IN THE ARBITRATION OF

KEVIN S., *et al.,*

Plaintiffs,

vs.

NEW MEXICO CHILDREN YOUTH and
FAMILIES DEPARTMENT, and
NEW MEXICO HUMAN SERVICES DEPARTMENT,

Defendants.

STIPULATED REMEDIAL ORDER NO. 4

Having met through a settlement process, the Parties, by and through their respective counsel of record, hereby stipulate and agree, and the Arbitrator having reviewed and approved the same orders as follows:

I. Status of Prior Remedial Orders

The Parties agree that, except as otherwise provided in Remedial Order No. 3, Remedial Order Nos. 1 and 2 have been met. The Parties further agree that, except as provided below, Remedial Order No. 3 has been met. The Parties agree that the requirements in Remedial Order No. 3 shall remain in effect, however, enforcement of any remaining obligations under Remedial Order Nos. 1, 2, and 3 is suspended pending a determination of performance on this Order. To the extent the obligations or deadlines of this Order conflict with a prior Remedial Order, the Parties agree that this Order shall control. Nothing in this Order shall preclude any Party from exercising their rights under the Final Settlement Agreement including, but not limited to, the right to arbitrate any and all remaining unresolved issues and to secure any and all relief and remedies provided by the Final Settlement Agreement. The Parties agree that the Arbitrator retains jurisdiction over the January 21, 2025 Decision and Award and all past Remedial Orders.

The Arbitration hearing currently set for September 23 and 24, 2026 will be vacated. The Arbitrator will hold a hearing to discuss entry of this order on September 23, 2026.

II. Undisputed Areas of State's Performance of Remedial Order No. 3

A. The Parties agree that CYFD and HCA have complied with the following requirements of RO#3:

1. The Parties held an All Parties meeting in May 2026, during which the Parties discussed data exchange. RO#3, I.[1]

2. HCA developed and disseminated guidance approved by the Co-Neutrals to providers detailing the elements of a comprehensive well-child visit ("WCV"), including guidance specific to children in State custody ("CISC"), by June 1, 2026. RO#3, III.[2]

3. CYFD and HCA collaborated with Presbyterian Health Plan ("PHP") to develop alternative strategies to improve communication, collaboration, and the sharing of information between PHP care coordinators and CYFD personnel on other related matters. RO#3, IV.[3]

4. CYFD trained all County Office Managers on implementation of the data dashboard by May 15, 2026. CYFD solicited feedback from local CYFD managers on the data dashboard by July 1, 2026 and made changes accordingly by August 1, 2026. RO#3, V.[4]

[1] RO#3 provides: "To facilitate a collaborative problem-solving process, the Parties agree that they will hold one full-day All Parties meeting in May 2026. These meetings will be confidential settlement meetings to allow for full discussion of the status and barriers to implementing the FSA. The Secretaries for each agency and Co-Neutrals will attend. In an effort to ensure that the State is focused on providing accurate information to the Co-Neutrals, the Parties agree that at the All Parties meeting, the Parties will discuss data exchange between the parties, including sharing of current data and amending the FSA requirement for the State's Annual Report."

[2] RO#3 provides: "The Parties agree that HCA will develop and disseminate guidance approved by the Co-Neutrals to providers detailing the elements of a comprehensive WCV, that includes guidance specific to CISC, by June 1, 2026."

[3] RO#3 provides: "The Parties agree that CYFD and HCA will collaborate with PHP to develop alternative strategies to improve communication, collaboration, and the sharing of information between PHP care coordinators and CYFD personnel on other related matters."

[4] RO#3 provides: "The Parties further agree that CYFD will train all County Office Managers on implementation of the data dashboard by May 15, 2026. The Parties also agree that CYFD will solicit feedback from local CYFD managers on the data dashboard by no later than July 1, 2026 and will make any changes accordingly by August 1, 2026."

5. CYFD made changes to the data dashboard for caseload management as requested by the Co-Neutrals. RO#3, V.[5]

6. CYFD obtained Co-Neutral approval of its 2026 annual non-relative resource home recruitment target and satisfied at least 40 percent of the target by July 1, 2026. RO#3, VII.A.[6]

7. CYFD submitted a plan regarding Care and Behavioral Support Specialists ("CBSS") to the Co-Neutrals for approval and provided a copy to the Plaintiffs by May 1, 2026, including descriptions of the support provided to CBSS workers and details about the process CYFD is implementing for CBSS workers' case record reviews. Although the Co-Neutrals approved the CBSS plan on May 18, 2026 and CYFD has begun implementation, the Co-Neutrals' August 3, 2026 Report identified challenges to the implementation of the CBSS plan. CYFD leadership acknowledges these challenges and is actively working to address them.[7] RO#3, VI.[8]

8. By July 1, 2026, CYFD established a foster parent advisory board representative of New Mexico's resource family community, by contracting with an organization with child welfare experience. RO#3, VII.C.[9]

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[5] RO#3 provides: "the Parties agree that CYFD will make all changes requested by the Co-Neutrals related to its data dashboard and source data within 15 days of the Co-Neutrals' request."

[6] RO#3 provides: "The Parties agree that if approved by the Co-Neutrals, CYFD may use a different methodology to establish the 2026 annual target under the Data Validation Plan ("DVP"). The Parties agree that CYFD will submit any information necessary and obtain the Co-Neutrals' approval of the 2026 annual target by March 31, 2026. The Parties agree that the State will satisfy the annual target by December 1, 2026 and, in the interim, at least 40 percent of its annual target by July 1, 2026. The Parties agree that if the State does not meet either target, the State must show cause to the Arbitrator for its failure to do so."

[7] In furtherance of this goal and based on the Co-Neutrals' RO#3 reporting on implementation, CYFD agrees to take further action in this area. *See* Section IV.D.

[8] RO#3 provides: "CYFD will develop a plan to submit to the Co-Neutrals for approval and will provide a copy to the Plaintiffs by May 1, 2026 that includes (1) description of the support provided to CBSS workers and (2) details the process CYFD is implementing for CBSS workers' case record reviews. The Co-Neutrals are invited to report on this term and the implementation of CYFD's plan regarding utilization of CBSS staff to the parties and the Arbitrator by August 1, 2026."

[9] RO#3 provides: "The Parties agree that by July 1, 2026 CYFD will establish a foster parent advisory board, that is representative of New Mexico's resource family community. To implement this term, CYFD will contract with an organization with child welfare experience to undertake all activities necessary to create and facilitate the foster parent advisory board. In

B. The Parties agree that CYFD and HCA have partially but not completely complied with the following requirements of RO#3:

1. Regarding the State's well-child visit related obligations under RO#3, III,[10] the Co-Neutrals' August 28, 2026 report to the Arbitrator found that the State timely completed 95% of WCVs from January to May 2026. The State contends that 100% of CISC received a WCV within 30 days between January and May 2026, but acknowledge that the Co-Neutrals calculated 95%. The State will work with the Co-Neutrals to resolve this discrepancy. In addition, CYFD and HCA submitted the EPSDT Supplement on July 1, 2026 regarding the criteria for WCVs among the entities that included sharing of WCV information. Providers are reminded to provide sufficient documentation to support the visit including all the required elements for billing of the WCV/EPSDT. Additionally, the required elements should be included in the after-visit documentation supplied to the parent, foster parent or guardian. If the child is in state custody, this includes ensuring CYFD and the foster family have records in real time. Documentation guidance for WCV includes: Current medications; Active conditions 2 Supplement: 26-02; Immunization status; Screenings performed and results (as applicable by age/need), including behavioral health and developmental screenings; Referrals: for each referral, document reason, priority, receiving

addition to responding to resource family concerns, the board will recommend strategies to improve resource family training, the licensing process, respite opportunities, and the provision of appropriate background and clinical information about CISC to prospective resource families. The board will issue a report to the Parties, Co-Neutrals, and Arbitrator regarding its activities and recommendations by December 31, 2026."

[10] RO#3 provides: "As validated by the Co-Neutrals, after October 2025, the State made substantial progress in ensuring that children in State custody ("CISC") receive a well-child visit ("WCV") within 30 days. Additionally, the Co-Neutral team's review demonstrates, and the State endorsed, the impact of increased coordination and communication between CYFD and HCA. The State reported that a team including leadership of CYFD, HCA and PHP meet every day to track WCVs for CISC, and that it would be beneficial for such meetings to continue. The Parties agree that CYFD and HCA should continue their strategy of meeting every day with PHP to ensure WCVs are completed timely. The State will notify the Co-Neutrals and Plaintiffs 30 days before making any substantive changes to its WCV compliance strategy, including changes in the frequency of meetings and changes to which entities participate in the meetings. The Parties agree that HCA will develop and disseminate guidance approved by the Co-Neutrals to providers detailing the elements of a comprehensive WCV, that includes guidance specific to CISC, by June 1, 2026. The Parties agree that CYFD, HCA, and PHP will outline for Plaintiffs and the Co-Neutrals by July 1, 2026 the process for the timely sharing of health information from providers, including the results of the WCVs, among the entities. The Co-Neutrals are invited to report to the Arbitrator by August 1, 2026, regarding the status of WCV compliance and the States' strategies regarding WCVs."

entity, and timeframe; and Care plan summary. The Co-Neutrals have not yet found that the State has implemented a process to ensure correct and complete WCV and other health information is shared with caregivers and caseworkers.

2. Regarding the State's Foster Care Plus-related obligations under RO#3, VII.B,[11] The State contends CYFD is continuing to develop and implement the Foster Care Plus program in collaboration with HCA. The State provided Plaintiffs with detailed information regarding Foster Care Plus including date of enrollment, status of the Pressley Ridge Training, and whether HFW is being provided. The State obtained the Co-Neutrals' approval of their 2026 annual Foster Care Plus target. However, Plaintiffs contend that CYFD and HCA have not fully demonstrated that CISC enrolled in Foster Care Plus are sufficiently accessing and utilizing available behavioral health services. While the State asserts it met the target for the number of children and youth enrolled in Foster Care Plus by the July 1, 2026 deadline, as August 28, 2026, the full target could not be validated. Only twenty children and youth were submitted by the State to the Co-Neutrals for validation.

3. HCA was required to consult with CYFD to develop and identify semiannual interim benchmarks and timelines to expand access to and utilization of TFC placements, mobile crisis services, intensive case management, HFW services, intensive home-based services, and trauma-based therapies (DBT, MST, CBT, FFT, EMDR). HCA was required to submit benchmarks to the Co-Neutrals by July 1, 2026 for approval. RO#3, VII.D.[12] On June 23, 2026, the State timely

[11] RO#3 provides: "The Parties agree that CYFD will continue to develop and implement the Foster Care Plus program, which will include expanded training and increased payment for resource families and enhanced delivery of services to the children served by those families. CYFD will provide the Plaintiffs, on an on-going basis, with detailed information regarding the training provided to the resource families, when it was completed, and when children were placed under the Foster Care Plus program. The Parties agree that CISC enrolled in Foster Care Plus must have expedited access to behavioral health services, and that adequate access to those services is lacking and will be addressed by CYFD and HCA, including tracking all children in Foster Care Plus who are not receiving HFW and the reason why they are not receiving the service. The Parties agree that CYFD will submit any information necessary to and obtain the Co-Neutrals' approval of the 2026 annual target for Foster Care Plus homes by March 31, 2026. The Parties agree that the State will satisfy the annual target by December 1, 2026 and, in the interim, will meet at least 50 percent of its annual target by July 1, 2026. The Parties agree that if the State does not meet either target, the State must show cause to the Arbitrator for its failure to do so."

[12] RO#3 provides: "To address the immediate needs for mental health services necessary to support foster care placements, HCA agrees to consult with CYFD to develop and identify semiannual interim benchmarks and timelines to expand access to and utilization of TFC placements, mobile crisis services, intensive case management, High Fidelity Wraparound services, intensive home-based services, and trauma-based therapies including Dialectical

submitted benchmarks to the Co-Neutrals for DBT, MST, CBT, FFT, EMDR and HFW. The TFC benchmark was subsequently clarified and sent to Co-Neutrals on August 19, 2026. The State contends that included in the August 19, 2026 submission to the Co-Neutrals were intensive case management, intensive home-based services and mobile crisis services. There was a benchmark included for mobile crisis. The intensive home-based service was described as not a "separately identifiable service." Intensive case management was included in HFW and the benchmark would mirror that service. However, in addition to the RO#3 requirement for specific benchmarks, the Final Settlement Agreement ("FSA") specifically requires intensive case management as a service separate from HFW and also requires mobile crisis services and intensive home-based services as separate and distinct services.[13] Plaintiffs contend the benchmarks have not been set and issues finalizing the methodology for the other benchmarks have slowed the Co-Neutrals' ability to report on them.

4. Regarding HCA's obligation to coordinate with PHP and CYFD on licensing and certification issues for TFC and MRSS providers and CANS assessment goals, RO#3, VIII(D),[14] on July 1, 2026, the State provided the Arbitrator, Plaintiffs, and Co-Neutrals with a report addressing TFC and MRSS licensing, certification, CANS processes.

5. Regarding CYFD's resource parent reimbursement-obligations under RO#3, VII.D,[15] on July 31, 2026, CYFD provided the Arbitrator, Plaintiffs, and Co-

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Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). HCA will submit their semiannual interim benchmarks and timelines to the Co-Neutrals by July 1, 2026 for approval. HCA agrees that HCA and PHP will coordinate with CYFD on licensing issues for TFC and MRSS providers and CANS assessment goals. HCA will include their description of these coordination efforts in the July 1, 2026 report."

[13] *See, e.g.,* FSA, App D.ITI1, and IT3 and App D. TO2.

[14] RO#3 provides: "HCA agrees that HCA and PHP will coordinate with CYFD on licensing issues for TFC and MRSS providers and CANS assessment goals. HCA will include their description of these coordination efforts in the July 1, 2026 report."

[15] RO#3 provides: "The Parties agree that within 30 days of proper submission for reimbursement, CYFD will pay all qualifying expenses owed to foster parents. CYFD will continue to include reimbursement information in foster parent monthly newsletters, including regarding processes for late submissions/payments. By August 1, 2026, the Parties agree that CYFD will establish written business practices that include monthly statements to foster parents itemizing all reimbursements requested and payments received. The Parties agree that CYFD will communicate this business practice to foster parents. CYFD will review the written business practices with the foster parent advisory board for comment and input, and will provide the written business practices to the Plaintiffs."

Neutrals with written business practices for resource parent reimbursements. As of August 28, 2026, the Co-Neutrals reported that CYFD's written practices "do not reference or clearly identify what resources parents should do when requesting reimbursement, who resource parents should communicate with, and how to troubleshoot issues," among other concerns. The Foster Parent Advisory Council will review and provide feedback on the business practices.

6. Regarding the State's TFC-related obligations under RO#3, IX,[16] HCA obtained the Co-Neutrals' approval of the 2026 annual target for TFC placements by March 31, 2026. In addition, HCA provided the Co-Neutrals with the information needed and obtained the Co-Neutrals' approval of the 2026 annual target for TFC placements by March 31, 2026, and HCA asserts it submitted reporting by the July 1, 2026 deadline. However, the Co-Neutrals reported in their August 28, 2026 report that the State only satisfied 19% of its 2026 target of 116 TFC placements between January 1 – May 1, 2026. The Parties disagree that the State is making continuous and continual progress.

7. Regarding the State's critical incident report ("CIR")-related obligations under RO#3, X,[17] CYFD and HCA met with Plaintiffs and Plaintiffs' counsel for one

[16] RO#3 provides: "The Parties agree that HCA must provide the Co-Neutrals with the information needed and obtain the Co-Neutrals' approval of the 2026 annual target for TFC placements by March 31, 2026. The Parties agree that the State will satisfy its annual target by December 1, 2026, will make continuous and continual progress in the interim, and by July 1, 2026 will report to the Co-Neutrals, Plaintiffs, and Arbitrator. The Parties agree that if the State does not meet the annual target, the State must show cause to the Arbitrator for its failure to do so. The Parties agree that HCA, CYFD, and PHP will track placement of children referred to TFC every two weeks. The tracking will include: placement prior to TFC referral, TFC referrals, denials and reasons for denials, delays and reasons for delays, a description of what alternative services were offered, and outcomes for each child. The leadership team will analyze the data to identify barriers to the provision of TFC service and make recommendations for improvement. The tracking data and documents identifying barriers and recommendations will be provided to the Co-Neutrals on request. The Parties agree that HCA will not allow PHP to change its utilization management method or medical necessity criteria to further restrict access to TFC for CISC. HCA will continue to provide technical assistance to applicants who do not initially meet federal criteria to be certified as a CCBHC, including providing tailored technical assistance to support the certification of potential CCBHCs with experience providing services to children."

[17] RO#3 provides: "The Parties agree that CYFD and HCA will meet with Plaintiffs and Plaintiffs' counsel for one day by May 1, 2026 to develop a plan to appropriately address Critical Incident Reports ("CIRs"). CYFD and HCA will provide their recommendations for a comprehensive CIR plan to the Co-Neutrals and the Plaintiffs in writing by April 1, 2026. The plan must include a method for tracking alleged perpetrators of abuse and neglect at congregate care placements. At the meeting, the Parties will collaborate to identify actionable recommendations and timelines to ensure:

day by May 1, 2026 to develop a plan to appropriately address CIRs. CYFD and HCA provided their recommendations for a CIR plan to the Co-Neutrals and the Plaintiffs in writing by April 1, 2026. The State contends the plan met most of the requirements of RO#3, however it does not yet address responsibility for psychotropic medication oversight. Plaintiffs contend the plan requires additional revision, including addressing 911 calls, seclusion, restraint and suicide attempts, and producing child specific responses and prevention and understand the State is actively updating the plan to include these items.

8. Regarding the State's obligations related to contracting with a child welfare expert under RO#3, X,[18] the State contracted with a child welfare expert who would

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• All stakeholders understand what CIRs must be reported under the agreement by the Parties entered on September 15, 2025, including reporting of restraint and seclusion.
• A method to confirm cross-CIR reporting between CYFD and HCA occurs for all congregate care placements.
• Current forms shall be revised to ensure and document all details needed to describe the incident, the people involved, safety plans, and services provided to the child.
• Current forms shall be revised to ensure and document safety assessment and response as to other children residing in the setting where a CIR took place.
• Current forms shall be revised and must document referrals to CYFD, HCA, PHP and law enforcement as needed.
• Current forms shall be revised to require documentation of follow up actions to be taken by the State to prevent future CIR incidents based on the allegations.
• Developing policies and procedures regarding chemical and physical restraints and ensuring that there is review of all restraints of CISC.
• Responsibility for reviewing and analyzing CIRs by CYFD and HCA.
• Responsibility for monitoring and follow up of restraint and seclusion data by child and facility to identify trends and where alternative strategies or increased monitoring are needed.
• Responsibility for implementing the State's policy on oversight of psychotropic medications."

[18] RO#3 provides: "The State will promptly contract with a child welfare expert who will assist the State to develop child-centered plans for identified children with a focus on identifying and meeting their needs through providing them with natural supports, services and least restrictive placement. This contractor will collaborate with community providers in Las Cruces, including FYI+, as well as CYFD and PHP staff in Las Cruces specifically chosen to support this planning project. Plaintiffs have identified Las Cruces as the location for this child centered planning project to reduce the need for congregate care placement. Importantly, this community actively participated in the Kevin S. Coordinated Action Pilot project, made substantive recommendations to improve their continuum of care for CISC, and has demonstrated a persistent commitment to supporting CISC. Finally, FYI+ has already forged relationships with schools and other community providers. In addition, CYFD, HCA and PHP will fund the work of professionals responsible for providing recommended services and supports and collaborating with the contractor as needed. Funds will be made available to flexibly create informal and community support services not readily available to support these children and youth. The

assist the State to develop child-centered plans for identified children with a focus on identifying and meeting their needs through providing them with natural supports, services and least restrictive placement. While the contracted expert had access to CYFD and HCA leadership, Plaintiffs assert the access provided was not sufficient to allow for "barrier busting" regarding the provision of services, as contemplated by RO#3, X.

9. The State agreed that children with developmental disabilities will not be placed in RTCs, except in extraordinary circumstances, as that term is defined under the FSA. HCA and CYFD met with ARCA and the University of New Mexico Center for Developmental Disabilities (CDD). The State contends actionable recommendations with timelines to place children with developmental disabilities in family-based settings with appropriate services such as evidenced-based therapies and assistive technology were made and were sent on June 1, 2026. There were 10 recommendations from the CDD, all but one had an expected completion date. To date, eight of these recommendations have been met. The remaining recommendations are in process. Plaintiffs contend the initial list of 10 recommendations demonstrate that the State needs to undertake additional activities to ensure that family-based placements for CISC with developmental disabilities are available.

C. <u>The Parties agree that CYFD and HCA have not complied with the following requirements of RO#3:</u>

1. By July 1, 2026, at least 50 percent of workers for all caseworker types were required to have caseloads compliant with the caseload standards for 2026. RO#3, V.

2. CYFD was required to obtain Co-Neutral approval of its report assessing the statewide continuum of community-based placements necessary to support CISC in the least restrictive environment. RO#3, VIII. CYFD submitted the report

contractor will also advise leadership on improving assessment processes designed to support stability for CISC. The contractor will have access to CYFD COO Brenda Donald, Deputy Secretary Kathy Kunkel, and HCA Medicaid Director Alanna Dancis as needed to address barriers. She will also have access to the Co-Neutrals as needed. By June 30 2026, the contractor will file a written report with the Arbitrator, the Co-Neutrals and the Parties explaining the children served by the project, the types of services and supports needed by the children and whether those services and supports were made available. They will identify any systemic barriers and may make recommendations for improvements in the system of care."

timely and continues to confer with the Co-Neutrals to attempt to secure approval.[19]

III. Disputed Areas of Compliance with RO#3

The Parties disagree on the status of the State's compliance with the following requirements of RO#3:

1. The State agreed that at least 30 days before PHP or the State executes any contract, certifies, licenses, or otherwise approves the opening of the Roya Health RTC or any other RTC, multiservice home, transitional home, receiving center, or any new congregate placement or expansion in congregate placements, the State would provide notice of such action to the Co-Neutrals and the Plaintiffs. RO#3, X.[20]

IV. Stipulated Remedial Order for Undisputed Areas of Compliance and Non-Compliance.

The Parties agree that the State will take the following actions:

A. Continued Data Collaboration Between the Parties, RO#3, I

1. The Parties agree that at an All Parties meeting held prior to June 1, 2027, the Parties will continue their discussions regarding data exchange between the parties, including sharing of current data and amending the FSA requirement for the State's Annual Report.

2. The Parties agree that 60 days after CYFD provides access to its new CCWIS data system to caseworkers, CYFD will provide the Arbitrator, Co-Neutrals, and Plaintiffs with a full report assessing any material adverse impacts the State is experiencing regarding its ability to track and report on *Kevin S.* commitments, including those in the Final Settlement Agreement, Memorandum of Understanding, and all Remedial Orders.

[19] Addressing the State's submitted plan, the Co-Neutrals' August 28, 2026 Report states, "We have determined that substantial revisions to the plan are necessary." Co-Neutrals' August 28, 2026 Report at 12.

[20] RO#3 provides: "The Parties agree that at least 30 days before PHP or the State executes any contract, certifies, licenses, or otherwise approves the opening of the Roya Health RTC or any other RTC, multiservice home, transitional home, receiving center, or any new congregate placement or expansion in congregate placements, the State will provide notice of such action to the Co-Neutrals and the Plaintiffs. If Plaintiffs request a status conference upon notice of any such actions, one shall be scheduled and held."

B. Well-Child Visits, RO#1, ¶ 7; RO#2, III.6 and IV.2.d; RO#3, III

1. The Parties agree that by November 16, 2026, the State will submit a written process with timelines addressing the timely sharing of health information, including the results of WCVs, between providers, CYFD, HCA, PHP, and resource families for approval by the Co-Neutrals.[21] The State will provide a copy of its written process to the Arbitrator and Plaintiffs.

C. CYFD Caseloads, RO#2, IV.2.a, RO#3, V

1. The Parties agree that by November 2, 2026, ninety percent of all workers of all types will have caseloads compliant with the Data Validation Plan caseload standards for 2026. RO#3, V.

2. The Parties agree that by March 31, 2027, at least 50 percent of all workers of all types will have caseloads compliant with the Data Validation Plan caseload standards for 2027 and by November 1, 2027, 90 percent of all workers of all types will have caseloads compliant with the Data Validation Plan caseload standards for 2027.

D. Care and Behavioral Support Specialists (CBSS), RO#2, III.9–10; RO#3, VI

1. The Parties agree that by November 16, 2026, CYFD will submit a plan with timelines that addresses: (a) filling gaps in CBSS staffing; (b) lack of an operating budget for CBSS; (c) improved referral processes; and (d) CBSS responsibilities regarding children in Foster Care Plus and congregate placements for approval by the Co-Neutrals.[22] CYFD will provide a copy of the plan to Plaintiffs.

E. Resource Family Recruitment and Retention, RO#2, IV.2.b

1. The Parties agree that the State will satisfy the Co-Neutral-approved 2026 annual target for non-relative resource family recruitment by December 1, 2026. RO#3, VII.A.

2. The Parties agree that CYFD will satisfy at least 30 percent of its 2027 annual target for non-relative resource family recruitment under the Data Validation Plan by March 31, 2027, and will satisfy the annual target by December 1, 2027.

F. Foster Care Plus, RO#3, VII.B

1. The Parties agree that the State will satisfy the 2026 annual target for Foster Care Plus homes by December 1, 2026. RO#3, VII.B.

[21] *See* Section IV.K.3.

[22] *See* Section IV.K.3.

2. The Parties agree that CYFD, in consultation with HCA on the availability and utilization of Foster Care Plus services, will submit any information requested by the Co-Neutrals for the Co-Neutrals to approve[23] a 2027 annual target for Foster Care Plus placements by December 15, 2026.. The Parties further agree that CYFD, in consultation with HCA, will satisfy the 2027 annual target approved by the Co-Neutrals by December 1, 2027, and in the interim, will meet at least 30 percent of that annual target by March 31, 2027.

3. The Parties agree that by November 2, 2026, CYFD and HCA will update the Foster Care Plus Program Implementation Guide and Manual, which shall provide written processes with timelines for children in Foster Care Plus and allow for information sharing between CYFD, HCA and PHP regarding Foster Care Plus and children in the program, and will address recommendations already made by the Co-Neutrals. The State will submit the proposed guide to the Co-Neutrals by November 16, 2026, for approval.[24] Once approved by the Co-Neutrals, the Guide will be agreed to in writing by CYFD, HCA, and PHP.

4. By October 1, 2026, HCA will inform the Arbitrator, Co-Neutrals, and Plaintiffs of the name and title of the HCA employee responsible for ensuring MCO service network adequacy and CISC utilization of services to support the Foster Care Plus program.

5. The Parties agree that by no later than December 31, 2026, CYFD, in consultation with HCA, will report to the Arbitrator, Co-Neutrals, and Plaintiffs the number of CISC referred to Foster Care Plus in 2026 and all required elements in the Foster Care Plus evaluation plan approved by the Co-Neutrals.

6. The Parties agree that, by no later than December 31, 2026, the State will: (1) develop and distribute written descriptions of mobile crisis services, intensive case management, HFW services, intensive home-based services, DBT, MST, CBT, FFT, and EMDR ("interim benchmark services") and TFC to case workers and will post the description on both CYFD and HCA websites; (2) HCA will ensure that PHP has met at once with each county office to go over the service descriptions and explain how to request the services; and (3) submit a proposed plan with implementation timeline to further improve referral and utilization of these services for CISC for Co-Neutral approval.[25] The plan will include a proposal to review CYFD's use and sharing or the CANS screening tool and in consultation with Praed will reverify the CANS algorithm. The plan will also

[23] *See* Section IV.K.3.

[24] *See* Section IV.K.3.

[25] *See* Section IV.K.3.

include additional proposed training for CYFD staff on referral of CISC for TFC placements and interim benchmark services.

G. Stakeholder Advisory Council, RO#3, VII.C

1. The Parties agree that CYFD will continue engaging its newly-established foster parent advisory council. The Parties agree that the council will issue a report to the Parties, Co-Neutrals, and Arbitrator regarding its activities and recommendations by December 31, 2026. RO#3, VII.C. The council will continue to recommend strategies to improve the foster parent experience and retention. In addition to the report due on December 31, 2026, the council will issue a second report to the CYFD Secretary describing the council's activities and recommendations by June 30, 2027. CYFD will promptly provide that report to the Arbitrator, Co-Neutrals, and Plaintiffs.

2. The Parties agree that within sixty days of receiving the reports from the council referenced in Section IV.G.1 above, CYFD will submit a report to the Arbitrator, Co-Neutrals, and Plaintiffs addressing the recommendations made by the council and either (a) commit to implement each recommendation with specific timelines or (b) provide a detailed explanation of why it is not doing so and any alternatives CYFD is considering in response to the recommendation.

3. The Parties agree that by December 1, 2026, CYFD, in consultation with HCA, will obtain Co-Neutral approval[26] of a written plan with timelines to establish a foster youth advisory council to obtain input directly from children and youth in foster care on a regular basis and consider implementation of changes based on that input.

H. Placement Support – Mental Health Services, RO#3, VII.D

1. The Parties agree that by December 1, 2026, HCA, in consultation with CYFD, will submit to the Plaintiffs and Co-Neutrals the State's definitions of intensive home-based services, mobile crisis services, and intensive case management. These definitions will allow the State, with Co-Neutral approval,[27] to develop semiannual interim benchmarks and timelines to expand access to and utilization of these services. If the State, Plaintiffs, and Co-Neutrals are unable to reach an agreement on these definitions by December 4, 2026, the Parties and Co-Neutrals may provide their proposed definitions to the Arbitrator by December 7, 2026, who will decide the definition.

[26] *See* Section IV.K.3.

[27] *See* Section IV.K.3.

2. The Parties agree that within 14 days of the definitions being finalized, HCA, in consultation with CYFD, will submit to the Co-Neutrals for approval[28] proposed 2026 semiannual interim benchmarks and timelines to expand access to and utilization of intensive case management, intensive home-based services, and mobile crisis services.

3. The Parties agree that by February 1, 2027, HCA, in consultation with CYFD, will submit all information requested by the Co-Neutrals for approval of 2027 semiannual interim benchmarks and timelines to expand access to and utilization of interim benchmark services. In accordance with the metrics used to assess implementation of the State's April 2025 Behavioral Health Care Workforce Development Review, the interim benchmarks will not require HCA to satisfy more than 90 percent of the total number of expected children to receive HFW/ICM/DBT/MST/TF-CBT/FFT/EMDR before December 1, 2027. If the 2027 semiannual interim benchmarks are not approved by the Co-Neutrals by February 15, 2027, a status conference will be immediately held to allow the Arbitrator to hear directly from the Parties and the Co-Neutrals and determine the benchmarks so the Co-Neutrals are able to report on the State's performance prior to the May 2027 status conference.

4. The Parties agree that HCA in consultation with CYFD will meet all 2026 and 2027 approved interim benchmarks and will utilize the methodology specified by the Co-Neutrals to track and report progress on all interim benchmarks.

5. The Parties agree that HCA in collaboration with CYFD will provide updates on the interim benchmarks in Section IV.H to the Co-Neutrals in writing prior to the existing monthly meetings with State leadership and Co-Neutrals. These updates will detail updates on how many CISC received each service by county of residence. The first meeting will be in December 2026.

6. The Parties agree that starting January 1, 2027, HCA will provide quarterly reports to the Co-Neutrals, and copied to Plaintiffs, detailing utilization of services by CISC through CCBHCs by county.

7. The Parties agree that CYFD and HCA will continue to assess the statewide continuum of community-based placements necessary to support CISC in the least restrictive environment, including incorporating the use of interim benchmark services and TFC to support CISC in the least restrictive environment. Within 60 days of the date of this Order, CYFD will revise their proposed plan titled, "Improving CYFD's Placement Array," dated June 30, 2026 to reflect feedback from the Co-Neutrals and resubmit it for Co-Neutral approval.[29]

[28] *See* Section IV.K.3.

[29] *See* Section IV.K.3.

8. Consistent with the metrics used to assess implementation of the State's April 2025 Behavioral Health Care Workforce Development Review, in 2027, CYFD and HCA will decrease by at least 15% the number of days all CISC spend placed in a Residential Treatment Center (includes in-state and out-of-state RTCs) during a 12-month period (comparing 7/1/2026-6/30/2027 with 7/1/2025-6/30/2026).

9. By December 1, 2027, CYFD and HCA will create a team of HCA and CYFD employees to transition children in out-of-state facilities into in-state placements in the least restrictive environment. The team shall include at least one person trained and experienced in HFW and individualized planning, a PHP representative with demonstrated expertise in providing services to CISC with complex behavioral needs, a person with expertise in providing services to CISC with developmental disabilities. The team will be informed who to contact at HCA and CYFD to address barriers to prompt placement in the least restrictive placement. CYFD and HCA will report on its progress by June 30, 2027.[30]

I. Treatment Foster Care (TFC) Placements, RO#2, IV.2c; RO#3, IX

1. The Parties agree that CYFD and HCA will continue to meet with TFC agencies to identify barriers and opportunities to improve TFC service. By December 31, 2026, the State will provide to the Arbitrator, Co-Neutrals, Plaintiffs, and TFC agencies a written summary highlighting insights gathered, including barriers and proposed solutions, and proposed next steps with timelines detailing any steps the State will take after considering the issues raised. The summary will also identify HCA and CYFD staff responsible for implementing such steps or otherwise addressing concerns.

2. The Parties agree that HCA will require PHP to contract with two new TFC agencies, with at least one new TFC agency operating by December 31, 2026 and the second operating by the end of Q2 of 2027. If any existing TFC provider stops providing services, HCA will require PHP to maintain their network adequacy, including contracting with other TFC agencies within six months so that the same number of CISC have access to TFC. HCA will ensure that the new providers will focus on children with high-acuity behavioral health needs and are licensed to serve CISC up to 18 years of age. HCA's Medicaid Director must approve any placement where a TFC provider who also operates a congregate facility refers a

[30] The RO#3 commitment that "at least 30 days before PHP or the State executes any contract, certifies, licenses, or otherwise approves the opening of the Roya Health RTC or any other RTC, multiservice home, transitional home, receiving center, or any new congregate placement or expansion in congregate placements, the State will provide notice of such action to the Co Neutrals and the Plaintiffs. If Plaintiffs request a status conference upon notice of any such actions, one shall be scheduled and held" remains in force and enforceable.

child to a more restrictive placement, and must notify the Co-Neutrals of any such approval within ten days.

3. The Parties agree that by December 31, 2026, CYFD, in consultation with HCA, will update the existing report submitted to the Co-Neutrals to include how many children are in each TFC home with a CISC.

4. The Parties agree that the State will satisfy its 2026 annual target for TFC placements by December 1, 2026. RO#3, IX.

5. The Parties agree that HCA and CYFD will submit any information necessary and obtain the Co-Neutrals' approval of 2027 interim and annual targets for TFC placements by December 15, 2026. The State will satisfy 30% of its annual target by March 31, 2027 and 100% of its annual target by December 1, 2027. At the May 2027 status conference, the State will report to the Co-Neutrals, Plaintiffs, and Arbitrator on its interim target performance.

J. Critical Incidents, RO#2, IV.4.a; RO#3, X

1. The Parties agree that by November 2, 2026, CYFD and HCA will submit a final proposal for a comprehensive CIR policy addressing each component outlined in RO#3 to the Co-Neutrals for their approval.[31] The Parties agree that the CIR policy will include clear policies and procedures regarding the use of chemical and physical restraints and seclusion for CISC and identify responsibility and oversight for implementing the State's policy on oversight of psychotropic medications for CISC.

2. The Parties agree that CYFD and HCA will provide the Co-Neutrals with semiannual reports on all reported allegations of abuse and neglect in congregate care settings. Such reports will include, if available, the status of an HCA licensing investigation of in-state facilities, disposition of the factual investigation, identification of the alleged perpetrator for in-state substantiated cases or note if the allegations were deemed unsubstantiated, and indication of whether the alleged perpetrator in an in-state investigation was identified in an employee abuse registry.

3. The Parties agree that by December 31, 2026 HCA will issue a small purchase contract in conformance with the New Mexico Procurement Code to contract with an expert on how to safely support children with challenging behaviors, address improper use of restraint and seclusion, and to make further recommendations about needed policy revisions based on a review of the State's policies. The expert

[31] *See* Section IV.K.3.

will provide a written report to the Arbitrator, Co-Neutrals, and Parties prior to the May 2027 status conference.[32]

4. The Parties agree that for children with developmental disabilities and autism spectrum disorder who are currently placed out-of-state, by November 16, 2026, HCA and CYFD will meet with the children's teams to develop plans with timelines to return each child to an in-state, family-based setting. CYFD agrees to protect the Constitutional rights of CISC with developmental disabilities to access the federally mandated Protection and Advocacy System by providing DRNM with the contact information of all CISC with developmental disabilities who are placed in congregate care out-of-state.

5. By April 1, 2027, HCA will submit the application to CMS to expand the DD Waiver to include family-living services for CISC.

K. Collaboration

1. The Parties agree that they will hold an All-Parties meeting in early- to mid-January 2027, before the 2027 Legislative Session begins. The Parties agree that there will be a status conference with the Arbitrator in May 2027 in order to assess the State's progress. The Parties also agree that there will be hearings on compliance under this Order scheduled in August 2027 and February 2028. The Parties agree that Plaintiffs may request other hearings with the Arbitrator under this Order, but no such hearing shall be requested prior to August 2027, unless it is a hearing specified under Section IV.K.2. Two weeks before any hearing, the Co-Neutrals are invited to submit to the Arbitrator and the Parties a report providing any information they deem necessary or appropriate for the Arbitrator to consider in assessing whether the State has made continual and continuous progress on the outcomes and directives set forth in this Order. The State will provide all information requested by the Co-Neutrals to assess compliance with this Remedial Order within the timeframes specified by the Co-Neutrals.

2. The Parties agree that, if the Co-Neutrals do not approve the State's submitted version of any plan or other deliverable required under this Order, the State will have 15 (fifteen) business days from the date of the Co-Neutrals' feedback to incorporate feedback provided by the Co-Neutrals and resubmit. If within 30 days of the State's resubmission or sooner, (a) the Co-Neutrals either (i) do not approve a re-submitted deliverable, or (ii) provide written notice to the Parties that they will not approve the resubmission, or (b) the State (i) declines to resubmit or (ii) allows the resubmission period to pass, then Plaintiffs may request a status conference or hearing with the Arbitrator on that deliverable. The Co-Neutrals may be heard at the hearing or status conference. Nothing in this provision bars

[32] The State will provide the September 2026 report produced by the child welfare expert specified in RO#3, X to the Arbitrator, the Co-Neutrals, and Plaintiffs without delay.

Plaintiffs from requesting a hearing or conference on any other deliverable contained in this Order.

V. Attorneys' Fees and Costs

The Parties will meet and confer regarding attorneys' fees and costs by October 15, 2026. If they cannot come to an agreement, they will present their positions to the Arbitrator.

Dated: September 18, 2026

Respectfully submitted,

PUBLIC COUNSEL
/s/ Tara Ford
Tara Ford
Katrina Landeta
610 S. Ardmore Avenue
Los Angeles, CA 90005
Office: (213) 385-2977
tford@publiccounsel.org
klandeta@publiccounsel.org

KEEGAN, RICHARDSON, SOLIMON & WEST, L.L.P.
/s/ Christina West
Christina West
Kayla Jankowski
7424 4th Street NW
Los Ranchos De Albuquerque, NM 87107
Office: (505) 842-6123
cwest@indiancountrylaw.com
kjankowski@indiancountrylaw.com

MARTINEZ, HART, SANCHEZ & ROMERO, P.C.
/s/ F. Michael Hart
F. Michael Hart
1801 Rio Grande Blvd. NW, Suite A
Albuquerque, NM 87104
Office: (505) 343-1776
mikeh@osolawfirm.com
Counsel for Plaintiffs

JACKSON LOMAN DOWNEY & STEVENS-BLOCK, P.C.

Eric Loman
Travis Jackson
201 Third Street, NW, Suite 1500
Albuquerque, NM 87102
eric@jacksonlomanlaw.com
travis@jacksonlomanlaw.com

Counsel for Defendants