 10      CHILD PROTECTIVE SERVICES**  
**PART 8            PERMANENCY PLANNING**

**8.10.8.1            ISSUING AGENCY: Children, Youth and Families Department, Protective Services Division.**

[8.10.8.1 NMAC - Rp, 8.10.8.1 NMAC, 9/29/2015]

**8.10.8.2            SCOPE: Protective services employees and the general public.**

[8.10.8.2 NMAC - Rp, 8.10.8.2 NMAC, 9/29/2015]

**8.10.8.3            STATUTORY AUTHORITY: New Mexico Children’s Code, Section 32A-1-1, NMSA 1978 (Repl. 2004).**

[8.10.8.3 NMAC - Rp, 8.10.8.3 NMAC, 9/29/2015]

**8.10.8.4            DURATION: Permanent.**

[8.10.8.4 NMAC - Rp, 8.10.8.4 NMAC, 9/29/2015]

**8.10.8.5            EFFECTIVE DATE: September 29, 2015, unless a later date is cited at the end of a section.**

[8.10.8.5 NMAC - Rp, 8.10.8.5 NMAC, 9/29/2015]

**8.10.8.6            OBJECTIVE: To establish parameters for the provision of permanency planning services to children in the custody of CYFD.**

[8.10.8.6 NMAC - Rp, 8.10.8.6 NMAC, 9/29/2015]

**8.10.8.7            DEFINITIONS:**

**A.            “Caregiver”** is an adult, parent, guardian or custodian in the household who provides care and supervision for the child.

**B.            “Case plan”** means a plan created jointly with clients for a child, youth, parent, guardian, custodian or respondent that identifies the appropriate services based on the needs identified to achieve the child’s or youth’s permanency plan and to promote the safety and well-being of each child or youth.

**C.            “Close proximity”** means a location physically close enough to facilitate family visiting, consistent with the best interest and identified needs of the child.

**D.            “Community home”** means a home which operates 24 hours a day and provides full time care, supervision and support to no more than 16 children in a single residential building, and which meets the definition of “group home” as outlined in the Human Services Department Act, Section 9-8-13 NMSA 1978.

**E.            “Complicating factors”** are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute imminent danger. Refer to the structure decision making manual to review the list of complicating factors protective services workers use in the New Mexico child safety and risk assessment tool.

**F.            “CYFD”** refers to the New Mexico children, youth and families department.

**G.            “Danger indicators”** are conditions resulting in a child being exposed to harm or injury and was placed at risk of harm or injury that could occur immediately. Refer to the structured decision making manual to review the list of ten identified factors protective services workers use in the New Mexico child safety and risk assessment tool.

**H.            “Early and periodic screening, diagnosis and treatment (EPSDT),”** is a medicaid program designed to provide comprehensive and preventive health care services to medicaid-eligible children under age 21.

**I.            “Family”** are caregivers, adults fulfilling the caregiver role, guardians, and others related by ancestry, adoption, or marriage, or as defined by the family or child.

**J.            “Fictive kin”** means a person not related by birth, adoption or marriage with whom the child has an emotionally significant relationship.

**K. “Foster child” or “child in foster care”** as referred to as “child” herein, means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

**L. “Household”** are all persons who have significant in-home contact with the child, including those who have a familial or intimate relationship with any person in the home. This may include persons who have an intimate relationship with a caregiver in the household (partner/significant other) but may not physically live in the home, or a relative whom the caregiver allows authority in parenting and caregiving decisions.

**M. “Indian child”** means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

**N. “Maintenance payments”** are payments designed to reimburse resource families for the cost of food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, and reasonable travel required to address the child’s needs. Maintenance payments are not considered income.

**O. “New Mexico Children’s Code”** refers to Section 32A-1-1 NMSA 1978.

**P. “Needs”** may refer to services and supports to address safety and the physical and emotional well-being of the child, parent, guardian, or resource parent. Needs may also include activities that promote the normalcy of the child.

**Q. “Parent”** as defined in the Children’s Code, Subsection (Q) of Section 32A-1-4 NMSA 1978, includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child.

**R. “Permanency planning”** is the systematic process of carrying out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or legal guardians and the opportunity to establish healthy and positive lifetime relationships that are in the best interest of the child or youth.

**S. “Protective services division (PSD)”** refers to the division within the children, youth and families department, and is the state’s designated child welfare agency.

**T. “Provider”** refers to a person or agency providing services to a PSD client.

**U. “PSD custody”** means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 NMSA 1978 or 32A-3B-1 NMSA 1978.

**V. “Relative”** means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity or affinity.

**W. “Resource family”** refers to a person or entity licensed by CYFD, licensed by another state’s child welfare agency, or a licensed child placement agency to provide foster care services including respite, non-relative, relative, or treatment foster care. Resource family includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA.

**X. “Resource family license”** is the document which bears the name or names and address or addresses of those who are resource parents for the protective services division or licensed child placement agency. The license displays the ages and number of children in foster care the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

**Y. “Resource parent”** is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for children in foster care. Resource parent includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA.

**Z. “Safe”** is a New Mexico child safety tool decision when no danger indicators have been identified.

**AA. “Safe with a plan”** is a New Mexico child safety assessment tool decision when one or more danger indicators are present, however, the child can safely remain in the home with a safety plan.

**BB. “Safety decision”** is based on the presence of danger indicators and safety planning capacities a family possesses that may that offset, mitigate or control the identified danger indicators. Using the

New Mexico child safety assessment tool, a child may be assessed to be safe, safe with a plan or unsafe.

**CC.** “**Safety plan**” is a detailed strategy that outlines immediate action steps the family and their network will take to help keep the child safe from the identified danger indicators.

**DD.** “**Safety planning capacities**” are those assets possessed by the caregiver that reduce or control the identified danger indicators. Refer to the structured decision making manual to review the list of four identified safety planning capacities protective services workers use in the New Mexico child safety and risk assessment tool.

**EE.** “**Sex or human trafficking**” consists of a child or youth who may have experienced being recruited, solicited, enticed, harbored, exploited or transported by another person whose intent is to exploit or use force, fraud, manipulation or coercion to subject the child or youth into labor, services or sexual activity.

**FF.** “**Sibling**” one of two or more children or offspring having one or both parents in common by birth or adoption.

**GG.** “**Treatment foster care home**” is a resource parent licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

**HH.** “**Trial home visit**” is the period of time, not to exceed six months, in which a child with a plan of reunification resides with their parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

**II.** “**Tribally licensed home**” means a resource family home licensed or approved by an Indian tribe or pueblo.

**JJ.** “**Unsafe**” is a New Mexico child safety assessment tool decision when one or more danger indicators are present and a safety plan cannot be created.

[8.10.8.7 NMAC - Rp, 8.10.8.7 NMAC, 9/29/2015; A, 5/4/2021]

#### **8.10.8.8 PURPOSE OF PERMANENCY PLANNING SERVICES:**

**A.** The purpose of permanency planning services is to systematically carry out, within a time-limited period, a set of goal-directed activities designed to help children live in families that offer the continuity of relationships with nurturing parents or guardians and the opportunity to establish healthy and positive lifetime relationships.

**B.** PSD provides permanency planning services to children or youth who come into PSD custody:

(1) through an abuse or neglect petition, voluntary placement outside of the home, or a family in need of court ordered services (FINCOS) case;

(2) as an undocumented immigrant child or youth through an abuse or neglect petition;

(3) as an unaccompanied alien child or youth as provided for and defined by the department of health and human services, administration for children and families, office of refugee resettlement, or division of unaccompanied children services;

(4) as an infant left at a hospital as outlined in the Safe Haven for Infants Act, 24-22-1 NMSA 1978; and

(5) as children returned to the custody of the parent, guardian or custodian subject to any condition or limitations as the court may prescribe including protective supervision of the child by PSD.

[8.10.8.8 NMAC - Rp, 8.10.8.8 NMAC, 9/29/2015; A, 5/4/2021]

#### **8.10.8.9 SAFETY ASSESSMENT IN PERMANENCY PLANNING:**

**A.** The overriding concern throughout the life of a permanency planning case shall be the safety of the child. PSD shall be responsible for the continued assessment of the child’s safety until case closure and shall determine:

(1) whether or not the responsibilities for care and protection of the child have been met by the parent, guardian or custodian; and

(2) if the child can safely return home to the parent, guardian or custodian.

**B.** PSD shall be responsible for assessing the child’s safety during visitation with the parent, guardian, custodian or other family members, including the child’s current living situation.

[8.10.8.9 NMAC - N, 9/29/2015]

**8.10.8.10 OUT OF HOME PLACEMENT:** When a child cannot safely remain in their home, PSD shall pursue legal custody of the child. When the court has determined it is contrary to the welfare of the child to remain in their home, PSD is awarded legal custody and the child shall be placed with a licensed resource family to ensure the child's safety and well-being. The placement of a child into foster care shall not be delayed or denied on the basis of the race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other factor unrelated to suitability to parent.

**A. Entry into foster care:** The child is considered to have entered foster care on the earlier of:

- (1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

- (2) the date that is 60 days after the date on which the child is removed from the home.

**B. Relative and relative notification:**

- (1) PSD shall give preference to relatives when making placement decisions. PSD considers fictive kin for placement if appropriate for best interest placement consideration.

- (2) Within 30 days of the child's removal, PSD shall exercise due diligence to identify and notify the following relatives: all adult grandparents, all parents with legal custody of a sibling of the child, and other adult relatives of a child.

- (3) When the court adopts a permanency plan other than reunification, and the child is not placed with a relative, PSD shall continue to make reasonable efforts to identify and locate appropriate and willing relatives to become licensed resource parents.

**C. Placement types:** When the court places a child in the legal custody of PSD, PSD shall be responsible for placing that child with a licensed resource family, which may include, but is not limited to:

- (1) relative and non-relative foster care;

- (2) treatment foster care;

- (3) a licensed facility such as residential treatment center, group home, or emergency shelter; or;

- (4) a licensed community home.

**D. Indian child placement:** PSD shall make active efforts to place an Indian child in accordance with the placement preferences of the Indian Child Welfare Act (ICWA.), which may include placement in tribally licensed homes.

**E. Least restrictive environment and proximity of placement:**

- (1) Children are placed in the least restrictive setting consistent with the assessment of their individual needs.

- (2) PSD shall make efforts to place children in close proximity to their home of origin; PSD shall document any reason as to why a child cannot be safely placed in close proximity to their home of origin.

**F. Educational continuity:** At the initial placement and any placement change thereafter, PSD shall develop plan for transportation for the child to remain in the same education setting in which the child was enrolled at the time of placement, if reasonable in the child's best interest.

**G. Level of care assessment:** PSD shall determine level of care within 30 days of entry into custody and every six months thereafter at a minimum. In addition, a determination will be made regarding the appropriateness of applying for social security insurance (SSI) or the developmentally disabled (DD) waiver.

**H. Change of placement:**

- (1) When a child's placement is changed, including a return to the child's home, PSD shall provide written notice to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's resource parents and the court. This notice is required 10 days prior to the placement change, unless an emergency situation requires moving the child prior to the notice. When prior notice is not possible, written notice must be provided to the GAL or attorney, all parties, the CASA, the resource parents, and the court within three days after the placement change has occurred.

- (2) Written notice is not required for removal of a child from respite. In respite situations, PSD shall provide verbal notification of the removal to the child's guardian ad litem or attorney.

(3) When a child, through their GAL or attorney, files a motion and requests a court hearing to contest the placement change, PSD shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

**I. Sibling continuity:**

(1) PSD shall make reasonable efforts to place siblings together when possible.

(2) PSD shall document reasons for not placing siblings together, such as when there are safety concerns or placement together is not a viable option.

(3) PSD shall facilitate visitation, as appropriate, between siblings not placed together or siblings who are not placed in PSD custody, including any adult siblings.

[8.10.8.10 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.11 VOLUNTARY PLACEMENTS:**

**A.** No parent may relinquish parental rights to PSD without PSD's consent.

**B.** When it has been determined to be in the best interest of the child parent, guardian or custodian, PSD may accept legal custody of a child placed voluntarily through a written agreement.

**C.** No child shall remain in voluntary placement for longer than 180 consecutive days or for more than 180 days in any calendar year; provided that a child may remain in voluntary placement up to an additional 180 consecutive days upon order of the court after the filing of a petition by PSD for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.

**D.** In no event shall a child remain in voluntary placement for a period in excess of 365 days in any two-year period.

**E.** The PSD director or designee approves all voluntary placement agreements before accepting a voluntary placement.

**F.** If the parent, guardian, or custodian requests PSD to return the child prior to the termination of the voluntary placement agreement, the child is returned within 72 hours of the request unless an abuse or neglect petition is filed concerning that child, and the court enters an order finding abuse or neglect, prior to the expiration of the 72 hours.

**G.** PSD develops a case plan with all families entering into a voluntary placement agreement.

[8.10.8.11 NMAC - N, 9/29/2015]

**8.10.8.12 THE PERMANENCY PLAN:** The permanency plan reflects the permanency goal within the child's case plan to be achieved by PSD's intervention with the family. Permanency goals include:

**A.** Reunification: The goal of reunification is to safely reunify the child to the home of the parent or legal guardian. Reunification is the preferred goal in all cases unless the court finds that aggravated circumstances exist.

**B.** Adoption: The goal of adoption is to judicially terminate the rights, privileges and duties as between the child and the biological parent, and to judicially establish in another family such rights, privileges and duties as between a child and heir, and the adoptive parent.

**C.** Permanent guardianship: The goal of permanent guardianship is to establish a court-sanctioned arrangement which vests in a guardian all rights and responsibilities of a parent without terminating the rights of the parent as set forth in the Children's Code, Section 32A-4-32 NMSA 1978.

**D.** Placement with a fit and willing relative: The goal of placement with a fit and willing relative is to establish a court sanctioned relationship between the child and the child's relative or fictive kin in order to maintain family or family-like relationships to the extent possible, consistent with the best interests of the child.

**E.** Planned permanent living arrangement: The goal of a planned permanent living arrangement is to establish a court sanctioned arrangement to provide physical and emotional permanency for the child when the court determines this is the most appropriate permanency plan for the child after considering all other permanency plans. Planned permanent living arrangement may only be used for youth over the age of 16.

[8.10.8.12 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.13 CASE PLANNING:**

**A.** As part of the initial case planning process, PSD shall hold an initial assessment planning conference prior to the 10 day custody hearing. An initial assessment plan shall be developed at the assessment planning conference. The initial assessment plan is ordered at the custody hearing and remains in effect until a case plan is ordered at the dispositional hearing.

**B.** PSD shall develop a case plan to address the identified danger indicators and include plan-directed activities for both the child and parent, guardian or custodian to achieve permanency without the need for the PSD intervention.

**C.** At a minimum, the case plan shall be re-assessed prior to any court hearing.

**D.** For youth ages 14 and older, the case plan shall be developed in consultation with the youth and, at the option of the youth, with up to two members of the case planning team who are chosen by the youth and who are not a [resource parent of or a caseworker for, the youth. PSD may reject an individual selected by the youth to be a member of the case planning team at any time if PSD has good cause to believe the individual would not act in the best interest of the youth. An individual shall be selected by the youth to be a member of the youth's case planning team, and may be designated to be the youth's advisor and, as necessary, advocate with respect to the application of the reasonable and prudent parent standard to the youth.

**E.** As part of the youth's case plan, PSD shall provide to the youth the New Mexico foster child and youth bill of rights and the New Mexico foster youth document of responsibilities.

**(1)** PSD shall provide a document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents and the right to stay safe and avoid exploitation.

**(2)** PSD shall obtain a signed acknowledgement that the child has received a copy of those documents and understands those rights and responsibilities; and

**(3)** PSD shall also provide and adhere to youth the youth grievance process.

**G. Other plans within the case plan:** As part of the case planning process the following plans shall be incorporated into the case plan as appropriate:

**(1)** Permanency plan: The permanency plan reflects the permanency goals to be achieved. Every child's case plan shall have a permanency plan, which may change throughout the life of the case.

**(2)** Transition home plan: A transition home plan shall be submitted to the court prior to or at the initial permanency hearing when the child's plan remains reunification. The plan shall be completed within 90 days of the initial permanency hearing. The plan results in the child being placed with their parent, guardian or custodian on a trial home visit.

**(a)** As part of the transition home plan, PSD shall set up a trial home visit in which the child resides with their parent, guardian or custodian until it has been determined no safety threats exist to the child and the case can be dismissed. If the trial home visit is unsuccessful, then the child shall be removed from the home of the parent, guardian or custodian and placed in the same or another out of home placement.

**(b)** A trial home visit normally does not exceed six months in duration.

**(c)** If a trial home visit exceeds six months in duration, or exceeds a longer time period deemed appropriate by the court, and the child is subsequently returned to foster care, the placement is considered a new placement and procedures must be followed to newly establish title IV-E eligibility.

**(4)** Life skills plan: PSD shall develop a life skills plan, using the life skills assessment, with youth age 14 or older who are in PSD custody. The life skills plan shall identify the activities, tasks, and services needed for the youth to develop the life skills necessary to safely transition into independent living as an adult, regardless of the youth's permanency plan.

**(5)** Transition plan: PSD shall begin developing a transition plan with the youth prior to their seventeenth birthday to identify needs, strengths and goals in the areas of safety, housing, education, employment or income, physical health and mental health, local opportunities for mentors and continuing support services. The plan shall identify activities, responsibilities and timeframes to address specified goals. PSD shall present the transition plan to the court at the first hearing scheduled after the youth's seventeenth birthday. The court shall order the transition plan for the youth. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing.

[8.10.8.13 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.14 ADJUDICATION AND DISPOSITION:**

- A. PSD shall schedule a mandatory pre-adjudicatory meeting prior to the adjudicatory hearing.
  - B. The adjudicatory hearing shall be held within 60 days after the date of service on the respondent.
  - C. Prior to the dispositional hearing, PSD shall prepare a pre-dispositional study and report.
  - D. The dispositional hearing may occur simultaneously with the adjudicatory hearing, but no later than 30 days after the conclusion of the adjudicatory hearing.
  - E. Resource parents, pre-adoptive parents, relatives or fictive kin providing care to the child shall be given notice and an opportunity to be heard at the dispositional hearing.
- [8.10.8.14 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.15 INITIAL JUDICIAL REVIEW, FIRST PERMANENCY HEARING AND SUBSEQUENT HEARINGS:**

- A. The initial judicial review shall be held within 60 days of the dispositional hearing. PSD shall inform the court of the progress made toward the permanency plan.
  - B. The initial permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within 12 months of a child entering foster care, whichever occurs first.
  - C. Prior to the initial permanency hearing, PSD shall attend a mandatory meeting with all other parties to mediate issues attendant to the permanency hearing and to develop a case plan that services in the child's best interest.
  - D. At the initial permanency hearing and subsequent hearings thereafter, PSD shall document the following:
    - (1) the efforts made to return the child home;
    - (2) the steps PSD has taken to ensure the child's resource family is following the reasonable and prudent parent standard;
    - (3) the steps PSD has taken to ensure the child has regular, ongoing opportunities to engage in age and developmentally appropriate activities.
  - E. PSD evaluates the status of each child within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion, and re-evaluates the status every six months thereafter so long as the child remains in custody. The evaluation includes a determination of the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care. The evaluation also projects a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.
- [8.10.8.15 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.16 TERMINATION OF CUSTODY: PSD's custody of a child shall terminate under the following circumstances:**

- A. the court dismisses or terminates PSD's custody of a child;
  - B. a voluntary placement agreement expires;
  - C. court ordered custody of the child expires;
  - D. the child reaches the age of 18; or
  - E. a child in PSD's custody marries or joins the armed forces.
- [8.10.8.16 NMAC - Rp, 8.10.8.26 NMAC, 9/29/2015]

**8.10.8.17 MEDICAL AND BEHAVIORAL HEALTH:**

- A. Within the first 30 days of PSD custody, the child shall have a complete physical examination or, if medicaid eligible, an early and periodic screening, diagnostic and treatment services (EPSDT). The child shall receive an annual well-child check and dental and eye exam thereafter.
- B. In order to support the child through the experience of foster care, in addition to supporting their history of possible trauma, PSD conducts both the crisis assessment tool (CAT) and child and adolescent needs and strengths-trauma (CANS) assessments to better understand the needs of the child and to make appropriate referrals to community providers. Once an abuse and neglect petition has been filed, all children in the case will have a CAT completed by the investigator and filed with the court 24 hours prior to the 10-day

hearing. CANS assessments shall be completed by PSD, within 45 days of removal from the home. Children in care shall be reassessed prior to every subsequent court hearing to assess progress in treatment (or within six months, whichever comes first) or to adjust services and supports as results may indicate. CANS shall also be completed whenever any change in behavior is identified, and also after any significant emotional event. CANS shall also be updated upon discharge from CYFD custody.

**C.** While a child is in the custody of PSD and until parental rights have been terminated, the child's parent, guardian or custodian shall continue to be responsible for the child's medical needs. If support by the parent, guardian or custodian is not available, PSD shall seek to obtain other medical coverage or, if all other possibilities are exhausted, to qualify the child for medicaid through supplemental security income (SSI).

**D.** If available, PSD shall obtain and keep current the child's immunization records. In any case, where the parent, guardian, or custodian objects to immunizing the child, PSD shall inform the parent, guardian, or legal custodian that they may obtain a waiver from the department of health objecting to the immunizations.

**E.** PSD shall arrange for behavioral health services for children, parents, guardians or custodians to address identified needs and to move the case planning process along in order for the child to achieve permanency.

**F.** The use of psychotropic medication is one of several interventions used to address the emotional and behavioral needs of children in PSD custody and is used in concert with other interventions in accordance with the treatment plan. Children are to be free from unnecessary or excessive medication as expressed in the Children's Code 32A-6A-12A (12). PSD shall adhere to internal procedures regarding psychotropic medication (permanency planning procedure 17—mental and behavioral health).

**(1)** PSD shall ensure each child in PSD custody is not inappropriately medicated while ensuring timely access to medically necessary medication and treatment. Psychotropic medication shall only be prescribed by a person licensed by the State of New Mexico to prescribe psychotropic medications.

**(2)** PSD must first approve any medication, including medication changes, by consulting with the prescribing provider, parent, guardian or custodian, and their supervisor within seven calendar days of the medication recommendation. Psychotropic medication shall not be prescribed for a child in care unless the prescribed use of the psychotropic medication is for a medically accepted indication that is age-appropriate and its proposed beneficial properties outweigh any risks identified in peer-reviewed medical literature relating to the children's use of the psychotropic medication. Psychosocial interventions shall be the first intervention utilized prior to exploring psychotropic medication. PSD shall inquire about the most appropriate use of medication, dosage and ongoing monitoring. PSD must monitor medication success and impacts on the child. PSD may seek a second opinion from a licensed prescriber if there are concerns regarding the recommended medication.

**(3)** Depending on the age of the child, type of medication and the number of medications prescribed, PSD shall request a higher level of monitoring and consultation with a PSD staff person or contracted provider licensed by the State of New Mexico to prescribe psychotropic medications to review the child's medications. This secondary review is to ensure medication is not misused as a primary response to trauma-related behaviors and to evaluate the effectiveness of the medication on the child's wellbeing and quality of life. The review in consultation with the PSD contracted provider licensed by the State of New Mexico will include a review of the polypharmacy, dosage and frequency for all prescribed medication, adverse side-effects and the use of any atypical antipsychotics.

**(4)** PSD shall document medication prescribed to the child in the case management system and in every court report. PSD must report any medications or changes in medications, impact and side effects to the court.

**(5)** PSD shall monitor any trends in psychotropic medications in relation to children in PSD care and appropriate PSD staff will provide training, consultation or other response depending on the trends identified.

**(6)** PSD shall be responsible for regularly assessing the impact the medication has on the child. PSD shall participate in medication management meetings with the child's treatment team. The meetings may occur with the prescribing physician at least monthly if the child is in treatment foster care or a residential treatment center or as recommended by the prescriber.

**(7)** CYFD shall consult with other state agencies to provide CYFD with information, training, data and support to monitor psychotropic medication trends and outliers.

[8.10.8.17 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.18 EDUCATION:**

**A.** PSD shall develop a plan for transportation with the resource family and child, if age appropriate, in order for the child to remain in the same education setting in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

**B.** PSD shall work with the child's school to identify the child's educational needs and the need for an individualized education plan (IEP) and if appropriate, assist in the development of the IEP. For children with an IEP, the PSD worker shall assist the child and the child's school in implementing the IEP.

**C.** For children in eighth grade and older, PSD shall request and review the child's next step plan and actively participate in updating the plan each year with the child to prepare post-secondary educational goals.

**D.** An educational decision maker shall be appointed for every child in PSD custody. The educational decision maker shall be named prior to the custody hearing and shall be re-evaluated at every hearing thereafter.

[8.10.8.18 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.19 VISITATION:**

**A.** Family visits: PSD shall arrange for visitation between the child and their family or fictive kin as appropriate.

**B.** Sibling visits: PSD shall arrange for and facilitate visitation, as appropriate, between children in PSD custody and their siblings who are either in PSD custody, but not in same out of home placement, or siblings who are not in PSD custody including adult siblings.

**C.** Worker-child visits: PSD shall visit each child at least monthly in the child's placement to assess the placement for appropriateness in meeting the child's safety, emotional and well-being needs.

**D.** Worker-parent visits: PSD shall arrange for visits at least monthly with the parent, guardian or custodian to share information about the child and discuss case plan progress.

[8.10.8.19 NMAC - Rp, 8.10.8.22 NMAC, 9/29/2015; 5/4/2021]

**8.10.8.20 OUT-OF-STATE PLACEMENTS OF FOSTER CHILDREN:** PSD shall visit each child in an out-of-state placement in that placement at least every six months. PSD, in accordance with the Interstate Compact for the Placement of Children (ICPC), shall request other receiving state child welfare agencies to visit the child in their placement monthly and provide PSD with reports on those visits.

[8.10.8.20 NMAC - Rp, 8.10.8.14 NMAC, 9/29/2015; A, 5/4/2021]

**8.10.8.21 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN (ICPC):**

**A.** PSD may place children in custody in licensed out-of-state placements, and may accept children in the custody of another state for placement in New Mexico in accordance with the Interstate Compact for the Placement of Children (ICPC).

**B.** CYFD has no authority to license resource families in other states.

[8.10.8.21 NMAC - Rp, 8.10.8.27 NMAC, 9/29/2015; 5/4/2021]

**8.10.8.22 SPECIAL IMMIGRANT JUVENILE STATUS (SIJS):** If a child is a foreign national child without legal permanent residency in the United States, PSD shall apply to the department of homeland security's (DHS) citizen and immigration services (USCIS) to obtain "special immigrant juvenile status" for the child.

**A.** In those cases in which a child is a foreign national child without legal permanent residency in the United States, and if the permanency plan does not include reunification with at least one parent and PSD does not recommend that the child be returned to the country of origin, PSD shall determine whether the child may be eligible for SIJS under federal law. Under federal law, in addition to legal requirements of being under court jurisdiction and the court making the necessary judicial determination, a child must be in the United States, unmarried and under the age of 21.

**B.** If the child is eligible for SIJS, PSD shall move the court for a SIJS order containing a judicial determination that the child is deemed unable to reunify with one or both parents due to abuse, neglect or abandonment, and that it is not in the child's best interest to return to the country of nationality or last habitual residence. PSD's motion shall include a statement of the express wishes of the child, as expressed by the child or the child's guardian ad litem or attorney.

**C.** If it has been determined that it is in the child's best interest to file a petition for SIJS and an application for adjustment of status, then within 60 days after an entry of the SIJS order, PSD shall file a petition for SIJS and an application for adjustment of status on behalf of the child.

**D.** The court order for SIJS must be filed and accepted by the court prior to the child turning age 18.

**E.** The children's court attorney shall request court jurisdiction and set review hearings pending the granting of SIJS. The children's court attorney shall provide judicial review reports for a child for whom the court has granted the SIJS order, and shall advise the court of the status of the petition and application process concerning the child.

**F.** The court's jurisdiction terminates upon the final decision of the federal authorities, however the court may not retain jurisdiction of the case after the child's twenty-first birthday.

[8.10.8.22 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.23 CONSULAR NOTIFICATION:**

**A.** Foreign national children: When PSD is given custody of a foreign national child, that is, a child who is not a citizen of the United States, PSD shall notify that child's foreign national consulate in writing without delay after obtaining custody. When PSD is given custody of a child who has at least one parent who is a foreign national of any country other than Mexico, PSD shall notify the appropriate foreign consulate except in cases in which notification may create a risk to the child's safety or may impede the goal of reunification of the child with their family.

**B.** Mexican national children: When PSD is given custody of a Mexican national child, that is, a child who is a national of Mexico or has at least one parent who is a national of Mexico, PSD shall notify the Mexican consulate without delay.

[8.10.8.23 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.24 PREVENTING, IDENTIFYING AND REPORTING SEX AND HUMAN TRAFFICKING AND REPORTING RUNAWAYS:**

**A.** PSD shall identify, document, and determine appropriate services for children or youth who have disclosed or who may be at risk of being the victim of human trafficking.

**B.** PSD shall immediately, but no later than 24 hours, notify law enforcement of children or youth who PSD has identified as victims of sex or human trafficking.

**C.** PSD shall make reasonable efforts to locate children or youth missing from foster care, including determining the factors that led to the child or youth being absent from foster care. PSD shall also assess the child or youth's experience while absent from foster care, including whether the child or youth is a victim of sex or human trafficking.

**D.** PSD shall report immediately, but no later than 24 hours, after receiving information on missing or abducted children or youth to law enforcement authorities for entry into national crime information center (NCIC) database of the federal bureau of investigation.

**E.** PSD shall report immediately, but no later than 24 hours, after receiving information on missing or abducted children or youth to the national center for missing and exploited children.

[8.10.8.24 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.25 INCIDENTS INVOLVING CHILDREN IN CUSTODY:**

**A.** Incidents in foster care may refer to a broad spectrum of events which may include, but are not limited to, reports of:

- (1) alleged policy or procedures violations by resource parents, including resource parents failure to comply with case plans or safety plan requirements;
- (2) alleged violations of the New Mexico foster child and youth bill of rights or the New Mexico foster youth document of responsibilities;
- (3) serious illness or accidental injury of a child in foster care;
- (4) resource parent reporting concerns related to parent-child or sibling visitation; or
- (5) child in care running away.

**B.** Incidents in foster care shall not include reports of alleged abuse or neglect. Reports of alleged abuse or neglect are called in to statewide central intake (SCI) and if warranted, assigned for PSD

investigation.

[8.10.8.25 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.26 TITLE IV-E AND MEDICAID ELIGIBILITY:** PSD shall determine funding eligibility for each child in PSD custody.

[8.10.8.26 NMAC - N, 9/29/2015]

**8.10.8.27 MAINTENANCE PAYMENTS AND INCIDENTALS**

**A.** Resource families are reimbursed for the care provided to children at rates established by the state legislature.

**B.** Requests from resource families for reimbursements for pre-approved purchases must be submitted within 45 days of the expenditure.

**C.** PSD is not liable and shall not reimburse any person for any loss or property damage, real or personal, in excess of \$25,000, that is shown to be caused by a child in PSD custody.

[8.10.8.27 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.28 FINANCIAL RESPONSIBILITY:** Until parental rights have been terminated, the child's parents continue to be financially responsible for the child. PSD establishes a children's maintenance account for children in PSD custody who receive monetary benefits. Resources received on behalf of the child are used to reimburse PSD for the child's care and to meet the needs of the child.

[8.10.8.28 NMAC - Rp, 8.10.8.15 NMAC, 9/29/2015]

**8.10.8.29 COURT APPOINTED SPECIAL ADVOCATE (CASA) AND SUBSTITUTE CARE ADVISORY COUNCIL (SCAC):**

**A.** If the court has appointed a CASA, PSD shall involve and inform the CASA as required by the Children's Code.

**B.** PSD refers each child in custody to the SCAC as required by the New Mexico Children's Code. The SCAC provides the resource parent or relative providing care for the child with timely notice of and an opportunity to be heard before the SCAC. The notice and opportunity to be heard do not include the right to standing as a party in the case.

[8.10.8.29 NMAC - Rp, 8.10.8.25 NMAC, 9/29/2015; A, 5/4/2021]

**8.10.8.30 CHILD PROTECTIVE SERVICES CHILD CARE**

**A.** PSD provides child protective services childcare as one part of a case for children and families receiving services to address child maltreatment safety and risk factors.

**B.** The purpose of protective services childcare is:

(1) to enable parents, guardians or custodians to participate in activities which are part of the comprehensive treatment plan;

(2) to enable resource parents to maintain employment, obtain job training and attend educational programs while children are in placement in the home; and

(3) to provide childcare as crisis intervention for those families who lack other resources, are at risk of child maltreatment, and unable to provide adequate care for their child.

**C.** PSD provides childcare:

(1) without regard to income eligibility;

(2) depending on the assessment of need for the child and family or resource family;

and

(3) as appropriate and to maintain stability of a placement.

**D.** PSD arranges for childcare by providers who meet the requirements established by and who are licensed or certified by the New Mexico early childhood education and care department.

**E.** The child's worker determines an appropriate childcare provider in cooperation with the child's family or resource family.

**F.** PSD follows the service standards and payment rates for childcare that are established by the New Mexico early childhood education and care department.

**G.** PSD arranges child protective services childcare from any of the following approved provider types:

- (1) licensed family child care;
- (2) certified family child care; and
- (3) licensed childcare center.

[8.10.8.30 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.31 DOCUMENTATION AND CONFIDENTIALITY:**

**A. Documentation:** PSD shall maintain the case record, which consists of both the electronic record and the paper case record. The case record is a working tool and shall contain all documents necessary for the provision of services.

**B. Confidentiality:** All PSD staff and CYFD contractors shall maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.

(1) Abuse and neglect records: Abuse and neglect records are confidential pursuant to the New Mexico Children's Code Subsection A of Section 32A-4-33 NMSA 1978. The name and information regarding the reporting party shall not be disclosed absent the consent of the reporting party or a court order.

(2) Foster care and adoption records: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA 1978, the confidentiality provisions of the Children's Code, Sections 32A-3B-22 and 32A-4-33 NMSA 1978, the specific authority related to certification of foster homes, Subsection (D) of Section 40-7-4 and the Adoption Act, Sections 32A-5-6 and 32A-5-8 NMSA 1978, all client case records and client identifying information including resource and adoptive families, and applicant files are confidential and may not be publicly disclosed. PSD may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.

(3) Records related to an adoption proceeding: Records related to an adoption proceeding are confidential pursuant to the Children's Code, Section 32A-5-8 NMSA 1978. Post decree adoption records: Guidance on obtaining access of post decree adoption records by an adult adoptee, biological parent of an adult adoptee, sibling of an adoptee, or adoptive parent of a minor adoptee is outlined in the Adoption Act Regulations, Subsection C of 8.26.3.41 NMAC.

(4) Social security administration electronic records: Any information obtained through the social security administration (SSA) data system, ISD2, either directly or from another individual with access to the ISD2, is confidential. Improper access, use or disclosure of ISD information is a violation of the Privacy Act of 1974 (5 U.S.C. Section 552a, Public Law No 93-579), and could result in civil and criminal sanctions pursuant to applicable federal statutes. When a PSD becomes aware of a loss or suspected loss of any file containing ISD information (whether a hard copy file, or on a laptop, removable drive, etc.), PSD shall notify CYFD office of the general counsel (OGC) within one hour of the discovery of the loss.

[8.10.8.31 NMAC - Rp, 8.10.8.28 NMAC, 9/29/2015; A, 5/4/2021]

#### **HISTORY OF 8.10.8 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

SSD Rule #411.0000, Substitute Care, filed 11/10/1981;  
 SSD 5.0.0, Substitute Care for Children - Definition and Goal Statement, filed 8/22/1986;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 8/22/1986;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 1/29/1987;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 6/18/1987;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 3/28/1989;  
 SSD Rule #410.5400, Substitute Care for Children - General Guidelines, filed 9/17/1981;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 8/22/1986;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 1/29/1987;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 6/18/1987;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 11/18/1987;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 1/13/1988;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 3/30/1989;

SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 7/14/1989;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 9/18/1990;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/1986;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/1987;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/1987;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/1988;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/1988;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/1990;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/1991;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/1986;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 1/29/1987;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 6/18/1987;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 11/18/1987;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/1988;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/28/1989;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/20/1990;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 9/18/1990;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/15/1991;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 8/22/1986;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 1/29/1987;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 6/18/1987;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 11/18/1987;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 1/13/1988

**History of Repealed Material:**

8.10.8 NMAC, Permanency Planning - Repealed, 2/14/2001  
8.10.8 NMAC, Permanency Planning - Repealed 7/15/2004  
8.10.8 NMAC, Permanency Planning - Repealed 11/15/2005  
8.10.8 NMAC, Permanency Planning - Repealed 9/29/2015

# State of New Mexico

## CHILDREN, YOUTH and FAMILIES DEPARTMENT

**MICHELLE LUJAN GRISHAM**  
GOVERNOR

**HOWIE MORALES**  
LIEUTENANT GOVERNOR



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### FOR IMMEDIATE RELEASE

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September 2, 2021

### **Children, Youth & Families requests \$258 million budget for fiscal year 2023**

SANTA FE – The Children, Youth & Families Department this week submitted the department’s 2023 state fiscal year general fund budget request of \$258 million, a \$44.6 million increase over SFY2022. When factoring in all funding sources, including federal dollars, the Department’s budget is more than \$368 million.

The budget request reflects CYFD’s needs to align its funding with the department’s mission and strategic plan to help our children be safe and to thrive in the community and with a family whenever possible.

The department’s budget request focuses on expanding services and programs that are trauma-responsive and increase prevention; on continuing efforts that favor placement with relatives when appropriate; on implementing the next phase of extended foster care through the Fostering Connections program; on improving financial supports for resource families; and on reducing vacancies across the agency.

The extended supports now available to young adults who age out of the foster care or juvenile justice systems include guaranteed housing, connection to community-based behavioral health supports, job assistance, food access, and money for college.

As of August 2021, more than 160 young adults have enrolled in extended foster care through age 21. These transition aged youth benefit from extended services, including access to health care, housing, food, and other basic necessities. The department’s request (including federal funding) for contracts related to Fostering Connections, prevention, homelessness, kinship/guardianship, stipend training program, transitional living programs and community services is \$42.6 million.

Statewide Central Intake continues to see success in connecting directly with young people in crisis or who need services through text message-based Reach NM, which has engaged in more than 1700 text messages since launching in late December 2020. A differential response system, FORCE (Family OutReach and Community Engagement), is under pilot implementation in four counties and was also able to resolve barriers and refer to resources for nearly 600 additional families across the state to connect them to school between September 2020 and May 2021.

Protective Services is also requesting more than \$69 million for care and support funds that go directly to our resource parents, costs for incidental reimbursements and at-risk childcare payments. CYFD has recently increased the monthly amount provided to resource families with the help of a higher federal fund reimbursement rate.

In 2019, the department entered into a settlement agreement for a class-action lawsuit *Kevin S., et al. v. Blalock, et al.* The department is requesting \$2 million to support the implementation of intensive case management services, a required service for children in state custody as part of the Kevin S. Settlement Agreement.

The SFY23 budget also includes expansion and better support for the CYFD Office of the Secretary's Office of Children's Rights, launched in January 2021 as part of Governor Lujan Grisham's vision for better serving the state's children and families. The Office of Children's Rights offers educational advocacy and disability rights, part of ensuring a child is receiving all state and federal programs they are entitled to. The office also has a grievance process to address concerns of children who are in foster care, centered around the 29 specific rights CYFD guarantees through its New Mexico Foster Child and Youth Bill of Rights.

Behavioral health remains a central focus of the department and CYFD's Behavioral Health Services Division (BHS) continues to collaborate with CYFD's Juvenile Justice and Protective Services Division to develop and maintain trauma-responsive services. Behavioral Health Services' overall base request is \$59.2 million, a 30% increase, including a general fund request increase of \$16.3 million. This request is due to the expansion of community behavioral health services statewide to both effectively implement CYFD's strategic plan and comply with the requirements of the Kevin S. Settlement Agreement within the established timelines. These services include Functional Family Therapy, Developmental Disability Services, High Fidelity Wraparound, Domestic Violence Offender Treatment Intervention Program. Expansion of the Child and Adolescent Needs and Strengths assessment to Protective Services population remains high priority as well as growth around the Crisis Assessment Tool for accurate screening of individual needs and strengths. BHS is also working to add 63 additional full-time positions utilizing agency vacant positions to BHS to support the expansion of the aforementioned services.

Finally, CYFD's Information Technology Division, as part of the department's MMIS/CCWIS Data Modernization Project, is requesting \$4.7 million to pay for licensing for the new Comprehensive Child Welfare Information System as well as contracts for data retrieval and archiving of the department's 23-year-old FACTS system, slated to be replaced in fall of 2022.

This budget will help the Children, Youth & Families Department get better results, move further toward a preventative services model, comply with legal settlements, and build a better child services delivery system to help support the children and families of New Mexico.

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