

CO-NEUTRALS' 2023 ANNUAL REPORT

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



CO-NEUTRALS

Judith Meltzer Kevin Ryan

November 15, 2024



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



Kevin S., et al. v. Blalock and Scrase
Co-Neutrals’ Annual Report
January - December 2023

TABLE OF CONTENTS

I. Introduction	5
II. Executive Summary	10
III. Contextual Summary of Children in State Custody.....	17
IV. Discussion of Performance	25
<i>A. FSA Section VI: Process.....</i>	<i>25</i>
i. Data Validation Plan (DVP).....	25
ii. Production of Data	26
iii. Production of Reports	27
iv. Parties’ Meetings	27
<i>B. FSA Appendices</i>	<i>28</i>
i. Appendix A: Trauma-Responsive System of Care.....	28
ii. Appendix B: Least Restrictive and Appropriate Placements	59
iii. Appendix C: Indian Child Welfare Act	125
iv. Appendix D: Behavioral Health Services	148
V. Appendix.....	167
A. List of Acronyms.....	167

LIST OF TABLES

Table 1: Children in State Custody at Any Point and on December 31 in 2019 – 2023	17
Table 2: Children Entering and Exiting State Custody in 2023	17
Table 3: Race, Ethnicity, and Tribal Affiliation Status of Children in State Custody on December 31, 2023	19
Table 4: Placement Type for Children in State Custody on December 31, 2021 – 2023	20
Table 5: Regional Distribution of Case Region and Placement Region for Children in State Custody on December 31, 2023.....	22
Table 6: Federal Permanency Goals for Children in State Custody on December 31, 2021 – 2023	23
Table 7: Exits from State Custody by Exit Type in 2023	24
Table 8: Screenings Completed for Children in State Custody for Episodes Longer Than 45 Days, 2023.....	31
Table 9: Overall Quality of Practice Ratings for Completed CANS Screenings, 2022 - 2023.....	35
Table 10: Days Between a Child’s Entry and CANS Completion	40
Table 11: CANS Algorithm-Based Service Recommendations on Completed CANS Screenings, 2023.....	44
Table 12: Children who Received at Least One Session of HFW, MST, MCR, or FFT, 2019 – 2023	46
Table 13: Number of Children Expected to Use Specific Services Compared to Actual Service Use, 2023	46
Table 14: Trauma-Responsive Training Received in 2023 by CYFD and HCA Employees	50
Table 15: Completed and Required IPPs for Resource Home Placements in 2023, by Month	55
Table 16: Children with any Placement to a Hotel/Motel, Office, or Out-of-State Facility, 2019 – 2023.....	61
Table 17: Placements to Hotel/Motel, Office, and Out-of-State Facility by Month, 2023.....	62
Table 18: Length of Stay of Office Placements Reviewed in 2023.....	65
Table 19: Number of Out-of-State Facility Placements that Met Extraordinary Circumstances and Medical Necessity by Month in 2023	67
Table 20: Completed and Required Joint Clinical Review Meetings for Out-of-State Residential Placements in 2023, by Month	70
Table 21: Documented Participants in Completed Joint Clinical Review Meetings, January – December 2023	72
Table 22: Worker Visits to Children Placed Out-of-State, Required and Completed, January – December 2023	75
Table 23: Discharge Plans Required and Completed January – December 2023	78
Table 24: Completed and Required Reviews for Clinical Congregate Placements in 2023, by Month	81

Table 25: Documented Participants in Completed IPP Meetings for Children Placed In-State Clinical Congregate Care Placements, January – December 2023	85
Table 26: Completed and Required Reviews for Non-Clinical Congregate Placements in 2023, by Month	87
Table 27: Completed and Required Reviews for Shelter Placements in 2023, by Month.....	91
Table 28: Children with Placements to Settings Other Than Licensed Foster Homes, 2019 – 2023	94
Table 29: Children with Placements to Foster Homes Not Licensed at Time of Placement in 2019 – 2023	95
Table 30: Distribution of the Number of Placements to Settings Other Than Licensed Foster Homes Per Child in 2023	95
Table 31: New Active Non-Relative Resource Homes Recruited in 2023, by Placement Status.....	97
Table 32: New Active Non-Relative Resource Homes Recruited in 2023, Statewide and by County	98
Table 33: New Active Non-Relative Resource Homes Recruited in New Mexico in 2023 with At Least One Non-Relative Placement, by Race and Ethnicity	99
Table 34: New Active Non-Relative Resource Homes Recruited in New Mexico in 2023, by Month License was First Active and Effective.....	100
Table 35: New Treatment Foster Care (TFC) Placements in 2023	103
Table 36: Number of New TFC Placements Per Child in 2023	104
Table 37: Duration of New TFC Placements Made in 2023	104
Table 38: Number of New TFC Placements Made in 2021 – 2023.....	105
Table 39: Children Placed with Relatives or Fictive Kin on December 31, 2019 - 2023.....	108
Table 40: Number of Placement Moves and Person-days, 2019-2023	109
Table 41: Number of Placement Moves and Person-days in 2023, by Race/Ethnicity and ICWA Eligibility.....	110
Table 42: Children Who Reached Permanency of Those Who Had Been in Care Between 12 and 23 Months, 2019 – 2023.....	112
Table 43: Age at Exit and Custody End Reason for Children Who Reached Permanency in 2023	113
Table 44: Individuals Assigned as Primary on Any Case, by Compliance with Caseload Standard	118
Table 45: Summary of Cases by Category of Assigned Worker and Type	120
Table 46: Voluntary Turnover Rate for Protective Services Workers, 2019 – 2023.....	121
Table 47: Length of Tenure Before Termination for Eligible Employees, in 2023	121
Table 48: ICWA-Eligible Children Who Received At Least One TMB in 2023, by MCO	133
Table 49: Number of Native American Children Who Received at Least One Payment and/or Reimbursement for Cultural Activities (including TMBs) in 2023.....	134
Table 50: Number of Children in Non-IFPA-Preferred Placements in 2023 and Placements Made After December 1, 2020, by Total Days Spent.....	140

Table 51: Number of Required and Completed Reviews for Non-IFPA-Preferred Placements, by Month, in 2023.....	141
Table 52: Percent of Timely Well-Child Checkups in 2023, by Race/Ethnicity and ICWA-Eligibility.....	163

LIST OF FIGURES

Figure 1: Age of Children in State Custody on December 31, 2023	18
Figure 2: Length of Current Episode in Care for Children in State Custody	21
Figure 3: Difference in CANS Screening Test-Retest Scores, 2023	34
Figure 4: Timely Completion of CANS Screenings, by Episode	39
Figure 5: Eligible Episodes of Custody During Which a Child Received at Least One Follow-up Assessment, 2019 – 2023	42
Figure 6: Attendees of Completed Joint Clinical Review Meetings, January 2022 – December 2023	71
Figure 7: Total Number of Resource Homes with Active Effective Licenses by Month and Type, 2021 – 2023	101
Figure 8: Percent of Children in State Custody Who Received a Well-Child Checkup Within 30 Days of Entry into Care, 2019 – 2023.....	160
Figure 9: Percent of Children in State Custody Who Received a Well-Child Checkup Within 30 Days of Entry into Care in 2023, by Month	161
Figure 10: Number of Days Between Entry into Custody and Well-Child Checkup for All Entries Longer than 30 Days in 2023	162
Figure 11: Documentation of Required Well-Child Checkup Elements, 2023	164

I. Introduction

The *Kevin S., et al. v. Blalock and Scrase* (“*Kevin S.*”) lawsuit was filed in the U.S. District Court for New Mexico on September 22, 2018,^{1,2} on behalf of a class of children in the custody of New Mexico’s child welfare system (“Plaintiffs”) by Disability Rights New Mexico,³ the Native American Disability Law Center,⁴ Public Counsel, Pegasus Legal Services for Children, and associated counsel. The Defendants in the lawsuit include State officials responsible for administering and supervising New Mexico’s child welfare system – Children, Youth, and Families Department (CYFD) – and the system responsible for delivery of Medicaid services for eligible children as well as other behavioral health services for adults, children, and their families – Health Care Authority (HCA).⁵ Following months of negotiations among the *Kevin S.* parties, on March 17, 2020, the parties executed a Final Settlement Agreement (“FSA,” also referred to herein as “Agreement”),⁶ and on March 26, 2020, filed a Joint Stipulation of Dismissal⁷ of the lawsuit. In reaching this Agreement, the parties acknowledged their mutual commitment to the development of a trauma-informed system of care that meets the needs of New Mexico’s diverse children and youth and their families.⁸

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

¹ Case 1:18-cv-00896, Dkt. No. 1.

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

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

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

⁵ On July 1, 2024, the New Mexico Health Care Authority (HCA) was formed; it consolidated within it the following agencies: Human Services Department (HSD), the State Employee Benefits team from the General Services Department, the Developmental Disabilities Supports Division, and Division of Health Improvement from the Department of Health. HCA maintains the functions HSD held relevant to *Kevin S.*, and will be referenced throughout the remainder of this report. Additional information about HCA can be found [here](#).

⁶ Exhibit A to the Joint Stipulation of Dismissal. (Dkt. No. 62)

⁷ Dkt. No. 62.

⁸ Shortly after the parties executed the FSA, the Covid-19 pandemic had a significant and unforeseeable impact on the State and nation. The parties agreed to extend by 180 days the deadline for compliance with a significant number of commitments originally scheduled to be completed on December 1, 2020. FSA IV, B states, “The parties have negotiated specific completion dates for each Implementation Target and Target Outcome. Defendants agree to adhere to these deadlines. The parties may not modify, amend or extend these deadlines other than by mutual consent in writing.”

Specifically,

- Appendix A, titled *Trauma-Responsive System of Care*, requires CYFD and HCA to make good faith efforts to achieve substantial and sustained progress toward the development and support of a trauma-responsive system of care for all children in state custody.
- Appendix B, titled *Least-Restrictive and Appropriate Placements*, requires CYFD and HCA to make good faith efforts to achieve substantial and sustained progress toward the development of a system for placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment.
- Appendix C, titled *Indian Child Welfare Act*, requires CYFD and HCA to make good faith efforts to achieve substantial and sustained progress to serve Native American children and families, build a relationship with each of the New Mexico Tribes and Pueblos,⁹ and comply with the Indian Child Welfare Act in its letter and intent.
- Appendix D, titled *Behavioral Health Services*, requires CYFD and HCA to make good faith efforts to achieve substantial and sustained progress to build a statewide, community-based mental health system that all children and families will be able to access.

Each Appendix includes a set of Implementation Targets (ITs) and Target Outcomes (TOs) toward which the State committed to make good faith efforts to achieve substantial and sustained progress. The FSA defines ITs as process commitments that CYFD and HCA agreed to undertake as intermediary and necessary steps toward reaching TOs.¹⁰ The TOs are defined as performance commitments toward which CYFD and HCA agreed to make good faith efforts to achieve substantial and sustained progress in consideration for Plaintiffs' agreement to dismiss the *Kevin S.* litigation.^{11,12}

⁹ The FSA defines New Mexico Tribes and Pueblos to be inclusive of all Tribes, Pueblos, and Nations in New Mexico. The Co-Neutrals' use of this term within this report is consistent with the FSA definition.

¹⁰ ITs may not be monitored once they have been achieved. Pursuant to the FSA, if the Co-Neutrals find that the Defendants have met the Performance Standard for a specific IT, the IT will not be reassessed in further reports. (FSA, pg. 8)

¹¹ The Co-Neutrals must monitor each TO until the State has met the Performance Standard continuously for a period of at least 24 months. (FSA, pg. 8)

¹² "When the Co-Neutrals certify that Defendants have met the Performance Standard for an IT or have met the Performance Standard for a TO for a continuous period of no less than 24 months, the Co-Neutrals may certify that Defendants have done so and may declare that the IT or TO is no longer subject to monitoring in the Co-Neutrals' reports. Once an IT or TO is no longer subject to monitoring, it is severable from the rest of the Agreement for the purpose of determining expiration of the Agreement." (FSA, pg. 10)

Implementation of the State’s obligations within the FSA are validated and monitored by two Co-Neutrals. The parties appointed Judith Meltzer¹³ and Kevin Ryan¹⁴ to serve in this role.¹⁵ The Co-Neutrals function in a neutral capacity, and have the authority to validate, evaluate, and audit progress toward achievement of the Performance Standard for ITs and TOs. The Co-Neutrals are also responsible for assessing and providing approval of certain policies, plans, and efforts the State must complete related to specific ITs and TOs, as identified in the FSA.

The primary accountability mechanism for validating, evaluating, and auditing the State’s progress is through issuance of public reports. Pursuant to the FSA, the State and Co-Neutrals are each required to produce a baseline and subsequent annual reports to assess CYFD and HCA’s achievement of ITs and TOs. The parties agreed to amend the FSA to provide that CYFD and HCA were not required to produce or publish a written report in 2024 for the assessment period of 2023.¹⁶

This report – authored by the Co-Neutrals – assesses and, where possible, validates the 2023 data and information produced by the State, and documents the Co-Neutrals’ determinations whether the State has met the Performance Standard for ITs and TOs in 2023. The FSA defines the Performance Standard as,

making good faith efforts to achieve substantial and sustained progress toward achieving the Implementation Target or Target Outcome. A finding of good faith efforts to achieve substantial and sustained progress toward achieving the Implementation Target and Target Outcome shall be based on whether Defendants have made all reasonable efforts to achieve each Implementation Target or Target Outcome. This standard is not intended to assess Defendants’ subjective intentions, plans, or promises.¹⁷

The FSA also describes the information the Co-Neutrals should consider when assessing the State’s efforts against the Performance Standard and the factors the Co-Neutrals should apply, including consideration of the FSA’s goals and prefatory language in each Appendix.¹⁸ Ultimately, ITs and TOs are meant to collectively strengthen the agencies’ practices, processes, and infrastructure, and

¹³ Judith Meltzer is a Senior Fellow at the Center for the Study of Social Policy, a national non-profit policy organization that connects community action, public system reform, and policy change to create a fair and just society in which all children and families thrive. Ms. Meltzer has been appointed as court monitor or has served as a member of a technical assistance team in other state and federal class action lawsuits involving child welfare systems, including in Washington DC, New Jersey, Tennessee, South Carolina, Kansas, and Humboldt County, CA.

¹⁴ Kevin Ryan is the former commissioner of the New Jersey Department of Children and Families, former New Jersey State Child Advocate, and, through Public Catalyst, supports U.S. District Court Judges overseeing child welfare reform across the country.

¹⁵ Pamela Hyde was appointed as a third Co-Neutral and retired from this role in December 2022. In January 2023, the parties agreed to amend the FSA to provide that Kevin Ryan and Judith Meltzer would serve as the two Co-Neutrals referenced in the Agreement and that a third Co-Neutral was not required.

¹⁶ This agreement does not negate the State’s obligation to produce annual reports for future assessment periods.

¹⁷ FSA, pgs. 2-3.

¹⁸ FSA VI, C.

in turn, improve outcomes for children and families served by CYFD and HCA. As required by the FSA, the Co-Neutrals have applied the FSA definition of the Performance Standard in this report to assess the State's 2023 performance.

A. Report Structure

The report is structured as follows:

- Section I outlines the *Kevin S., et al. v. Blalock and Scrase* complaint, subsequent Agreement, the definition and role of the Co-Neutrals, and provides sources of information used and activities completed by the Co-Neutrals to prepare and compile this report.
- Section II summarizes the State's progress on *Kevin S.* commitments due by December 2023.
- Section III provides an overview of the demographics of children in state custody in New Mexico during 2023.
- Section IV discusses the State's performance on each of the FSA commitments due by December 2023, organized by the Agreement's subject area Appendices.

B. Methodology

During this period, the Co-Neutrals and their staff held regular meetings and communicated with the Secretaries of CYFD and HCA, the agencies' leadership teams and staff, and provided feedback to the State on certain efforts and work relevant to each commitment. In September 2023 and January 2024, the Co-Neutrals met in New Mexico with scores of CYFD staff serving 12 counties across the state, Tribal leadership from several Pueblos, community providers, and state officials to further inform the Co-Neutrals' understanding of the State's performance and their efforts in 2023. Throughout 2023 and 2024, the Co-Neutrals also met with the Plaintiffs' team, community advocates, private providers, Tribal representatives, and resource parents.^{19,20} In 2023, members of the Co-Neutral team also participated in two CYFD New Employee Training (NET) sessions – the

¹⁹ Following the release of the Co-Neutrals' November 15, 2022 Report, on January 6, 2023, the Plaintiffs invoked the FSA Dispute Resolution process. The Co-Neutrals mediated discussions between the parties in March through June 2023. The resulting agreement – Corrective Action Plan (CAP) – is referenced throughout this report and can be found [here](#). The Co-Neutrals also participated in a facilitated listening session with Nations, Pueblos, and Tribes in New Mexico on May 10, 2023, and observed a Tribal roundtable discussion in follow up to the listening session between the State and Nations, Pueblos, and Tribes in November 2023 which included Plaintiff participation and Co-Neutral attendance.

²⁰ In August and September 2024, the Co-Neutrals conducted visits to CYFD county offices and met with caseworkers, supervisors, and managers whose work covered at least 10 counties, visited a congregate care facility, met with staff from the Office of Tribal Affairs (OTA), leadership and care coordinators from the MCO for children in state custody, and with state officials to further inform the Co-Neutrals' understanding of the State's performance and efforts in 2023 and 2024.

one-day Child and Adolescent Needs and Strengths (CANS) training, and the three-day Individualized Planning Process (IPP) training.

The Co-Neutrals and their team worked closely with the State's data team and program leadership to identify and refine the guidelines for data validation and data handling described in the Data Validation Plan (DVP).²¹ They also reviewed, analyzed, and validated demographic data about children served and performance data submitted by the State. The Co-Neutral team worked independently and with State staff to develop qualitative instruments for some metrics and to collect 2023 performance data for several TOs.

The IT and TO Performance Standard determinations in this report assess CYFD and HCA's performance in 2023. The FSA dictates the period of assessment for each annual report; specifically, this report – due by November 15, 2024 – assesses the State's performance from January 1, 2023 to December 31, 2023.

The Performance Standard determinations are solely based upon the State's efforts to achieve substantial and sustained progress in 2023, even though comments regarding some commitments completed in 2024 are included in this report. The Co-Neutrals' next report – due by November 15, 2025 – will discuss and assess the State's performance in 2024.

²¹ The DVP is discussed in more detail in Section IV.A.i. of this report.

II. Executive Summary

This is the fourth *Kevin S.* report produced by the Co-Neutrals on the State's efforts to achieve the commitments of the FSA. The FSA was structured with Implementation Targets (ITs) due to be completed in the first years of the reform as the foundation for improved outcomes to be completed in subsequent years (Target Outcomes, TOs) for New Mexico's children, youth, and families. The State has previously met the Performance Standard for all the ITs in Appendix A and B of the FSA. Of the remaining eight ITs in Appendix C and D, CYFD and HCA²² did not meet the Performance Standard for any by December 31, 2023. The State met the Performance Standard for two (5%) of the 39 TOs due in 2023.²³ The two TOs that were met in 2023 involve the number of children placed with kin (App. B, TO 7.1),^{24,25} and the timeliness to permanency for children who were in care 12 to 23 months (App. B, TO 9.1). For the 37 TOs and eight ITs where the State did not meet the Performance Standard in 2023, the State's performance worsened in the second half of the year in most instances.

In January 2023, HCA Secretary Scrase retired, and Kari Armijo was named as Acting Secretary; she was later confirmed by the Senate as Cabinet Secretary for HCA in February 2024. CYFD experienced similar leadership changes. On May 1, 2023, Secretary Barbara Vigil resigned as CYFD Secretary – a position she had held since August 2021. Teresa Casados was named as Interim Secretary and was confirmed by the Senate as Cabinet Secretary for CYFD in January 2024. Throughout 2023, there were at least three different CYFD Protective Services Division (PSD) Directors or Acting Directors.

The discussion below summarizes the State's performance on agreements in each FSA Appendix.

²² On July 1, 2024, the New Mexico Health Care Authority (HCA) was formed; it consolidated within it the following agencies: Human Services Department (HSD), the State Employee Benefits team from the General Services Department, the Developmental Disabilities Supports Division, and the Division of Health Improvement from the Department of Health. HCA maintains the functions HSD held relevant to *Kevin S.*

²³ In 2022, the State met the Performance Standard for four TOs that required development of Plans. Specifically, ATO4.1 – *IPP Plan*; ATO5.1 – *QAIEP Plan*; BTO10.1 – *CYFD Workforce Development Plan*; and CTO5.1 – *ICWA/IFPA Training Plan*. TOs are monitored until the Defendants have met the Performance Standard continuously for a period of at least 24 months.

²⁴ This TO was also met in 2022; performance was based upon all entries into care in 2022. The Co-Neutrals have assessed that the State met the Performance Standard for BTO7.1 for a continuous period of 24 months and that this TO is no longer subject to monitoring in the Co-Neutrals' reports.

²⁵ This commitment includes placement with relatives and fictive kin. Fictive kin is defined in CYFD's Licensing policy # 011, titled "*Relative and Fictive Kin Home Study*" as "a person (1) not related by birth, adoption, or marriage with whom the child has an emotionally significant relationship; (2) who is not a relative or an extended family member of an Indian child and who has a significant, family-like relationship with the Indian child or child's family, which relationship existed prior to the child's entry into foster care; (3) who meets the identification of 'fictive kin' as established by an Indian child's tribe's law, custom, or tradition; or (4) chosen by an Indian child who is 14 years of age or older, regardless of when the relationship between the person and the Indian child was established, when it is in the best interest of the Indian child to identify that person as fictive kin.

Appendix A – Trauma-Responsive System of Care

Appendix A commits the State to building a trauma-responsive system of care to ensure children's needs and strengths are identified as early as possible, and to build out trauma-responsive services such that children can receive the supports they need without unreasonable delay. One of the primary commitments of Appendix A is for the State to establish and implement Child and Adolescent Needs and Strengths (CANS) and Crisis Assessment Tool (CAT) screening tools to identify children in need of further trauma-responsive, community-based services. The findings and data from these screenings should be used to develop a child's case plan, and are also expected to be used by HCA to project and estimate children's behavioral health service utilization needs. Data provided by the State show that in 2023, 22 percent of applicable children received a CAT screening as required, and 39 percent of applicable children had a CANS screening completed during the year. Fifty percent of children in custody in 2023 received no completed CAT or CANS screenings.

The FSA requires that children receive timely follow-up assessments as indicated in a CAT or CANS screening or through other means. Quantitative data for 2023 show 38 percent of applicable children²⁶ received any type of follow-up assessment in 2023; this is the lowest percentage of service referrals for needed assessments reported by the State across the last five years.

Appendix A also commits the State to create a trauma-responsive system to reduce the experience of trauma for children and families served, as well as for the child welfare and behavioral health workforce. The Co-Neutrals approved the State's Trauma-Responsive Training and Coaching Plan in 2022. The State's data shows that 87 percent of CYFD staff and 76 percent of applicable HCA staff completed trauma-responsive training by the end of 2023.²⁷

In 2022, the Co-Neutrals approved the State's Individualized Planning Process (IPP) Plan. The Plan is based on New Mexico's Practice Model, which integrates principles of a trauma-responsive approach; community-based therapeutic supports; cultural connections and Tribal sovereignty; youth and family voice and choice; team-based, collaborative decision-making; continual professional growth and development; and cultural humility practice. Quantitative and qualitative data for 2023 show that the Plan has not been implemented as designed, and has not resulted in its desired outcomes. Few IPP meetings were completed as required. For example, 11 percent of 90-day reviews for children in resource homes were timely completed in 2023. Progress toward successful implementation of the Plan has been further hindered by CYFD's understaffed and

²⁶ Only children with completed CAT or CANS screenings are included in this metric. Additional information can be found within this report in the discussion of App. A, TO 1c.

²⁷ In conversations between the Co-Neutrals and CYFD staff throughout 2023 and 2024, staff reported feeling that there needs to be a stronger emphasis on staff wellness and the impacts of secondary trauma, especially as staff are providing care for children in state custody who are staying in CYFD offices. Staff reported needing more trauma-informed de-escalation training, as well as more specific guidance on what to do when a child is experiencing a behavioral health or trauma-related crisis.

overburdened workforce, inadequate communication to the field about the purpose and utility of these meetings, delays in incorporating the IPP Plan into CYFD’s policies and procedures, and a lack of community resources to support case plan development during meetings. The Co-Neutrals recommend CYFD reexamine the original IPP Plan to determine whether revisions are necessary to streamline the number and types of required meetings for children, better ensure that staff have the skills and support needed for the meetings, and to provide additional clarity to staff on their purpose and expected outcomes.

Finally, due to substantial turnover among executive and managerial leaders in both agencies in 2023, CYFD and HCA did not fully implement their approved Quality Assurance, Improvement, and Evaluation Plan (QAIEP) in 2023. The Plan requires the State to develop internal capacity and cross-departmental coordination between the agencies to implement a framework for quality improvement, and identify key practice metrics to assist in identifying where CYFD and HCA policies and processes are working successfully, and identify where policy and practice need to be improved. Quality data management and improvement processes are an integral part of building a trauma-responsive system. The State has expressed a desire to reinvigorate efforts toward this commitment.

Appendix B – Least Restrictive and Appropriate Placements

Appendix B requires CYFD and HCA to build a system for placing children in out-of-home care in stable, safe, appropriate community-based placements in the least-restrictive environment, and for CYFD to have a workforce with adequate qualifications, skills, and numbers of personnel. The State met the required Performance Standard for two Appendix B TOs – placement with kin and achieving permanency for children in care 12 to 23 months. The State’s performance with respect to placement with kin was especially strong; the percentage of children placed with kin increased from 31 percent in 2019 to 50 percent in 2023. Overall in 2023, however, the State’s performance toward most of the Appendix B commitments declined.

In 2023, substantial staff vacancies persisted, and CYFD stopped routine hiring for case-carrying workers and supervisors between May 2023 to September 2023. Once routine hiring began again in September 2023, many staff reported to the Co-Neutrals that the training academy was not able to accommodate the influx of caseworkers needing New Employee Training (NET), which created delays in new staff receiving training, and in turn, their ability to begin assisting with caseload assignments. In the second half of 2023, CYFD rolled out a reorganization – the Pillar system – at a time of significant organizational instability. The Pillar system emphasizes specialization in practice areas; the reorganization at that time also transferred Human Resources (HR) tasks to designated HR staff and financial tasks to an Administrative Services unit. However, implementation of the Pillar system was widely described by scores of CYFD staff across New Mexico as causing greater divisions among staff and stretching managers across larger geographical distances that have proved difficult to oversee effectively. Of the 81 voluntary terminations of

caseworker staff in 2023, 55 percent of the staff had been employed for less than one year, and 29 percent had been employed for one to three years.

Excessive caseloads in many offices are often cited by CYFD caseworkers as a barrier to child safety, quality work, and job satisfaction. As of January 5, 2024, 23 percent of staff assigned as primary on at least one case had caseloads compliant with the applicable caseload standards, and 34 percent of staff had caseloads above the applicable standards (this includes 19% of caseworkers whose caseloads were above 200% of the standard). Additionally, 73 (20%) of the 364 personnel assigned as a child's primary worker were, in fact, ineligible due to their roles, including 13 percent of the staff assigned as primary worker on at least one case who were supervisors and therefore not in a case-assignable role.

Inadequate placement capacity and array across New Mexico has had negative consequences for children, forcing many into settings prohibited by Appendix B. Only 129 new non-relative resource homes were recruited in 2023, well below the target of 190 homes set by the State in consultation with the Co-Neutrals. In fact, the total number of homes with a foster care, specialized foster care, or relative foster care license has not increased since 2021. Although the number of children in foster care declined each year between 2019 (2,212) and 2022 (1,719), the number rose to 1,942 children by December 31, 2023.

Most of the CYFD staff with whom the Co-Neutrals have spoken to in multiple offices throughout the state reported the ongoing responsibility of supervising children who are sleeping overnight in CYFD offices. In 2023, there was a sharp and alarming jump in the number of children being housed in offices, particularly in the second half of the year. There were 322 placements of children in offices in 2023, more than double the number of office placements in 2022 (139). Between July and December 2023, CYFD reports there were 52 critical incidents²⁸ involving children in CYFD county offices; most (88%) were 911 calls made by CYFD staff involving children housed in the offices. Many staff reported to the Co-Neutrals that children's behaviors when housed in the offices are negatively impacted by the conditions they are experiencing and the inattention to their needs. Staff report that they are not trained or supported to provide the care and support these children need to feel safe and stable, and as a result, their trauma and feelings of abandonment multiply.

The Co-Neutrals' qualitative review of 238 office placements in 2023 found that none (0%) included documentation that supported that the placement was made due to extraordinary circumstances necessary to protect the safety and security of the child, as required by the FSA. Nearly one-quarter (24%) of the office placements reviewed were the child's first placement upon entering care – up from 11 percent in 2022. This is another consequence of the ongoing and significant deficiencies in the State's placement array.

²⁸ The parties' June 2023 CAP defines critical incidents as any situation that results in either a 911 call, an allegation of harm, an allegation of abuse and/or neglect, an allegation of restraint/seclusion, or a change in licensure of a facility.

As part of a focused effort to reduce out-of-state placements of children, between January and April 2023, CYFD and HCA placed no new children in out-of-state facilities. However, beginning in May 2023, this progress reversed. In May 2023, the agencies placed three children in out-of-state congregate institutions, and additional new out-of-state placements continued each month through the end of the year. The FSA requires that a CYFD worker known to the child is required to visit children every month when they are placed out of state.²⁹ The Co-Neutrals found that 58 percent of required visits to children out of state were conducted by a worker known to the child, a decline from 2022 when 69 percent of required visits were conducted by a worker known to the child. There was also an increase in the percentage of required visits that were not documented as having been completed at all – from 17 percent in 2022 to 25 percent in 2023. Performance for the second half of 2023 shows nearly one-third (32%) of required visits were not documented as completed.

Appendix C – Services and Supports for Native Children, Families, and Tribes

CYFD’s Office of Tribal Affairs (OTA) and HCA began foundational work in 2023 toward many of the Appendix C commitments. In May and November 2023, the State organized and facilitated two listening sessions with New Mexico Nations, Pueblos, and Tribes to hear directly from Tribal leadership on how to address the needs of Native children in state custody. In response to the feedback received, CYFD has continued to develop processes to offer support in promoting traditional interventions and services to Native children in state custody, including how to provide payments for cultural connectedness activities. CYFD reports that this process was developed with input from Tribal representatives, and was piloted in June and July 2023.

Pursuant to federal and state law, CYFD has prioritized placing Native children with their families. To this end, the agency has established policy and procedures to conduct regular meetings and reviews of children not placed in accordance with the Indian Family Protection Act (IFPA)³⁰ placement preferences in order to identify and secure preferred placements for Native children.³¹ State data shows that approximately half (52%) of the ICWA-eligible children in care at any point

²⁹ Both CYFD’s current procedure (*Permanency Planning Procedures* (8.10.8 NMAC)) and PIG 01-2022-#3 – which was in effect in 2023 – require the following related to monthly visits, “If the decision is to place a child or youth in an out of state congregate placement, the PSD Worker or Supervisor must visit the child monthly to assess the child/youth’s safety and wellbeing and ensure the child/youth’s needs are being met. When that is impossible, the PSD Worker’s Supervisor may approve the monthly worker-child visit be conducted by a worker who has a relationship to the child/youth to assess the child/youth’s safety and wellbeing and ensure the child/youth’s needs are being met.” Over the last four years, the Co-Neutrals have had numerous conversations and written exchanges with the State to confirm alignment on the child’s primary PSD worker as the proxy for worker known to child, with documented exceptions as outlined in the procedure.

³⁰ The New Mexico Legislature passed IFPA in the 2022 legislative session, and Governor Michelle Lujan Grisham signed the bill into law on March 3, 2022. IFPA codifies into state law provisions of the federal Indian Child Welfare Act (ICWA).

³¹ IFPA provides for the following order of placement preference: (a) an extended family member of the Indian child; (b) a foster home licensed, approved or specified by the Indian child’s tribe; or (c) a foster home licensed or approved by a licensing authority in New Mexico in which one or more of the licensed or approved foster parents is Indian. Prior to placing a Native child in any placement, the primary PSD caseworker should consult with all Nations, Pueblos, or Tribes involved to determine their placement preferences.

in 2023 did not spend any time or spent less than a full day in a non-IFPA-preferred placement. For children who were placed in non-IFPA-preferred placements, the frequency of completing timely required staffings was lower than required but increased over the course of the year – from 18 percent in the first half of the year to 33 percent in the second half.

OTA has received additional positions to provide increased capacity to support and educate PSD staff in working with and serving Native children and families. This will allow for more accountability with processes to place children in IFPA-preferred placements, develop a Native resource home recruitment and retention plan, and ensure Native children and families are able to access traditional and cultural services and support as identified as appropriate by the child's Nation, Pueblo, or Tribe. OTA is also more routinely collecting data to monitor processes and outcomes for Native children, such as the number of Native children in IFPA-preferred placements and the timely provision of notice to Nations, Pueblos, and Tribes of CYFD initiating an investigation and the agency's intent to file a petition.³²

Appendix D: Behavioral Health Services

Appendix D of the FSA focuses on CYFD and HCA structuring and building out a statewide, community-based behavioral health system that will allow all children and families to have timely access to necessary services. A significant commitment in this Appendix is development of a Behavioral Health Workforce Development Review with the objective of supporting and expanding provider capacity throughout the state, describing the workforce necessary to meet FSA commitments, and identifying how HCA will work with Managed Care Organizations (MCOs) on increasing capacity to make available screenings, assessments, and services. As of December 31, 2023, the State did not have a Behavioral Health Workforce Development Review that was approved by the Co-Neutrals.³³ The Review is a foundational deliverable necessary to build or secure an adequate supply of behavioral health services for children in state custody. However, HCA worked on a number of fronts in 2023 that should impact the behavioral health workforce and service array in 2024. HCA engaged in a procurement process to determine the MCOs who would provide services for New Mexicans on Medicaid, and for the first time, HCA also solicited proposals for a single MCO to provide Medicaid services for all children in state custody.³⁴ In August 2023, HCA awarded the single MCO contract to serve children in state custody to Presbyterian Health Plan (PHP). The Turquoise Care contracts went into effect on July 1, 2024.

³² There is much work underway in 2024 that is not discussed within this report, which the Co-Neutrals anticipate will have an impact on outcomes in 2024 and beyond.

³³ In 2024, HCA collaborated with the Co-Neutrals and Presbyterian Health Plan (PHP) to develop a revised draft of the Review, which the Co-Neutrals advised the State to begin implementing while addressing minor remaining questions. The Co-Neutrals expect to approve the State's Review in 2024.

³⁴ Native children are able to decide whether they enroll with an MCO, and if so, they may choose their MCO. Additional information about Native children and Turquoise Care can be found [here](#).

State Medicaid billing data shows that in 2023, 100 children in state custody received High Fidelity Wraparound (HFW),³⁵ 21 received Multi-Systemic Therapy (MST), 1,242 received any type of Mobile Crisis Response (MCR), and one received Functional Family Therapy (FFT) interventions.³⁶ Utilization of these services was well below the expected service utilization projected by the State for 2023.³⁷

Well-child checkups when children enter or remain in state custody are essential to assess children's safety, needs and development, and identify issues that require follow-up treatment or monitoring. The State's data indicate well-child checkups occurred for 46 percent of all children who entered state custody in 2023 within 30 days of entering care, an increase from 44 percent in 2022. This remains an overall decline from the State's performance in 2019, 2020, and 2021, during which over 50 percent of children who entered custody received well-child checkups within 30 days of entry. Monthly performance in 2023 began increasing in August 2023 but declined in the final two months of the year. While the majority (81%) of children who entered custody in 2023 received a well-child checkup at some point after entering, most did not see a healthcare provider timely as the FSA requires.

³⁵ HFW became a Medicaid-billable service as of July 1, 2023, and was a grant-only funded service prior to that. The State did not provide the Co-Neutrals with data and information identifying children in state custody who received HFW through a grant-funded program, but it is possible that additional children received HFW between January – June 2023 who are not reflected in this total.

³⁶ FFT is identified as Functional Family Training in the FSA, however the intervention is largely known as Functional Family Therapy. Additional trauma-responsive services are identified in the FSA, however, data for utilization of those specific interventions were not available in 2023 or in prior years. Additional information can be found in discussion of App. A, TO 2 and App. D, TO 3 in this report.

³⁷ The State projected service utilization for all trauma-responsive services named in the FSA as part of their work to meet the commitment in App. D, IT 2 *Initial Expected Service Utilization*. The State's projected service utilization for 2023 was as follows: HFW – 776 children, MST – 205 children, MCR - 1,242 children, and FFT – 309 children. The State's expected service utilization document can be found [here](#).

III. Contextual Summary of Children in State Custody

Demographic data provided by CYFD on children in state custody during 2023 show that 2,944 children were in CYFD's PSD³⁸ custody at any time between January 1, 2023 to December 31, 2023.³⁹ As Table 1 illustrates, the total number of children in custody at any point during the reporting year, as well as the total number of children in custody on the last day of the reporting year, decreased each year between 2019 and 2022 and then increased from 2022 to 2023.

Table 1: Children in State Custody at Any Point and on December 31 in 2019 – 2023

	2019	2020	2021	2022	2023
Children in care at any point during reporting year	3,881	3,344	2,949	2,755	2,944
Children in care on Dec. 31	2,212	1,984	1,781	1,719 ⁴⁰	1,942 ⁴¹

Source: Analysis of Sandbox *Cohort*, *Cohort Jan1*, *Cohort Dec31*, *Cohort Entries* and *Cohort Exits* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/2024 (2023).

There were 1,715 children in state custody on January 1, 2023. During the year, there were 1,319 entries into care and 1,092 exits, leading to a total of 1,942⁴² children in state custody on December 31, 2023.

Table 2: Children Entering and Exiting State Custody in 2023⁴³

	Count
Children in care on Jan. 1, 2023	1,715
Entries during the year	1,319
Exits during the year	1,092
Children in care on Dec. 31, 2023	1,942

Source: Analysis of Sandbox *Cohort*, *Cohort Jan1*, *Cohort Dec31*, *Cohort Entries* and *Cohort Exits* files submitted 6/27/24.

³⁸ In 2023, CYFD was comprised of three divisions. These are the Protective Services Division (PSD), Juvenile Justice Services (JJS), and Behavioral Health Services (BHS). CYFD also had and is still developing its Office of Tribal Affairs (OTA).

³⁹ The Co-Neutrals' analysis is from 2023 *Cohort*, *Cohort Entries*, and *Cohort Exits* files submitted by CYFD on June 27, 2024.

⁴⁰ This includes 15 children who exited state custody on December 31, 2022.

⁴¹ This includes six children who exited state custody on December 31, 2023. Per the DVP definition of a placement, a child is considered to be in a placement on a given date if they are present in that placement at 3:00 am.

⁴² Ibid.

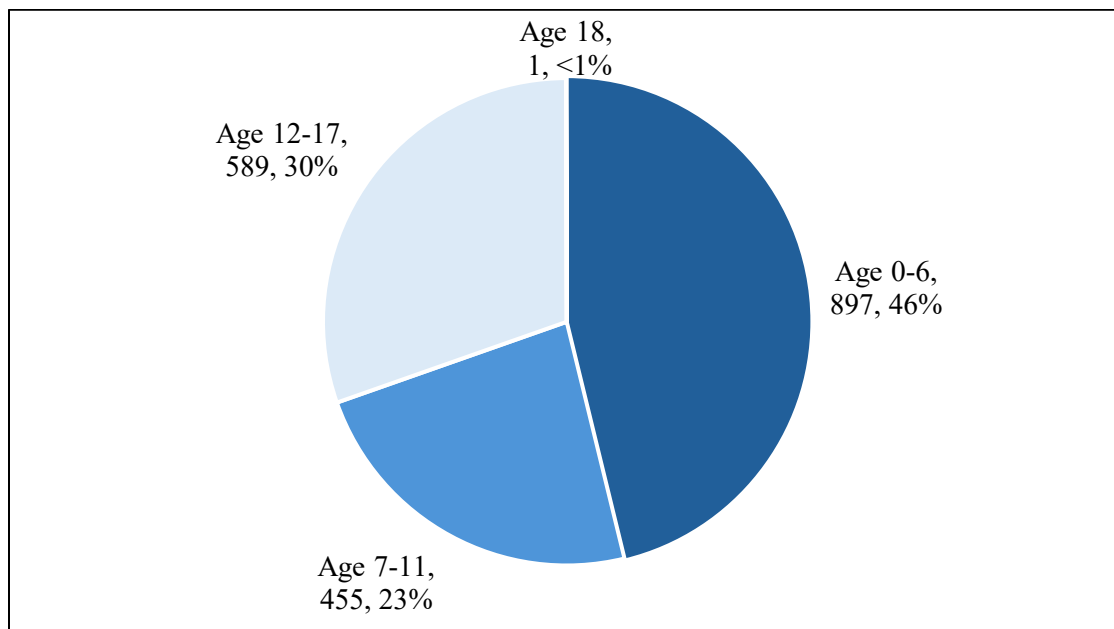
⁴³ The data include all entries and exits for children with multiple episodes of custody.

A. Age, Gender, and Race

As of December 31, 2023, children aged birth to six years made up the largest group of children in state custody (46%), followed by youth aged 12 to 17 years (30%), children aged seven to 11 years (23%), and one child who turned 18 on December 31 (see Figure 1). The age distribution was similar for each year from 2019 to 2023. In 2023, there were slightly more male (52%) than female (48%) children in state custody.

Figure 1: Age of Children in State Custody on December 31, 2023

N=1,942



Source: Analysis of Sandbox *Cohort Dec31* files submitted 6/27/24.

According to the State’s data, the distribution of children in state custody on December 31, 2023 by race and ethnicity was as follows: 61 percent (1,178) were of Hispanic ethnicity, 19 percent (374) were non-Hispanic White, seven percent (127) were non-Hispanic American Indian/Alaskan Native, five percent (89) were non-Hispanic Black/African American, two percent (42) were non-Hispanic multiracial, less than one percent (1) were non-Hispanic Native Hawaiian or Other Pacific Islander, less than one percent (1) were non-Hispanic Asian, and seven percent (130) were categorized as “Unknown”.⁴⁴ Of all 1,942 children, 89 percent (1,734) were not documented in FACTS⁴⁵ as having a Tribal affiliation, 206 children (11 percent) were documented as having a

⁴⁴ According to 2023 data from the US Census Bureau, 61 percent of children in New Mexico are Hispanic or Latino, 14 percent are American Indian or Alaska Native, and five percent are Black or African American. US Census Bureau, American Community Survey 1-Year Estimates for children under 18 years in New Mexico; categories are not exclusive.

⁴⁵ FACTS is CYFD’s system of record for managing children’s records of those involved with the department.

Tribal affiliation, and Tribal affiliation was not able to be determined for less than one percent (2) of children, as shown in Table 3.

Table 3: Race, Ethnicity, and Tribal Affiliation Status of Children in State Custody on December 31, 2023⁴⁶
N = 1,942 children

Race and ethnicity	Dec. 31, 2023	
	N	%
Hispanic (of any race)	1,178	61%
Non-Hispanic White	374	19%
Non-Hispanic American Indian or Alaska Native	127	7%
Non-Hispanic Black	89	5%
Non-Hispanic Multiracial	42	2%
Non-Hispanic Native Hawaiian or Other Pacific Islander	1	<1%
Non-Hispanic Asian	1	<1%
Unknown	130	7%
Tribal affiliation		
Tribal affiliation (No)	1,734	89%
Tribal affiliation (Yes)	206	11%
Tribal affiliation (Unable to Determine)	2	<1%

Source: Analysis of Sandbox *Cohort Dec31* files submitted 6/27/24.

B. Living Arrangements

On December 31, 2023, 85 percent (1,651) of children in state custody lived in family settings, including 44 percent (863) of children in relative and fictive kin resource families, 31 percent (611) of children in non-relative resource families, eight percent (161) of children in treatment foster care (TFC) homes (relative and non-relative), and less than one percent (16) of children in pre-adoptive homes. On December 31, 2023, five percent (92) of children lived in in-state congregate settings, and less than one percent (18) of children lived in out-of-state facilities,⁴⁷ as shown in Table 4.

⁴⁶ Percentages may not add up to 100 percent due to rounding.

⁴⁷ For purposes of this report, the Co-Neutrals classify the placements recorded as ‘Supervised Independent Living’ in FACTS as ‘congregate placements,’ subject to the ‘best interest’ determination in App. B, TO 4.1, unless there was information in the case record indicating the placement was to a non-congregate setting.

Table 4: Placement Type for Children in State Custody on December 31, 2021 – 2023

Setting	Dec. 31, 2021		Dec. 31, 2022		Dec. 31, 2023	
	N	%	N	%	N	%
<i>Children in Placements</i>	1,610	90%	1,570	90%	1,761	91%
<i>Family-Based Settings</i>						
Foster Family Home (Non-Relative)	578	33%	556	32%	611	31%
Foster Family Home (Relative & Fictive Kin)	696	39%	720	42%	863	44%
Treatment Foster Care (Non-Relative)	180	10%	155	9%	147	8%
Treatment Foster Care (Relative)	8	<1%	17	1%	14	<1%
Pre-Adoptive Family	51	3%	28	2%	16	<1%
<i>In-State Congregate Settings</i>						
Facility ⁴⁸	14	1%	16	1%	17	<1%
Emergency Shelter	16	1%	18	1%	13	<1%
Group Home	20	1%	17	1%	16	<1%
Community Home	14	1%	22	1%	28	1%
Hotel/Motel, Office, Receiving Center	2	<1%	0	0%	8	<1%
Supervised Independent Living	5	<1%	7	<1%	10	<1%
<i>Out-of-state congregate settings</i>	26	2%	14	1%	18	<1%
<i>Children Not in Placements</i>	171	10%	149	9%	181	9%
Trial Home Visit	89	5%	98	6%	84	4%
Runaway	46	3%	36	2%	57	3%
Temporary Absence	20	1%	0	0%	0	0%
Acute Hospitalization	8	<1%	7	<1%	5	<1%
Protective Supervision	6	<1%	4	<1%	4	<1%
Detention	2	<1%	4	<1%	4	<1%
Unknown ⁴⁹	0	0%	0	0%	27	1%
Total for all children in state custody⁵⁰	1,781	100%	1,719	100%	1,942	100%

Source: Analysis of Sandbox *Cohort Dec31* files submitted 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from FACTS *Episodes* file submitted 5/2/22 (2021). Findings for 2023 reflect adjustments informed by case record review of FACTS documentation conducted by the Co-Neutral team.

⁴⁸ Though FACTS captures information on hospital stays for children in state custody, acute hospitalizations are considered temporary absences, and – consistent with the definitions in the DVP – are not counted as placements. Acute hospitalizations are identified in the State data as any placement for a child who is under six years old at the time of placement with an "Institution Daily Rate" service type, and any placement with this service type that is 30 days or shorter for children six years or older. Stays for children six years or older with the "Institution Daily Rate" that are longer than 30 days are counted as placements subject to the congregate care medical necessity requirement (counted as "Facility" placements above).

⁴⁹ There were 27 children who appeared in the Sandbox *Cohort Dec31* file but whose last placement, according to the *Placements* data, ended before December 31, 2023, with no record of a subsequent placement.

⁵⁰ Percentages may not total 100 due to rounding.

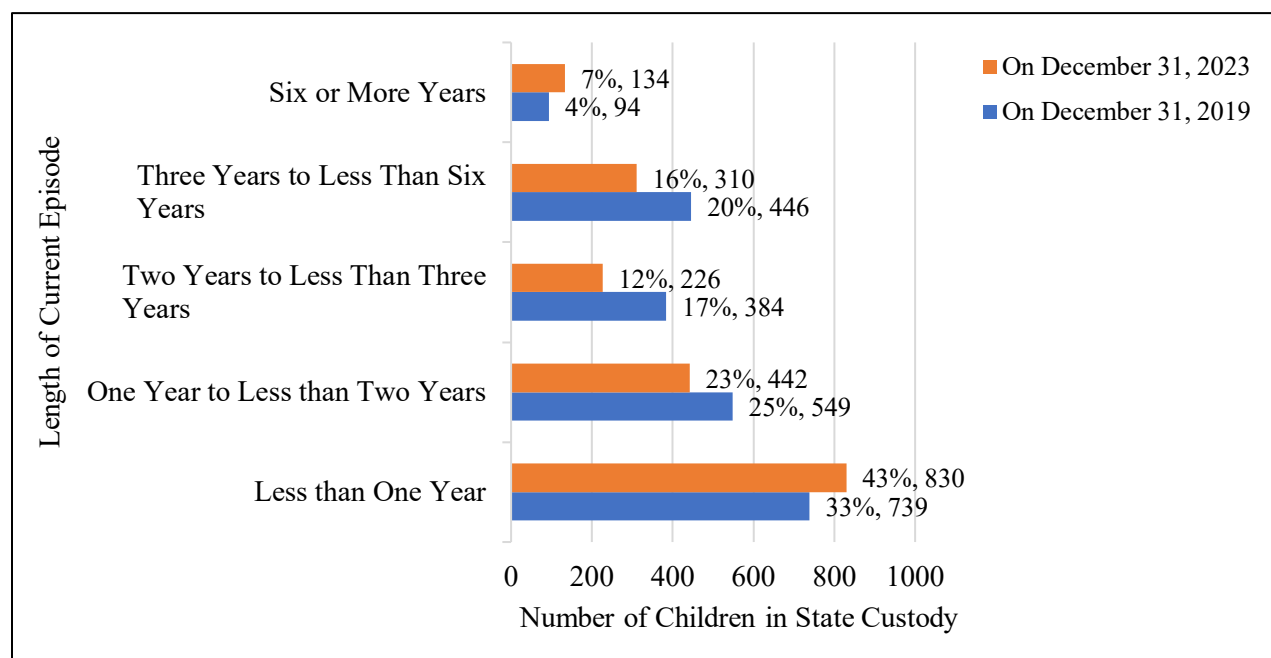
C. Length of Time of Current Episode in State Custody

Of all children in state custody on December 31, 2023, (1,942) 43 percent (830) had been in state custody for less than one year, 23 percent (442) had been in state custody for one to two years, 12 percent (226) had been in state custody for two to three years, and 23 percent (444) had been in state custody for more than three years.

Figure 2: Length of Current Episode in Care for Children in State Custody⁵¹

N = 2,212 children on December 31, 2019

N = 1,942 children on December 31, 2023



Source: Analysis of Sandbox *Cohort Dec31* files submitted 3/31/22 (2019) and 6/27/24 (2023).

The percentage of children who had been in state custody for less than one year at the end of the reporting period increased by 10 percentage points between 2019 (739, or 33%) and 2023 (830, or 43%). Additionally, seven percent (134) of children in state custody in 2023 had been in care for six years or more, an increase from 2019 (94 children; see Figure 2). For the remaining three categories of current episode length, the percentage of children in care for each respective duration decreased between 2019 and 2023.

⁵¹ Percentages may not add up to 100 percent due to rounding.

D. Geography

As of December 31, 2023, over one-third (35%) of children in care were from Region 3 (Bernalillo County), as seen in Table 5. Thirteen percent of children were from Region 1 (Northwest), 10 percent of children were from Region 2 (Northeast), 27 percent of children were from Region 4 (Southeast), and 14 percent of children were from Region 5 (Southwest). Seventy-six percent (1,484)⁵² of children were placed in their home region on December 31, 2023, compared to 71 percent (1,217) in 2022, 76 percent (1,224) in 2021, 79 percent (1,434) in 2020, and 74 percent (1,461) in 2019. Eighty-three (4%) children were placed out of state, including 18 in residential settings and 65 in family-based settings on December 31, 2023.

Table 5: Regional Distribution of Case Region and Placement Region for Children in State Custody on December 31, 2023⁵³

Region name	Case region		Placement region	
	N	%	N	%
Region 1 (Northwest)	261	13%	300	15%
Region 2 (Northeast)	196	10%	157	8%
Region 3 (Bernalillo)	670	35%	578	30%
Region 4 (Southeast)	533	27%	389	20%
Region 5 (Southwest)	281	14%	254	13%
Unknown ⁵⁴	1	<1%	27	1%
Out of State	n.a.	n.a.	83	4%
Not in an out-of-home placement on December 31 ⁵⁵	n.a.	n.a.	154	8%
Total	1,942	100%	1,942	100%

Source: Analysis of Sandbox *Cohort Dec31* files submitted 6/27/24. Findings for 2023 reflect adjustments informed by case record review of FACTS documentation conducted by the Co-Neutral team.

⁵² This analysis does not include one child who did not have data for case region listed in the Sandbox *Cohort Dec31* file submitted by CYFD on June 27, 2024.

⁵³ Percentages may not add up to 100 percent due to rounding.

⁵⁴ There were 27 children who appeared in the Sandbox *Cohort Dec31* file whose last placement, according to the *Placements* data, ended before December 31, 2023, with no record of a subsequent placement.

⁵⁵ Includes 84 children on Trial Home Visit, 57 children who were missing or had run away, four children in Protective Supervision, four children in detention, and five children who were placed in acute hospitalizations.

E. Federal Permanency Goals and Legal Status⁵⁶

Of the children in care on December 31, 2023, 1,089 (56%) children had a federal permanency goal of reunification. The rate of children with a goal of reunification has steadily increased since 2019 (40% in 2019, 43% in 2020, 45% in 2021, 49% in 2022), while the percentage of children in state custody with a federal permanency goal of adoption has steadily decreased each year since 2019 (51% in 2019, 48% in 2020, 42% in 2021, 38% in 2022).⁵⁷

**Table 6: Federal Permanency Goals for Children in State Custody
on December 31, 2021 – 2023**

Federal permanency goal	2021		2022		2023	
	N	%	N	%	N	%
Reunification	802	45%	844	49%	1,089	56%
Adoption	754	42%	657	38%	582	30%
Guardianship	141	8%	134	8%	133	7%
Planned Permanency Living Arrangements ⁵⁸	49	3%	44	3%	45	2%
Unknown	33	2%	40	2%	90	5%
Live with Other Relative(s)	2	<1%	0	0%	3	<1%
Total	1,781	100%	1,719	100%	1,942	100%

Source: Analysis of Sandbox *Cohort Dec31* files submitted 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023) and supplemental file submitted 8/8/24 (2023).

In previous reports, the Co-Neutrals received data on Legal Status and included it in the Contextual Summary. The Co-Neutrals did not receive this information for 2023.

⁵⁶ In previous reports, the Co-Neutrals received data from the State showing the legal status of children in state custody on December 31 of the reporting year. The Co-Neutrals did not receive this information this year and thus did not include it in this report.

⁵⁷ The Co-Neutrals' analysis of 2019-2023 *Cohort Exits* files, submitted by CYFD on March 31, 2022 (2019 and 2020), May 2, 2022 (2021), May 1, 2023 (2022) and June 27, 2024 (2023). The Sandbox *Cohort Dec31* file that the State submitted on June 27, 2024, did not contain information on federal permanency goals for children in state custody. On August 8, 2024, the State submitted an amended file containing this information.

⁵⁸ In previous years, the data submitted by the State referred to this permanency goal as "long term foster care." In the data submitted by the State on June 27, 2024, the name for this permanency goal was "planned permanency living arrangements."

F. Exits from State Custody

Table 7 below shows the rate of exits from care by exit type for 2023. Most (58%) children who exited state custody in 2023 exited to reunification with family. The reunification rate increased in 2023 (58%, 629 exits) compared to 2022 (53%, 582 exits) and 2021 (54%, 661 exits). The rate of exits to other relatives (5%, 54 exits) also increased in 2023 compared to 2022 (2%, 19 exits) and 2021 (1%, 14 exits). Fewer children exited to adoption in 2023 (18%, 198 exits) compared to 2022 (23%, 254 exits) and 2021 (28%, 342 exits).

Table 7: Exits from State Custody by Exit Type in 2023

Exit type	N	%
Reunification	629	58%
Adoption	198	18%
Guardianship	108	10%
Emancipation / Aged out	74 ⁵⁹	7%
Live with other relative(s)	54	5%
Runaway	6	<1%
Transferred to another State agency	6	<1%
Transfer to Tribal agency	5	<1%
Death of child	2	<1%
Unknown ⁶⁰	10	<1%
Total Exits	1,092	100%

Source: Analysis of Sandbox *Cohort Exits* files submitted 6/27/24. Findings for 2023 reflect adjustments informed by case record review of FACTS documentation conducted by the Co-Neutral team.

⁵⁹ Includes children who aged out of the cohort and entered Extended Foster Care.

⁶⁰ The Sandbox *Cohort Exits* file submitted by the State on June 27, 2024, was missing exit reasons for all but one child. The Co-Neutrals requested and received a supplemental file on August 13, 2024, which contained exit reasons for all but 92 exits. The Co-Neutral team then reviewed the FACTS case records for these 92 exits and were able to identify exit reasons for 82 exits. The 10 exits with unknown reasons are not included in this analysis.

IV. Discussion of Performance

A. FSA Section VI: Process

i. Data Validation Plan (DVP)

Section IV of the FSA requires the State to complete a written Data Validation Plan (DVP) that is approved by the Co-Neutrals. According to the FSA, the DVP should “set forth a process, including methodology and data sources, for validating Defendants’ progress toward achieving the Implementation Targets and Target Outcomes.” The DVP must also “set clear timelines for taking any intermediary steps necessary to validate progress towards the Implementation Targets and Target Outcomes and assign responsibility for supplying information necessary to fulfill the Data Validation Plan.”⁶¹

The Co-Neutrals and State collaboratively developed the DVP throughout 2020 and 2021, and the Co-Neutrals approved the DVP on February 16, 2022.^{62,63} The DVP provides key methodological definitions, detail about core data systems and processes (including planned system changes to strengthen data collection), and presents a set of quantitative and qualitative metrics to help the State manage, and the Co-Neutrals assess, progress. For each quantitative metric, the DVP specifies the data and methodology that will be used to calculate the metric for each reporting period to ensure that the State and the Co-Neutrals are working with a shared understanding of the State’s performance. For commitments that cannot be measured strictly by quantitative measures – for example, changes in worker practice following training – qualitative instruments and methodologies are necessary to assess and report performance. For some items, both quantitative metrics and qualitative methodologies are necessary.

As of the writing of this report, the State has not developed many of the required qualitative instruments to be reviewed and approved by the Co-Neutrals.⁶⁴ These multi-year delays have resulted in no available performance data for numerous qualitative metrics in 2022 and 2023, and it is very likely these delays will impact the availability of 2024 performance data for some if not all of the outstanding qualitative metrics.

⁶¹ FSA, pg. 6.

⁶² The DVP, as approved, includes several deadlines for completion of steps necessary to validate progress. In addition to the requirement for the State to develop (and the Co-Neutrals to approve) qualitative instruments, sampling strategies, and to determine a cadence of implementation and reporting by April 30, 2022, the DVP also required CYFD to finalize a caseload standard for Licensing and Support Specialists in collaboration with the Co-Neutrals, and for HCA to submit a proposed methodology reflecting their strategy to track coaching by July 1, 2022. The revised DVP, completed in early 2023, reflects a final caseload standard for Licensing and Support Specialists as agreed upon in early 2023. As of the writing of this report, the State has not submitted a proposed methodology for tracking coaching.

⁶³ The approved DVP, as revised and agreed upon in April 2024, can be viewed [here](#).

⁶⁴ Although the Co-Neutral team provided options for these instruments and methodologies to the State in the summer of 2023, as of the writing of this report, the State has not submitted a proposed plan to the Co-Neutrals for approval.

As anticipated, the DVP has evolved as implementation has proceeded and the State has made adjustments to practice and improvements to its systems and data collection practices. The Co-Neutrals worked with the State in late 2023 and early 2024 to modify the DVP to better specify how to validate and use data for certain metrics. The Co-Neutrals will continue to identify proposed modifications each year and to assess whether to approve changes after consultation with each party.

ii. Production of Data

The FSA requires the State to submit all data required to validate the TOs for the previous reporting period by May 1st each year, and to submit data used to calculate baseline metrics concurrently with those reports. The State submitted 2023 data on time, on May 1, 2024. However, the Co-Neutrals identified several data quality issues, including missing or inconsistent information about children's placements and episodes. The State resubmitted data on May 23, 2024, but several data quality issues remained. The Co-Neutrals requested a third data submission, which was received on June 27, 2024, and proceeded with validation using these files.

The FSA requires the State to collect data to assess new system practices that were not previously recorded, and to use this data in new and different ways to assess the experiences of children in state custody within both the foster care system (managed by CYFD) and the broader health continuum (managed by HCA). In 2023, the State continued to develop the capacity to do this work, aided by an external contractor (Falling Colors Corporation).⁶⁵ Much has been accomplished, and more work remains.

The Co-Neutral team conducted extensive qualitative reviews of children's records and identified discrepancies between information in children's case records and the State data reported from its FACTS system. There were some areas in which the State was able to correct discrepancies before the June 27, 2024 data submission, some areas in which the data issues were sufficiently limited that validation was still possible, and some areas in which the issues precluded any validation. Further detail is provided in the discussion of performance later in this report. The Co-Neutrals continue to work with the State and the State's data partners to improve the quality, completeness, and consistency of the data submitted for validation.⁶⁶

⁶⁵ The State reported that the *Kevin S.*-related contract with Falling Colors is "projected to end June 30, 2025."

⁶⁶ The structured reports produced by Falling Colors and submitted for validation are referred to as 'Sandbox' files. The State also submits to the Co-Neutrals, as background information, extracts from FACTS (the primary system of record for CYFD), ROM (structured management reports produced from FACTS data), and other data systems as described in the DVP.

iii. Production of Reports

Section IV, paragraph C of the FSA requires the State and the Co-Neutrals to each produce a baseline and subsequent annual reports to assess CYFD and HCA's efforts toward the Performance Standard for ITs and TOs. In May 2024, the parties agreed to waive the State's production of an annual report outlining 2023 performance and efforts as required by the FSA. No other provisions of Section IV, paragraph C were revised, and this agreement did not negate the State's obligation to produce annual reports for future assessment periods.

iv. Parties' Meetings

The FSA requires the Co-Neutrals to "preside over a meeting between the parties at least twice a year" and stipulates the Co-Neutrals and the parties "must make every effort to have the first Parties' Meeting no later than 30 Days after the State publishes its annual *Kevin S.* report, and the second meeting no later than 30 Days after the Co-Neutrals publish their *Kevin S.* annual report."⁶⁷ The parties have the ability to provide comments on the Co-Neutrals' annual reports prior to the second meeting.

A parties' meeting did not occur in 2023. Following the release of the Co-Neutrals' November 15, 2022, Report on January 6, 2023, the Plaintiffs invoked the FSA Dispute Resolution process. The Co-Neutrals mediated numerous in-person and remote meetings between the parties from March through June 2023. On June 30, 2023, the parties entered into a Corrective Action Plan (CAP)⁶⁸ to improve the State's compliance toward FSA commitments. The CAP expired on January 5, 2024. After the release of the Co-Neutrals' 2022 Annual Report on November 15, 2023, the parties agreed to schedule a parties' meeting on January 18, 2024 (after the CAP expired); this meeting was facilitated by the Co-Neutrals.

⁶⁷ FSA IV, C.

⁶⁸ The CAP addressed some of the Performance Standards the State failed to meet in 2021 as outlined in the Co-Neutrals' Annual Report released on November 15, 2022. The CAP can be found [here](#).

B. FSA Appendices

i. Appendix A: Trauma-Responsive System of Care

The commitments in Appendix A of the FSA require CYFD and HCA to “build and support a trauma-responsive system of care for all Children in State Custody.”⁶⁹ The parties describe a trauma-responsive system in Appendix A as a system that:

- Identifies, recognizes, understands the effects of trauma, and provides sufficient services and supports to ameliorate trauma, including secondary trauma;
- Supports and serves other stakeholders, including families and persons who work for or on behalf of children, youth, and families;
- Includes culturally appropriate services and supports; and
- Incorporates a child’s voice in decisions about where and with whom they should live and what services they should receive, and these decisions should occur in a timely manner.

Further, a trauma-responsive system “should utilize collaborative decision-making to identify strengths and needs and to develop an individualized plan for the child” and relies on “accurate, complete, and relevant evidence-based quality management tools and measures [that] are necessary for the State to implement and refine a trauma-responsive system of care.”⁷⁰

a. Implementation Targets Not Previously Achieved

In prior reports, the Co-Neutrals assessed the State had met the Performance Standard for all the App. A ITs, specifically: *Establish Child and Adolescent Needs and Strengths and Functional Trauma Assessment Criteria* (App. A, IT 1.1), *Revised Serious Emotional Disturbance (SED) Criteria* (App. A, IT 1.2), and *Developing a Trauma-Responsive Training and Coaching Plan* (App. A, IT 2.1). Thus, those ITs will not be assessed in this or future reports.

⁶⁹ FSA, pg. 1a

⁷⁰ Ibid.

b. Target Outcomes Due Between 2020 and 2023

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

<i>FSA Requirement</i>	<i>By December 1, 2021, every Child in State Custody will receive the screenings indicated below. CYFD and HCA will identify, and Co-Neutrals must approve, the form of the Child and Adolescent Needs and Strengths Crisis Assessment Tool (“CANS-CAT”) and comprehensive CANS screening tools to be used. CYFD will ensure that every Child in State Custody receives the indicated screenings and will provide the results of the indicated screenings to HCA (through its MCOs⁷¹ and/or their successors). HCA will ensure that MCOs and/or their successors have capacity to provide indicated screenings. (Due December 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

The Co-Neutrals approved the State’s Crisis Assessment Tool (CAT) and Child and Adolescent Needs and Strengths (CANS) screening tools on March 2, 2021, in fulfillment of FSA commitment App. A, IT 1.1 – *Establish Child and Adolescent Needs and Strengths and Functional Trauma Assessment Criteria*.⁷² The CAT and CANS are tools intended to capture, synthesize, and communicate the needs and strengths of children in state custody and their caregivers by collecting information across different domains.⁷³ To complete the CAT and CANS with fidelity, caseworkers must be trained and certified by CYFD and the Praed Foundation.⁷⁴ CANS screenings for children in state custody are typically completed by permanency coordinators (PCs),⁷⁵ permanency coordinator supervisors (PC supervisors), or Community Behavioral Health Clinicians (CBHC).⁷⁶

⁷¹ Managed Care Organizations (MCOs) are organizations responsible for implementing HCA’s Turquoise Care contracts. Additional information about Turquoise Care and the MCOs can be found [here](#).

⁷² The CANS is a widely used tool in various social service jurisdictions across the country. New Mexico worked with the developer of the CANS – the Praed Foundation – to develop a CANS specific to the needs of New Mexico CYFD. The CAT was also specialized to the needs of New Mexico, and was created from a subset of specific CANS domains and items.

⁷³ The CANS consists of 11 domains, while the CAT is comprised of five domains. The domains collectively assess a child’s needs or strengths based on their chronological age by assessing a wide range of specific items. Some items or domains, such as the Independent Living domain, are only applicable for youth of a certain chronological age. The CAT Reference Guide can be found [here](#). The CANS Reference Guide can be found [here](#).

⁷⁴ CYFD provides CANS training for staff, but the CANS certification exam and certificate is issued by the Praed Foundation. The Praed Foundation maintains a variety of tools that support the Praed Foundation’s Transformational Collaborative Outcomes Management (TCOM), including the CANS. Additional information about the Praed Foundation can be found [here](#).

⁷⁵ In 2024, CYFD renamed the position of Permanency Planning Workers (PPWs) to Permanency Coordinators (PCs).

⁷⁶ A CBHC is a behavioral health clinician who works with CYFD staff to provide clinical behavioral health consultation and review for children involved with CYFD’s JJ or PSD programs.

CYFD's requirements for completion of CAT and CANS screenings are outlined in Procedure 17 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC).⁷⁷ The procedure requires that once an abuse or neglect petition has been filed, all children in the case will have a CAT screening completed, which must also be provided to the court prior to the child's 10-day hearing. CANS screenings are required to be completed within 45 days of the child's removal from the home, and children must be reassessed before each court hearing (or within six months, whichever comes first) to assess progress in treatment or to adjust services and supports as results may indicate. CANS must also be completed any time there is an identified change in behavior or a significant life event, and upon discharge from CYFD custody.

In early 2022, HCA published Letter of Direction (LOD)⁷⁸ #69-1 titled, *MCO Requirements for Children in State Custody (CISCs)*.⁷⁹ LOD #69-1 requires MCOs to have "two certified CANS trainers" on their staff who are "responsible for training care coordination staff and other relevant members of the organization, including but not limited to utilization management." LOD #69-1 further requires training on the CANS be "timely and targeted" and part of the MCO's annual training plan submissions.

DVP Metrics and Validated Performance Data

ATO1(ii) – primary metric: For all episodes of custody longer than 45 days that occurred within or overlapped with the reporting year, the percent for which a screening was conducted using the CANS screening tool.

The Co-Neutrals' analysis of data submitted by the State showed that CANS screenings⁸⁰ were completed for 1,000 (39%) of the 2,533 children's episodes in care that occurred within or

⁷⁷ CYFD issued a Program Instruction Guide (PIG) in December 2021 which has since been incorporated into CYFD's *Permanency Planning Procedures*. CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

⁷⁸ In New Mexico, a Letter of Direction (LOD) provides instruction for MCOs to make them aware of any changes or additional responsibilities that must be completed in accordance with their contracts with HCA.

⁷⁹ The requirements in LOD #69-1 expired on June 30, 2024, and were integrated into the Turquoise Care contracts, which began on July 1, 2024. The Turquoise Care contracts can be found [here](#).

⁸⁰ There were 1,874 total CANS screenings conducted in the reporting year. Of these, 1,000 were counted for this metric. The remaining 874 were not counted because either they were completed outside of an eligible episode of custody, they were one of multiple CANS conducted during the same episode of custody, or they involved an older version of the CANS screening instrument. The DVP states only CANS completed during an eligible episode of custody will be counted, and if more than one CANS was completed during an episode of custody, only one will be counted. Additionally, the DVP also states that only CANS versions 2.0.0 or greater will be counted.

overlapped with the reporting year.^{81,82} This is a small increase from 2022, when CANS screenings were completed for 896 (38%) of 2,376 eligible episodes.

The Co-Neutrals' analysis of the State's data shows that CAT screenings were completed for 595 (22%) of the 2,665 children's episodes in care lasting longer than 10 days that occurred within or overlapped with the reporting year. This is an increase from 2022, when CAT screenings were completed for 400 (16%) of 2,508 eligible episodes.

The Co-Neutrals also examined the number of children's episodes in care during which a child received both CAT and CANS screenings. Of the 2,533 children's episodes that were longer than 45 days and occurred within or overlapped with the reporting year, 257 (10%) had only CAT screenings completed during the episode, 693 (27%) had only CANS screenings completed during the episode, 307 (12%) had both a CAT and CANS completed during the episode, and 1,276 (50%) had no screenings completed during the episode (see Table 8).

Table 8: Screenings Completed for Children in State Custody for Episodes Longer Than 45 Days, 2023
N = 2,533 eligible episodes

Type of Screening(s) Completed During Episode	N	%
Both CANS and CAT	307	12%
CANS Only	693	27%
CAT Only	257	10%
No Screening Completed	1,276	50%
Total Eligible Episodes	2,533	100%⁸³

Source: Analysis of Sandbox *Episode of Custody* and *Screenings* files submitted 6/27/24.

⁸¹ Several commitments set goals for how the State should respond to entries into state custody, regardless of how many times a child has entered or exited state custody during the reporting year. For instance, App. A, TO 1 requires that all children receive a CANS screening within 45 days of each of their entries into state custody during the reporting year. Since some children experience more than one episode in CYFD custody each year, the data analysis for this and other commitments focuses not just on children but on all their episodes of custody.

⁸² Children's episodes of custody were determined to be eligible for CANS screening if they were longer than 45 days and occurred within or overlapped with the reporting year. Episodes that reached their 46th day after the end of the reporting period were not counted.

⁸³ Total does not add to 100% due to rounding.

ATO1(iv) – primary metric: For all CANS screenings completed and approved by CYFD during the reporting year, the percent provided to the child's MCO or other care coordinating provider or entity within five business days.

The Co-Neutrals' analysis of the State's data for 2023 show that of the 972 eligible⁸⁴ CANS screenings completed during the reporting year, results for two (0.2 percent) screenings were shared with a child's MCO. In 2022, none (zero percent) of the CANS screenings results were shared with MCOs.

As supporting data, the Co-Neutrals also calculated the share of *initial* CANS screenings⁸⁵ provided to the child's MCO or other care coordinating entity within five business days of completion. Of the 972 CANS screenings completed, 462 were the first CANS screening of the episode, including the two CANS screenings shared with MCOs within five business days.

ATO1(v) – primary metric: For all CAT screenings conducted during the reporting year, the percent for which results were provided to the child's MCO or other care coordinating provider or entity within five business days.

The Co-Neutrals' analysis of the State's data shows that of the 269 eligible⁸⁶ CAT screenings completed during the reporting year, none (0%) were shared with a child's MCO. This is the same rate as in 2022.

ATO1(i) – qualitative metric: Qualitative review of practice used to identify and address child's trauma-related needs.⁸⁷

To collect qualitative data for this commitment, the Co-Neutral team and CYFD's Quality Assurance (QA) unit⁸⁸ collaborated to review completed CANS screenings available in BHSD STAR⁸⁹ and FACTS. The team of reviewers consisted of CYFD QA unit staff, a CYFD

⁸⁴ CANS screenings were eligible if they were CANS versions 2.0.0 or later and were completed and approved by CYFD during the reporting year, during a child's episode of custody, and during a child's time with an MCO.

⁸⁵ Per the DVP, initial CANS screenings will be identified as the first CANS screening completed in an episode of custody. Any initial CANS screening completed within the reporting year will be counted, even if the episode of custody began before the reporting year.

⁸⁶ CAT screenings were eligible if they were completed and approved by CYFD during the reporting year, during a child's episode of custody, and during a child's time with an MCO.

⁸⁷ This qualitative metric is used to validate multiple related commitments, specifically, App. A, TO 1; App. A, TO 1.a; App. A, TO 1.b; App. A, TO 1.c; App. A, TO 2.1; App. A, TO 2.2; and App. A, TO 2.3.

⁸⁸ In 2022, CYFD created the QA unit as part of their QAIEP plan (App. A, TO 5.1).

⁸⁹ BHSD STAR is the database used by CYFD to track and record all CANS and CAT screenings for children in state custody; it is managed by Falling Colors.

CANS/CAT Coordinator, and a CYFD CBHC Liaison.⁹⁰ A test-retest process⁹¹ was designed to assess the validity of the CANS screening scores based on documentation in the FACTS record and criteria in the CANS Reference Guide for six specific CANS domains: Individual Strengths, Risk Behaviors, Cultural Needs, Potentially Traumatic/Adverse Childhood Experiences, Traumatic Stress, and Early Childhood.⁹² The purpose of the reviews was to assess the quality of completed CANS screenings for two samples of children: (1) those who entered custody between May 1, 2023 to November 30, 2023, and (2) those who were in custody between July 1, 2023 to December 31, 2023. In sum, 44 children's cases were reviewed.⁹³

The test-retest demonstrated some alignment in four domains reviewed between CANS screening scores completed by CYFD staff ('test') and reviewers' scores ('retest') based on the documentation found in the FACTS record. The test-retest demonstrated significant misalignment within two domains reviewed.⁹⁴ Disparities were most common in the Individual Strengths domain (which screens for items such as optimism, the presence of natural supports, and a child's connection to their cultural identity), with half of all items rated differently during the retest.⁹⁵ The Traumatic Stress domain (which screens for symptoms of trauma such as avoidance of triggers, re-experiencing events, and dissociation) showed 27 percent of all items scored differently in the retest.⁹⁶ The remaining four domains assessed showed disparities for less than 20 percent of rated items.

Nearly half of the items in the Individual Strengths Domain were rated higher by the reviewer during the retest, suggesting a possibility that CYFD staff may under-identify a child's strengths within the CANS. Conversely, the Traumatic Stress retest showed that children's FACTS records may not accurately reflect symptoms of traumatic stress observed by CYFD staff, as retest scores by the reviewer, which were based upon information in the FACTS record, were lower than the test

⁹⁰ All reviewers had previously participated in the CANS training and obtained CANS certification, and completed an orientation and training on the review instrument prior to conducting the review. The CYFD QA supervisor and Co-Neutral staff implemented a quality control process during the review, including second level reviews of identified surveys.

⁹¹ Reviewers completed case reviews of children's FACTS records up to the date the CANS screening was conducted, and then completed an independent CANS screening based on the information documented in the record in accordance with the CANS Reference Guide. The findings from each of these CANS screenings were compared.

⁹² Each domain consists of a various number of items for which a CANS-certified worker scores as a 0, 1, 2, or 3, or as a "yes" or "no." A CANS score of a 0 or 1 indicates *no action is currently necessary* to either meet a need (needs-based scale) or to build up and/or identify a strength (strengths-based scale). A CANS item score of 2 or 3 indicates *an action is necessary* to either address the need or to build up and/or identify a strength. The Individual Strengths domain assesses on a strengths-based scale, while the other domains reviewed assess on a needs-based scale.

⁹³ CYFD did not propose a statistically significant sample for either universe selected. In the future, as CYFD's data collection and analysis capacity improves, the Co-Neutrals will encourage the State to use statistically significant samples.

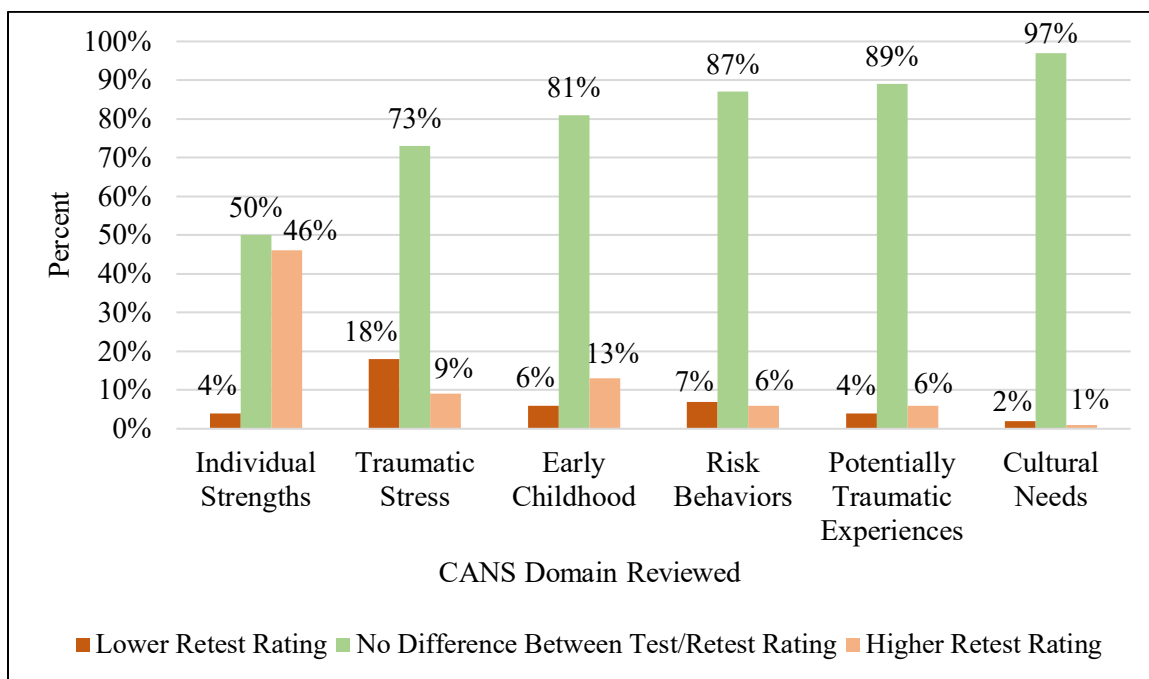
⁹⁴ CYFD staff (such as PCs or CBHCs) may have additional case knowledge that is not documented in the FACTS record, which is a limitation of the qualitative reviews completed for 2023. The Co-Neutrals have been working with CYFD's QA unit to mitigate this limitation in future reviews.

⁹⁵ NM CANS Reference Guide, pgs. 15-24.

⁹⁶ Ibid, pgs. 122-128.

scores originally given by the worker. Accurate CANS screening ratings that assess the full spectrum of a child’s needs and strengths are necessary to ensure appropriate supports are provided to advance the child’s well-being and permanency. Figure 3 shows the change between the test-retest scores across all assessed CANS domains.

Figure 3: Difference in CANS Screening Test-Retest Scores, 2023
N = 44



Source: Case record review of CANS screenings in BHSD STAR and FACTS documentation conducted by CYFD and Co-Neutral staff.

Based on the findings of the test-retest, reviewers assessed the overall quality of practice for the CANS screenings. Quality of practice was scored using a four-point scale jointly developed by CYFD’s QA unit and the Co-Neutral team to rate the overall quality of CANS screenings completed by CYFD staff.

The quality of practice ratings found that 41 percent of CANS screenings reviewed were of sufficient quality and did not need an intervention to improve practice (but should be monitored), 50 percent of screens required an intervention to improve practice, and nine percent required an immediate intervention to improve practice. Although this reflects an improvement in quality of practice ratings from 2022 (see Table 9), over half (59%) of the CANS screenings assessed showed that practice improvements were needed. Additional strategies to improve the quality of the CANS screenings continue to be necessary.

Table 9: Overall Quality of Practice Ratings for Completed CANS Screenings, 2022 - 2023

Quality of Practice Score	Number of CANS Screenings Reviewed, 2022	Percent of CANS Screenings Reviewed, 2022	Number of CANS Screenings Reviewed, 2023	Percent of CANS Screenings Reviewed, 2023
0 – No Intervention Needed to Improve Practice	0	0%	0	0%
1 – Monitor for Potential Intervention Needed to Improve Practice	7	24%	18	41%
2 – Intervention Needed to Improve Practice	17	59%	22	50%
3 – Immediate Intervention Needed to Improve Practice	5	17%	4	9%
Total CANS Screenings	29	100%	44	100%

Source: Case record review of CANS screenings in BHSD STAR and FACTS documentation conducted by CYFD and Co-Neutral staff.

Discussion

While the State’s data demonstrate a year-to-year increase in the number of children’s episodes during which a CAT screening was completed, less than one-quarter (22%) of episodes had a CAT screening completed as required in 2023. The number of children’s episodes during which a CANS screening was completed and where either the CAT or CANS screening was then shared with the court or MCOs, showed little progress between 2022 and 2023. The data for 2023 show that 50 percent of all eligible children’s episodes never received a CAT or CANS screening at any time during 2023. The State remains well-below the commitment for all children in state custody to receive these screens.

The CAT screenings are intended to be used to quickly assess the services and supports necessary for a child to maintain the least-restrictive and most-appropriate placement setting immediately after entering state custody, while CANS screenings are intended to guide referrals for further evaluations and services for children throughout their time in custody. As children in state custody often have complex needs, the CAT and CANS screenings provide a shared language from which CYFD can communicate a child’s strengths and needs to other key members of a child’s team, including members of the Individualized Planning Process (IPP) team,⁹⁷ the MCO care coordinator, and physical or behavioral health providers. These team members, in turn, can use the information from the CAT or CANS screenings to assist in building the child’s treatment plan or the care coordinator’s comprehensive care plan (CCP).

⁹⁷ IPPs are discussed within App. A, TO 4.1 and App. A, TO 4.2 sections of this report.

As part of the quality control process built into the CANS, staff are required to be trained and subsequently certified to complete CAT and CANS during New Employee Training (NET) and are then required to take ongoing training to maintain certification on an annual basis.⁹⁸ In September 2023, CYFD reports that staff had the opportunity to attend an additional CAT/CANS refresher training session to strengthen practice and that a CANS Coordinator position was added to CYFD's Behavioral Health Services (CYFD BHS) in 2023 to further support staff's understanding of the CANS.

Accurate CANS screenings that reflect the standards in the CANS Reference Guide are important for developing individual children's treatment plans and to build out the behavioral health network in New Mexico. CYFD worked with the Praed Foundation to create a function within the CANS that provides a list of specific, individualized recommendations for services and supports a child may need based on the CANS screening scores. If the screening scores do not accurately reflect the criteria in the CANS Reference Guide, the resulting recommendations and anticipated behavioral health utilization needs may also be inaccurate.⁹⁹

During the Co-Neutrals' site visits across New Mexico in September 2023 and January 2024, caseworkers at every CYFD office visited by the Co-Neutrals expressed uncertainty about the purpose of the CAT and CANS screenings and their relevance to helping them serve the children and families on their caseloads. Staff also shared substantial doubts about having adequate time to learn, complete, and document the CAT and CANS given their high caseloads and additional job responsibilities, such as mandatory weekend and overnight shifts to conduct investigations and watch children housed in CYFD offices.

To successfully implement the CAT and CANS to fidelity, CYFD staff must have the ability to complete CANS training, spend the necessary time gathering and documenting information to accurately complete the CANS, and have the time and skills to incorporate information from the CANS into child and family treatment plans. This requires CYFD to maintain an adequate workforce with manageable staff caseloads, which did not occur for most staff in 2023. Moreover, the State should strengthen and expand the CANS training to include reviewing each of the CANS domains, and provide realistic practice examples and activities to enable staff to experience how the CAT and CANS should be applied as tools to assist them in meeting the needs of the children on their caseload. The training should also help staff to understand what the CANS recommendations mean and how they can be used to determine referrals for supports and services that ultimately improve children's placement stability.

⁹⁸ Without current CANS certification, staff are unable to enter any CAT or CANS screenings into BHSD STAR. Co-Neutral staff attended one of the annual ongoing CAT/CANS trainings alongside CYFD staff in 2023.

⁹⁹ As identified as part of the State's App. D, IT 2.1 *Initial Expected Service Utilization Methodology*, which can be found [here](#).

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

<i>FSA Requirement</i>	<i>Results of initial screening using the CANS-CAT will be filed with the court no less than 24 hours before the child's 10-day hearing. If this deadline falls on a weekend or holiday, the screening results must be filed no less than one business day prior to the 10-day hearing. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

The CAT/CANS requirements are outlined in paragraph 17 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC).¹⁰⁰ Procedure 17 states, "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."

DVP Metrics and Validated Performance Data

ATO1.a(i) – primary metric: For all episodes of custody longer than 10 days that began within the reporting year, the percent for which CAT results were filed with the Court no less than two business days prior to a child's 10-day hearings. If this deadline falls on a weekend or holiday, the screening results must be filed no less than one business day prior to the 10-day hearing.

The Co-Neutrals' analysis of the State's data shows that of the 506 eligible¹⁰¹ episodes of children's custody during the reporting year, there was only one episode (<1%) for which a CAT screening result was documented as filed timely with the courts (no later than two business days before a child's 10-day hearing). Performance is unchanged from 2022, when CAT screening results were filed timely with the courts for one (<1%) of 465 eligible episodes.

As supporting information, the Co-Neutrals assessed the amount of time it took for completed screenings to be filed with the courts. The one compliant CAT screening was filed with the court on the same day that it was completed, which was five business days before the child's 10-day hearing.¹⁰²

¹⁰⁰ CYFD issued a Program Instruction Guide (PIG) in December 2021 which has since been incorporated into CYFD's Permanency Planning Procedures. CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

¹⁰¹ Episodes of children in custody must have begun on or after January 1, 2023, lasted longer than 10 days, and ended on or before December 31, 2023. Children's episodes were eligible if they began and reached their 11th day in the reporting year and had a 10-day hearing during the reporting year.

¹⁰² The assessment date and the date the screening was shared were both May 31, 2023. The 10-day hearing was on June 5, 2023.

Discussion

Similar to the State's performance in 2022, the data shows this practice did not occur in 2023, as only one CAT screening was documented as filed with the courts before the 10-day hearing. The CAT screening is an important tool to help identify the necessary supports a child may need immediately after entering custody. Providing the CAT screening to the court prior to the child's 10-day hearing allows the court to receive a succinct snapshot of the child's strengths and needs shortly after CYFD takes custody of a child. The CAT screening also assesses a child and family's strengths, which should be built upon in CYFD's treatment plans as they begin working toward permanency.

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

<i>FSA Requirement</i>	<i>Comprehensive screening using a CANS-Trauma Comprehensive instrument or a comprehensive CANS assessment instrument with a trauma module will be conducted within 45 Days of removal from the home. Any child discharged from CYFD's legal custody before these screenings are conducted will be provided a referral for the screenings. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Procedure 17 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC)¹⁰³ requires PSD staff to complete CANS screenings within 45 days of a child's removal from the home. Children are to have updated CANS screenings completed before each court hearing (or within six months, whichever is sooner) to reassess progress and needs. CANS screenings must also be completed any time there is a change in behavior or a significant life-changing event and upon discharge from CYFD custody.

DVP Metrics and Validated Performance Data

ATO1.b(i) – primary metric: For all episodes of custody for children who were removed and remained in State custody for at least 45 days during the reporting year, the percent for which an approved screen was conducted using the CANS within 45 calendar days of removal from home. The metric will exclude children who both did not receive this screening and who were discharged in less than 45 calendar days.

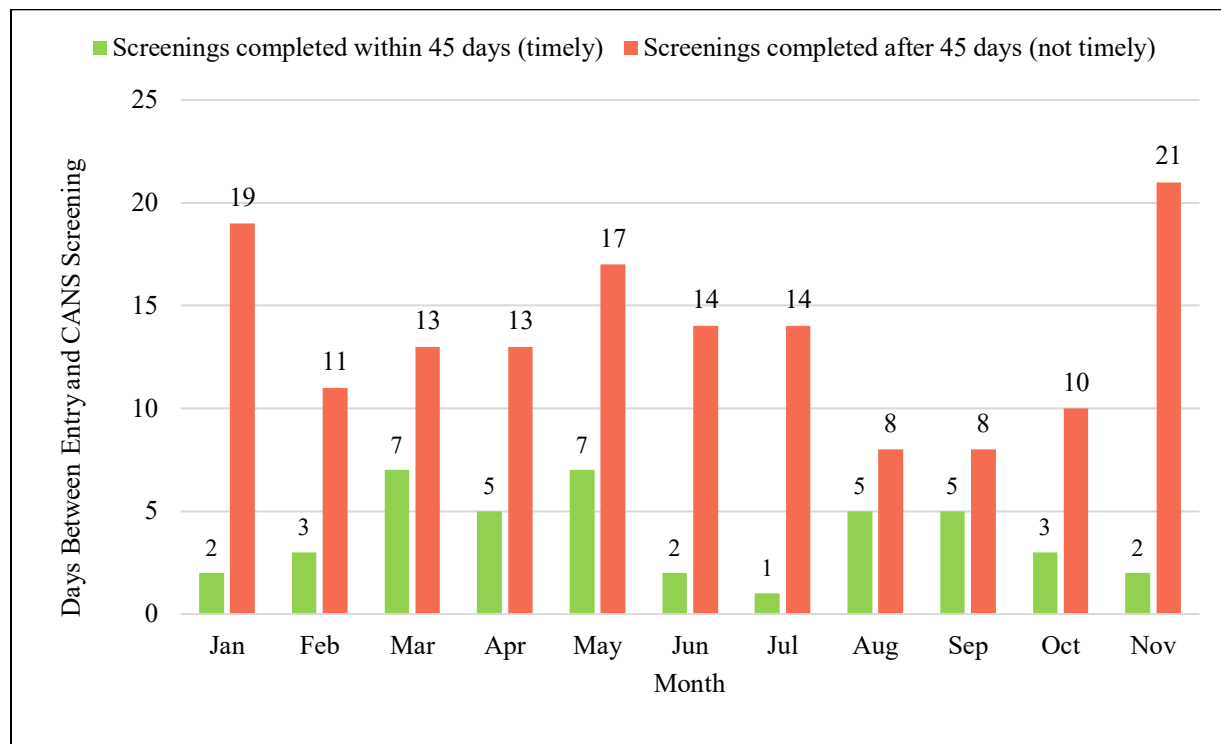
The Co-Neutrals' analysis of the State's data shows that CANS screenings were conducted within

¹⁰³ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

45 days of a child’s removal from home for 45 (5%) of 827 eligible episodes of custody.¹⁰⁴¹⁰⁵ This is a decrease in performance from 2022, when CANS screenings were conducted within 45 days for 59 (10%) of 618 eligible episodes.

Practice does not appear to have improved over the course of 2023: in the first quarter (January through March), an average of four timely assessments were completed each month; the average rose to five in the second quarter, returned to four in the third, and fell to three in the final quarter (see Figure 4).

Figure 4: Timely Completion of CANS Screenings, by Episode
N = 210 episodes of custody lasting at least 45 days with at least one CANS completed



Source: Sandbox *EpisodeOfCustody* and *Screenings* tables, submitted 6/27/24.

As supporting information, the Co-Neutrals assessed the average time for a CANS screening to be administered after a child is removed from their home for all timely CANS (45 days or fewer) and all late CANS (more than 45 days).¹⁰⁶ The average time for a CANS screening to be administered, timely or not, during an episode of custody was 121 days. The average for CANS screenings

¹⁰⁴ Eligible episodes were new episodes of custody that began and reached their 45th day in the reporting year. Episodes that had lasted less than 45 days as of the end of the reporting year were not counted.

¹⁰⁵ For 617 (75%) episodes, there was no record of a completed CANS screening; for the remaining 165 (17%) episodes, a CANS screening was completed outside of the 45-day window. Of these 165 “late” episodes, 36 were completed within 46 to 60 days, and 29 were completed within 61 to 90 days.

¹⁰⁶ If there was more than one CANS screening conducted within the same eligible episode of custody, the first CANS screening was used to assess the average time to screening.

considered timely was 21 days, and the average for CANS screenings considered late was 148 days, as shown in Table 10.

Table 10: Days Between a Child’s Entry and CANS Completion

Category	Number of Episodes	Percent of Episodes
Timely (within 45 days) – average 21 days		
0-14 days	19	9%
15-30 days	9	4%
31-45 days	17	8%
Late (after 45 days) – average 148 days		
46-60 days	36	17%
61-90 days	29	14%
91-120 days	31	15%
121-180 days	27	13%
181-365 days	31	15%
More than a year	11	5%
Total episodes with a CANS completed	210	100%

Source: Sandbox *EpisodeOfCustody* and *Screenings* tables, submitted 6/27/24.

ATO1.b(ii) – primary metric: For all episodes of custody for children who were removed during the reporting year and discharged within 45 days without a CANS screening conducted, the percent whose family received a referral for the CANS screening.

The Co-Neutrals were unable to validate data for this requirement because this metric relies on a data collection process that the State was not using consistently in 2023. In 2022, the State embedded a survey tool into FACTS to collect information on referrals for services, but the State reported that very few of these surveys had been completed in 2023. Data from this survey tool will be necessary to validate this metric for 2024.

Discussion

The CANS is a communication and case planning tool to help CYFD staff identify and secure supports and services to help children and families. However, timely completion of CANS worsened by half from 2022 (10%) to 2023 (5%) and is dramatically below acceptable levels.

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

<i>FSA Requirement</i>	<i>Follow up screening indicated by the CANS-CAT, CANS, and/or any other information available to CYFD or HCA, including screening for intellectual and developmental disabilities and/or sexual exploitation, will be conducted immediately where possible and within 10 Days of indication otherwise. Any child discharged from CYFD's legal custody before these screenings are conducted will be provided a referral for them. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

The CAT/CANS requirements outlined in Procedure 17 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC)¹⁰⁷ require CYFD staff to arrange for follow-up screenings, evaluations, or assessments that are indicated by the CAT/CANS to be conducted immediately when possible or within 10 days of indication.

DVP Metrics and Validated Performance Data

ATOI.c(i) – secondary metric: The percent of episodes of custody which included at least one assessment, as specified in the annual list of follow-up assessments provided to the Co-Neutrals.*¹⁰⁸

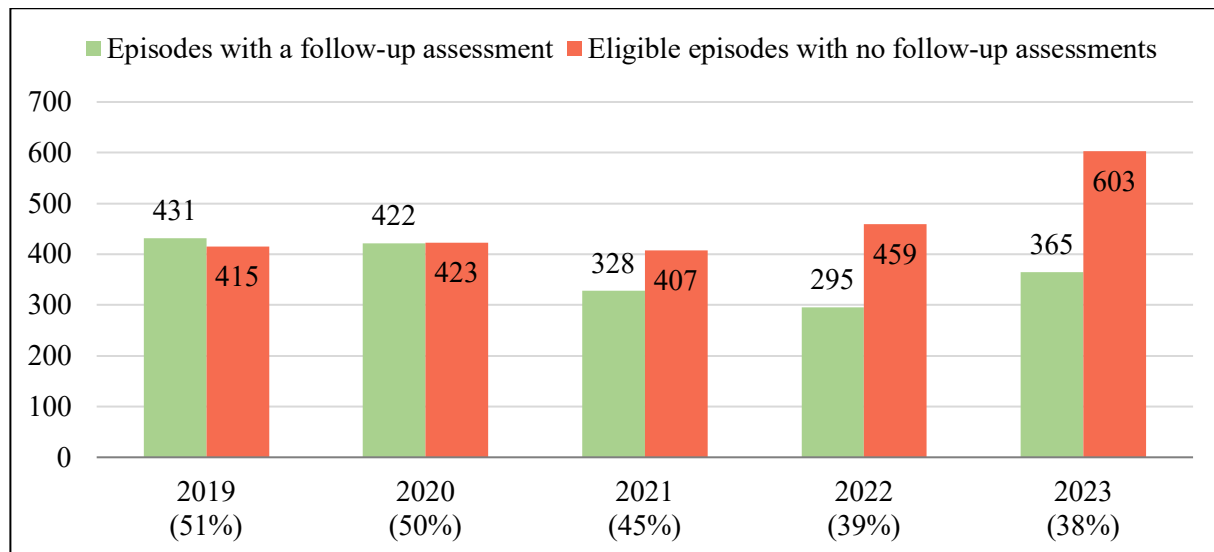
The Co-Neutrals' analysis of the State's data shows that of the 968 eligible episodes of custody in 2023 (i.e., episodes of 11 days or longer that began during the reporting period), 365 (38%) included at least one of the indicated follow-up assessments. This metric counts any assessments, not just those that were referred as a result of a CANS or CAT screening.¹⁰⁹ The State's performance has steadily decreased over time. In 2019, 51 percent of children's episodes of custody included a follow-up assessment. This declined to 50 percent in 2020, 45 percent in 2021, 39 percent in 2022, and 38 percent in 2023 (see Figure 5).

¹⁰⁷ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

¹⁰⁸ Between 2019 and 2023, this metric tracked the prevalence of the following service codes: H2010, 90791, 96130, 96131, 96132, 96133, 90885, 90792, and H2000. These include assessments such as: medication monitoring, psychiatric diagnostic evaluations, psychological testing, and comprehensive multi-disciplinary team evaluations.

¹⁰⁹ The primary metric, described below, focuses on assessments that were referred as a result of a CANS or CAT screening.

Figure 5: Eligible Episodes of Custody During Which a Child Received at Least One Follow-up Assessment, 2019 – 2023



Source: Analysis of Sandbox *EpisodeOfCustody*, Sandbox *Encounters*, and HSD/HCA_Service_Codes submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

As additional information, the Co-Neutrals examined the rate of completed follow-up screenings by children’s identified race and ethnicity. Non-Hispanic American Indian or Alaska Native children received a disproportionately low rate of follow-up assessments during their eligible episodes of custody. Of the 74 eligible episodes experienced by a non-Hispanic American Indian or Alaska Native child, 26 percent (19) included a follow-up assessment. In contrast, non-Hispanic Black or African American children (20 of 48, or 42%), non-Hispanic White children (79 of 192, or 41%), Hispanic children (of any race) (202 of 505, or 40%), and non-Hispanic multi-race children (10 of 28, or 36%) received a similar rate of assessments during their respective episodes.

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

ATO1c(ii) – primary metric: For all episodes where a child’s initial CANS or CAT screenings indicated a need for follow-up assessment(s), and where the child did not receive the indicated follow-up assessment(s) prior to discharge, the percent whose family received referral(s) for the follow-up assessment(s) when the discharge took place.

The Co-Neutrals were unable to validate data for these metrics because these metrics rely on a data collection process that the State was not using consistently in 2023. In 2022, the State embedded a survey tool into FACTS to collect information on referrals for services, but the State reported that

very few of these surveys had been completed in 2023. Data from this survey tool will be necessary to validate these metrics for 2024.

*ATO1(i): Qualitative review of practice used to identify and address child's trauma-related needs.*¹¹⁰

This commitment is assessed using the same qualitative review process described in App. A, TO 1 – *Completing Indicated Screenings*. Reviewers were asked to identify whether service recommendations were identified on the CANS screenings based on the CANS algorithm. Of the 44 CANS screenings reviewed, specific service recommendations were documented in 29 (66%) screenings. The most common recommendations were for Prevention¹¹¹ (9 records, 20%), Comprehensive Community Support Services (CCSS)¹¹² (8 records, 18%), and Trauma-Focused Cognitive Behavioral Therapy (TF-CBT)¹¹³ (8 records, 18%). Due to the limited information documented in FACTS regarding behavioral health services, reviewers were unable to determine whether referrals for any of these services were made based on the CANS recommendations. The test-retest portion of the qualitative review also showed that scores on completed CANS screenings may not accurately reflect a child's needs and strengths as intended based on the CANS Reference Guide, which may undermine the validity of the amount and type of referrals suggested by the CANS algorithm.

¹¹⁰ This qualitative metric is used to validate multiple related commitments – App. A, TO 1.1; App. A, TO 1.a; App. A, TO 1.b; App. A, TO 1.c; App. A, TO 2.1; App. A, TO 2.2; and App. A, TO 2.3.

¹¹¹ The State reported that 'Prevention' in the context of CANS recommendations refers to prevention services or an assessment to identify additional needs.

¹¹² Comprehensive Community Support Services (CCSS) is a voluntary, recovery-based program that assists in connecting clients to community resources and benefits to learn new skills. Additional information about CCSS can be found [here](#).

¹¹³ Trauma-Focused Cognitive Behavioral Therapy (TF-CBT) is an evidence-based therapeutic intervention shown to be effective in treating children and youth who have experienced trauma. Additional information about TF-CBT can be found [here](#).

Table 11: CANS Algorithm-Based Service Recommendations on Completed CANS Screenings, 2023¹¹⁴

Service Type	Number	Percent
Prevention	9	20%
Comprehensive Community Support Services (CCSS)	8	18%
Trauma-Focused Cognitive Behavioral Therapy (TF-CBT)	8	18%
Eye Movement Desensitization and Reprocessing (EMDR) ¹¹⁵	6	14%
Outpatient Therapy	5	11%
Child Parent Psychotherapy (CPP)	4	9%
Multi-Systemic Therapy (MST) ¹¹⁶	4	9%
High-Fidelity Wraparound (HFW) ¹¹⁷	1	2%
Number of CANS screenings with Any Service Recommendations	29	66%
Number of CANS screenings No Service Recommendations	15	34%
Total CANS Screenings Reviewed	44	100%

Source: Case record review of CANS screenings in BHSD STAR and FACTS documentation conducted by CYFD and Co-Neutral staff.

Discussion

The State reports that continued efforts, such as additional trainings for staff, were made throughout 2023 to improve practice regarding CANS screenings to ensure more accurate screening scores and thus more accurate CANS service referrals. The State also reports efforts to strengthen the practice of IPP meetings, during which services that may benefit a child are discussed and from which service referrals are to be made. However, data for 2023 demonstrate that less than 40 percent of children received any type of follow-up assessment at any time in 2023, which is the lowest number of service referrals reported by the State across the last five years.

Currently, and throughout 2023, the State had no consistent mechanism to track service referrals made as a result of the CANS algorithm-based recommendations. Therefore, it is not yet possible to determine whether the 38 percent of follow-up assessments that occurred in 2023 were as a result of the completed CANS screenings.

¹¹⁴ Multiple services may be recommended for a single CANS screening.

¹¹⁵ Eye Movement Desensitization and Reprocessing (EMDR) is an evidence-based therapeutic intervention used to treat individuals who have experienced trauma, including children. Additional information on EMDR can be found [here](#).

¹¹⁶ Multisystemic Therapy (MST) is an intensive family and community-based treatment for youth involved with juvenile justice and/or with substance abuse issues. Additional information on MST can be found [here](#).

¹¹⁷ High-Fidelity Wraparound (HFW) is an approach to service delivery rather than an intervention; it “provides a comprehensive, holistic, youth and family-driven way of responding when children or youth experience serious mental health or behavioral challenges.” Additional information on HFW can be found [here](#).

5. Expansion and Availability of Services (App. A, TO 2)

FSA Requirement	<i>By December 1, 2022, every Child in State Custody will receive age-appropriate trauma-responsive services, supports, and/or treatment to meet his or her individualized needs indicated by the CANS and functional trauma assessments, beginning immediately where possible and not to exceed 10 Days after the date of the screening and/or assessment. HCA and CYFD will expand and offer community-based, evidence-based, well-supported, and promising trauma-responsive services, which include mobile crisis response services, intensive case management, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). These services will be available to all Children in State Custody for whom the services are medically necessary and will be available immediately where possible and within 10 Days of the determination of medical necessity otherwise. (Due December 1, 2022)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

CYFD's *Permanency Planning Procedures* (8.10.8.17 NMAC)¹¹⁸ require CYFD staff to arrange for follow-up screenings, evaluations, or assessments that are indicated by the CAT/CANS to be conducted immediately when possible or within 10 days of indication.

DVP Metrics and Validated Performance Data

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

The Co-Neutrals' analysis of the State's data shows that of the 2,944 children in state custody at any point in 2023, 121 unique children received at least one session of an indicated trauma-responsive modality – High Fidelity Wraparound (HFW),¹¹⁹ Multi-Systemic Therapy (MST), Mobile Crisis Response (MCR), or Functional Family Therapy (FFT)¹²⁰ in 2023. The number of children in state custody who received any indicated modality was lower in 2023 than in any other

¹¹⁸ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

¹¹⁹ HFW became a Medicaid-billable service as of July 1, 2023, and was a grant-only funded service prior to that. The State did not provide the Co-Neutrals with data and information identifying children in state custody who received HFW through a grant-funded program, but it is possible that additional children received HFW between January – June 2023 who are not reflected in this total.

¹²⁰ Functional Family Therapy (FFT), referred to as Functional Family Training in the FSA, is a family-based intervention specifically utilized for youth experiencing significant behavioral health and/or substance use issues. Additional information on FFT can be found [here](#).

year since reporting began in 2019 (see Table 12).¹²¹ Utilization for 2023 was also well-below the State’s expected utilization of these services for 2023, as shown in Table 13.¹²²

Table 12: Children who Received at Least One Session of HFW, MST, MCR, or FFT, 2019 – 2023

Year	Children in state custody who received any indicated modality	Children who received listed modality			
		HFW	MST	MCR	FFT
	Number ¹²³				
2019	175	149	35	0	2
2020	196	171	20	0	8
2021	144	127	19	0	0
2022	152	135	18	0	1
2023	121	100	21	0	1

Source: Analysis of Sandbox *Encounters* files submitted 3/31/22 (2019 and 2020), 7/19/22 (2021), 5/1/23 (2022), and 6/27/24 (2023) and Sandbox *EpisodeOfCustody* and *Cohort* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

Table 13: Number of Children Expected to Use Specific Services Compared to Actual Service Use, 2023¹²⁴

Modality	Expected Service Use	Actual Service Use	Percent of Actual vs. Expected Service Use
HFW	776	100	13%
MST	205	21	10%
MCR	1,242	0	0%
FFT	309	1	<1%

Source: The State’s *Initial Expected Service Utilization* document and Analysis of Sandbox *Encounters* files submitted 3/31/22 (2019 and 2020), 7/19/22 (2021), 5/1/23 (2022), and 6/27/24 (2023) and Sandbox *EpisodeOfCustody* and *Cohort* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

¹²¹ Counts reflect analysis of data as submitted by the State; the Co-Neutral team has not validated each reported service.

¹²² The expected service utilization for children in state custody was updated in 2024 as part of the State’s work toward App. D, IT 1 – *Behavioral Health Workforce Development Review*, and is expected to be refreshed at least annually as new utilization data become available.

¹²³ The total is less than the sum of each modality as some children received more than one type of service. Children who received more than one modality were counted in each applicable modality column but counted only once in the “Number” column.

¹²⁴ These estimates were completed by the State as part of their work for App. D, IT 2.1 – *Initial Expected Service Utilization*, which can be viewed [here](#). The estimates of utilization are not mutually exclusive, thus children estimated to utilize FFT could also utilize HFW.

ATO2.2(i) – primary metric: The sum number of children in cohort who received either High Fidelity Wraparound services, Mobile Crisis Response (MCR), DBT, MST, Trauma Informed-CBT, FFT, or EMDR during the reporting year.

The State's data shows zero services were provided in 2023 using the billing codes and modifiers¹²⁵ for DBT, TF-CBT, and EMDR. Throughout 2023, HCA and CYFD worked to establish modifiers for these services, including setting rates, defining clinical criteria and provider requirements, drafting amendments to the State Plan, and collaborating with CMS for approval as reimbursable Medicaid services.¹²⁶ CMS approved the addition of the modifiers in late 2023, and eligible providers were able to bill for services using the modifiers for services provided after July 1, 2023.

ATO2.3(i) – primary metric: Of all children in state custody who received screenings or assessments that indicated a need for High Fidelity Wraparound services (HFW), Mobile Crisis Response (MCR), DBT, MST, Trauma-informed CBT, FFT, or EMDR during the reporting year, the percent that initiated or received all services for which they were indicated within 10 days of that screening or assessment.

The Co-Neutrals were unable to validate data for this metric because this metric relies on a data collection process that the State was not using consistently in 2023. In 2022, the State embedded a survey tool into FACTS to collect information on referrals for services, but the State reported that very few of these surveys had been completed in 2023. Data from this survey tool will be necessary to validate this metric for 2024.

Discussion

According to the State's 2023 annual projected service utilization for children in state custody as provided in App. D, IT 2.1 – *Initial Expected Service Utilization*, the State estimates 776 children in state custody of all ages will utilize HFW, 205 children ages 11 to 18 years will utilize MST, 309 children ages 10 to 18 years will utilize FFT, and 1,242 children in state custody will utilize MCR. However, the State's data shows a cumulative total of 121 individual children in custody received HFW, MST, MCR, or FFT interventions in 2023, which is the lowest utilization data reported by the State among the last five years. The State has not provided information to assess timeliness for children to access services.

In 2023, the State created a workgroup comprised of CYFD and HCA staff and behavioral health providers as part of a process to develop enhanced rates for behavioral health services, and

¹²⁵ As part of the State's work to expand EBPs, HCA developed specific modifier billing codes for behavioral health providers to use when billing for clinical services provided to children in state custody. Historically, providers utilizing clinical interventions such as DBT, TF-CBT, and EMDR would bill Medicaid for non-specific psychotherapy sessions, which is typical practice. With the addition of the modifiers, HCA will be able to track specific trauma-responsive interventions that are provided to children in state custody.

¹²⁶ The lack of provider billing for EBPs might seem surprising, but since those services require new certification and fidelity verification, and since the billing guidance only emerged midway through 2023, many providers were still navigating the State's new process at the end of the year.

specifically evidence-based practices (EBPs), by creating billing modifiers that eligible providers could use to receive higher reimbursement rates.¹²⁷ To be eligible to use the modifiers, the provider must be certified in the modality and enrolled with New Mexico State University’s Center of Innovation (NMSU COI)¹²⁸ as an approved provider. The State contracts with NMSU COI to provide training and support to providers and to oversee the vetting and approval process regarding providers seeking to use the billing modifiers. This process acts as a form of quality control to ensure providers who use the modifiers are practicing the EBP intervention to fidelity. The State also partners with NMSU COI as the certification trainer for HFW, which became a Medicaid-billable service as of July 1, 2023.

Also in 2023, the New Mexico Legislature appropriated \$20 million to build out children’s behavioral health services for all children in New Mexico (not limited to children in state custody) to be used in Fiscal Year (FY) 2024, which began on July 1, 2023. According to the New Mexico Legislative Finance Committee (LFC), these funds largely remained unspent or were used for purposes outside of their intent as of the end of FY2024.¹²⁹

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

<i>FSA Requirement</i>	<i>By December 1, 2021, all CYFD employees, designated HCA employees, employees of child serving agencies that contract with CYFD or HCA to provide care to Children in State Custody, and Resource Families will receive the training identified in the Trauma-Responsive Training and Coaching Plan. All Respondents will be offered the trauma training identified in the Trauma-Responsive Training and Coaching Plan. (Due December 1, 2022)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

The State’s Trauma-Responsive Training and Coaching Plan was approved by the Co-Neutrals on December 5, 2022.¹³⁰ The approved Plan provides a framework by which all CYFD staff and designated HCA staff¹³¹ are to receive trauma-responsive training appropriate to their role. For

¹²⁷ LOD #10 states that eligible providers could bill using the modifiers for services provided after July 1, 2023, however the State’s data indicate the codes were not used in 2023.

¹²⁸ Additional information about NMSU COI can be found [here](#).

¹²⁹ During a New Mexico LFC presentation on September 11, 2024, the LFC highlighted the reauthorization of prior years’ unused appropriations for CYFD and HCA, including \$20 million for children’s behavioral health expansion. The LFC’s presentation can be found [here](#).

¹³⁰ The approved Trauma-Responsive Training and Coaching Plan can be found [here](#).

¹³¹ Per the FSA, designated HCA employees are defined as Social and Community Services Coordinators, their supervisors and managers, (including the Behavioral Health Services Division Director), and any HCA employee or their designee involved in care coordination activities, EPSDT services, or determinations about service utilization for children in state custody, including supervisory and management level employees, are required to complete trauma-responsive training.

example, CYFD office staff may take only the novice-level trauma-responsive training, while direct casework staff and supervisors should take additional advanced level trainings. Specifically, the approved Plan commits CYFD's Workforce Development Bureau (WDB) to develop and provide:

- Novice Trauma-Responsive training for all new and existing CYFD staff interacting with children, youth, and families;
- A needs assessment and additional tool to incorporate trauma-responsive conversations into individual and regional coaching plans;
- Ongoing advanced level trauma-informed and trauma-responsive care training for CYFD staff and leaders;¹³² and
- Additional leadership level opportunities and resources for supervisors and leaders to develop skills needed to guide staff's development of a trauma-responsive care approach, with a focus on staff resiliency.

Similarly, the Plan commits HCA to provide trauma-responsive training appropriate to their roles to all HCA Behavioral Health Services Division (HCA BHSD) staff, all contracted behavioral health providers who deliver professional services to children in state custody and their families, MCO training staff, and all MCO care coordinators.

As part of the approved Trauma-Responsive Training and Coaching Plan, in 2022, the State created a Cross-Departmental Training Review Committee (CDTRC) composed of CYFD and HCA staff from various departments, including HCA's Deputy of Clinical Services and/or their designee(s); Director of CYFD's BHS and/or their designee(s); and may include staff from CYFD's PSD, WDB, and Office of Tribal Affairs (OTA). A component of the committee's purpose is to ensure consistency of trauma-responsive service delivery and to update the trauma-responsive training curriculum as the field evolves and additional training needs are identified.

DVP Metrics and Validated Performance Data

ATO3.a(i) – primary metric: Of all CYFD and designated HCA staff required to receive training as defined in the Trauma Training and Coaching Plan who are employed on December 31 of the reporting year, the percent who have received all trauma trainings required for that reporting year within the time frames designated for each training. The percentages will be calculated and reported separately for CYFD and HCA.

The Co-Neutrals' analysis of the State's data found that on December 31, 2023, there were 1,719 staff employed at CYFD and 1,555 staff employed at HCA. Of those, 969 CYFD staff¹³³ and 45 HCA staff were required to receive trauma-responsive training. Of the 969 CYFD employees, 782

¹³² CYFD reports the work is ongoing to develop the advanced-level trauma-responsive trainings.

¹³³ On August 23, 2024, the State submitted to the Co-Neutrals a list of job titles that were required to receive trauma-responsive training.

(81%) received training by December 31, 2023.¹³⁴ Of the 45 HCA employees, 34 (76%) received training by December 31, 2023.

**Table 14: Trauma-Responsive Training Received in 2023 by
CYFD and HCA Employees**

	Employees trained by December 31, 2023		Employees required to receive training	Total employees on December 31, 2023
	N	%		
CYFD	782	81%	969	1,719
HCA	34	76%	45	1,555

Source: Analysis of Sandbox *StaffPosition* table submitted 6/27/24, *Training Extract* submitted 7/10/24, and *Trauma Training Report as of 12-31-2023 v2* submitted 8/22/24.

ATO3.a(ii) – primary metric: Of all provider and contract staff required to receive training as defined in the ‘Trauma Training and Coaching Plan’ who are employed on December 31 of the reporting year, the percent who have received all trauma training required for that reporting year within the time frames designated for each training.

The State did not submit data to assess this metric involving trauma training for provider and contract staff in 2023.

ATO3.a(iii) – primary metric: Of all Resource Families required to receive training as defined in the “Trauma Training and Coaching Plan” who are licensed on December 31 of the reporting year, the percent where all adults reflected on the license have received all trauma training required to maintain an active license for that reporting year within the time frames designated for each training.

The State did not submit data to assess this metric involving trauma training for resource families in 2023.

ATO3.a(iv) – primary metric: Of all Respondent families during the reporting year, the percent who participated in any trauma training as defined in the “Trauma Training and Coaching Plan.”

The State did not submit data to assess this metric involving trauma training for respondent families in 2023.

¹³⁴ The DVP lists December 1 as the designated time frame for all trauma-responsive trainings, and the number of trauma-responsive trainings completed by December 31 as supporting information. However, according to communications from the State, the CYFD and HCA deadline for employees to complete their trainings for 2023 was December 31, 2023. The Co-Neutrals identified the percentage of trainings completed by both December 1 and December 31 of the reporting year.

ATO3.a(v) – primary metric: Of all CYFD staff who were required to receive or requested coaching as defined in the Trauma Training and Coaching Plan, the percent who received required and requested coaching.

The State did not submit data to assess this metric involving trauma coaching for CYFD staff in 2023.

ATO3.a(vi) – primary metric: Trauma coaching for designated HSD staff.

The State did not submit data to assess this metric involving trauma coaching for HCA staff in 2023.¹³⁵

ATO3.a – validation strategies.

The Co-Neutral team conducted interviews with resource parents in 2024 and asked about trauma-responsive training they received in 2023. Of the 42 resource parents interviewed, 27 recalled completing trauma-responsive training in 2023. Resource parents were asked to rate how useful the trauma training was in preparing them to care for children placed in their home; most (24 of 27, or 89%) resource parents rated the trainings as “somewhat,” “very,” or “extremely useful” to them. Among the resource parents who felt the training was “very” or “extremely useful,” they mostly expressed valuing a trauma-informed lens and recognizing and avoiding children’s behavioral and emotional triggers. For resource parents who felt the training was “not so useful” or “somewhat useful,” a common critique of the training was that it was too vague and was insufficiently substantive.¹³⁶

Discussion

The quantitative data demonstrate that 81 percent of CYFD staff and 76 percent of HCA staff completed trauma-responsive training by the end of 2023. The State reports the Cross-Departmental Training Review Committee met monthly throughout 2023 to review and approve trainings submitted by providers who contract with the State, and to continue work on developing trauma-responsive trainings for CYFD. Advanced-level trainings were not implemented in 2023, and the State was unable to provide data on HCA staff coaching, trauma-responsive training for resource parents, or respondent families.

Of CYFD staff and resource parents who reported completing trauma-responsive training in 2023, the Co-Neutrals heard through interviews with staff and resource parents that the majority reflected

¹³⁵ As of April 14, 2024, HCA had not submitted to the Co-Neutrals a proposed methodology for tracking completion of trauma training for HCA staff as described in the FSA.

¹³⁶ Multiple resource parents reported that they received a notice from CYFD in late December 2023 advising that they needed to complete the training before the end of the year.

positively on the experience. CYFD staff who completed the training found it valuable in their direct work with families, while resource families largely felt that the training was useful.

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

<i>FSA Requirement</i>	<i>By December 1, 2021, all CYFD employees, designated HCA employees, and employees of child serving agencies that contract with CYFD or HCA who provide care to Children in State Custody will demonstrate through competency assessments and self-reporting that they have received adequate trauma-responsive training. (Due December 1, 2022)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

ATO3.b(i) – qualitative metric: Of cases sampled, the share for which the required trauma training was reflected in case practice per all requirements articulated in the agreement.

The State had not finalized the qualitative instrument and methodology to collect data and assess performance for this metric. Thus, the Co-Neutrals are unable to report performance toward this metric for 2023.

ATO3.b(ii) – primary metric: Of all staff at CYFD and designated staff at HCA who provide care to children and who are employed on December 31 of the reporting year, the percent that score satisfactorily on a competency assessment test.

ATO3.b(iii) – primary metric: Of all provider and contract staff who provide care to children and are employed on December 31 of the reporting year, the percent that score satisfactorily on a competency assessment test.

The State reports that competency assessments were not in use during 2023. The State reports both CYFD and HCA are working to develop competency assessments for staff.

Discussion

The State reports the Cross-Departmental Training Review Committee met monthly throughout 2023 to continue work on developing trauma-responsive self-assessments and evaluations of staff, however competency assessments did not occur in 2023.¹³⁷

The Co-Neutrals' conducted site visits to eight CYFD county offices in September 2023 and January 2024 to speak with staff in part about their experience with trauma-responsive training. Overall, staff reported a desire for a stronger emphasis on staff wellness and the impacts of secondary trauma, especially as staff are providing care for children in state custody who are housed in CYFD offices. Staff reported needing more trauma-informed de-escalation training, as well as more specific guidance on what to do when a child is experiencing a mental health or trauma-related crisis.

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

<i>FSA Requirement</i>	<i>Subject to the approval of the Co-Neutrals, CYFD and HCA will develop and implement a process (the Individualized Planning Meeting Plan) for convening an Individualized Planning Meeting team for making decisions and for delivering services and supports for each Child in State Custody. The Individualized Planning Meeting process shall be informed by Child and Family Teaming (CFT), collaborative decision-making, and High-Fidelity Wraparound (HFW) models, and shall prioritize the child's voice and choice. The process shall also be strengths-based, connected to natural supports, and respectful of the child's family and unique cultural heritage. The Co-Neutrals shall not withhold approval of the Individualized Planning Meeting Plan if it is reasonably calculated to achieve the Goals of this Agreement. (due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	The State met the Performance Standard for this TO in 2023. Performance toward plan implementation will be monitored and assessed in App. A, TO 4.2 below.

Discussion

The Co-Neutrals approved the State's Individualized Planning Meeting (IPM) Plan – which the State renamed the Individualized Planning Process (IPP) – on August 17, 2022. The IPP is based on the New Mexico Practice Model, which integrates the principles of a trauma-responsive

¹³⁷ In 2024, CYFD reports they developed a brief, 11-question self-assessment survey that was sent to CYFD staff to assess their trauma-responsive knowledge and to allow staff to self-report on their application of trauma-responsive skills and behaviors. CYFD reported 251 staff completed the survey. The survey tool and subsequent data were not reviewed or validated by the Co-Neutrals. CYFD shared that the responses revealed areas where the training curriculum needed to be strengthened to improve staff knowledge and identified strengths within the current curriculum.

approach; community-based therapeutic supports; cultural connections and Tribal sovereignty; youth and family voice and choice; team-based, collaborative decision-making; continual professional growth and development; and cultural humility practice.¹³⁸ It is described in the State’s plan as “a facilitated approach to conducting teaming meetings to support children and families involved with CYFD.”¹³⁹ The IPP is applied as a framework across a number of CYFD’s child and family team meeting types.

The State’s approved IPP Plan outlines a timeline to roll out IPP training to staff across all CYFD divisions, including JJS, BHS, and PSD. The approved Plan identifies training that began in 2021 for select Family Centered Meeting (FCM) facilitators; PSD County Office Managers and supervisors; JJS regionals, chiefs, and supervisors; and CBHC staff. The Plan identifies training in 2022 to include all remaining PSD, JJS, and BHS staff, including caseworkers, with the State committing to complete the statewide roll out by December 1, 2022.

9. Implementation of Individualized Planning Meetings (App. A, TO 4.2)

<i>FSA Requirement</i>	<i>The Individualized Planning Meeting Plan will be... fully implemented by December 1, 2022. (due December 1, 2022)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

ATO4(i) – primary metric: Of all required 90-day IPP staffings for children in foster home placements, the percentage which occurred timely.

The Co-Neutrals’ analysis of the State’s data found that 4,086 90-day reviews were required for children in resource home placements in 2023, and 462 (11%) of these reviews were conducted¹⁴⁰ on time. The Co-Neutrals also examined the rate of timely review completion by month and found that it decreased over the course of the year (from 14% in the first half of the year to 9% in the second; see Table 15).

¹³⁸ The FSA notes “CYFD and HCA will develop and implement a process (the Individualized Planning Meeting Plan)” to fulfill this commitment. The State has indicated they intend to create an Individualized Planning Process (IPP) to serve as a framework to which all team meetings at CYFD will adhere to satisfy the commitment.

¹³⁹ IPP Plan, pg. 1.

¹⁴⁰ A meeting was identified as conducted when the State’s data indicated that it was not canceled, it occurred on or before the due date, and it was a “90-day staffing.” Due dates were calculated as every 90 days after the start of the placement and were unaffected by a move from one resource home placement to another.

Table 15: Completed and Required IPPs for Resource Home Placements in 2023, by Month

Month	Total required reviews	Completed and timely reviews	Percent of required reviews completed timely
January	305	55	18%
February	259	42	16%
March	308	38	12%
April	317	37	12%
May	321	38	12%
June	316	47	15%
July	361	37	10%
August	360	35	10%
September	377	26	7%
October	363	42	12%
November	392	39	10%
December	407	26	6%
Total	4,086	462	11%

Source: Analysis of Sandbox *Placement* file submitted 6/27/24 (supplemented by service type detail from FACTS episodes file submitted 5/1/24) and Sandbox *Meetings, Cohort*, and *CourtDisposition* files submitted 6/27/24.

ATO4(iii) – primary metric: Of all required 30-day IPP staffings for children in state custody who are missing or under runaway status, the percentage which occurred timely.

The Co-Neutrals’ analysis of the State’s data found that 176 30-day reviews were required for children who were missing or had run away in 2023; six (3%) of these reviews were conducted¹⁴¹ on time.

ATO4(ii) – qualitative metric: Of the IPP meetings reviewed for children in foster home settings, the share that reflected all requirements articulated in the Agreement.

ATO4(iv) – qualitative metric: Of the IPP meetings reviewed for children who have runaway or are missing, the share that reflected all requirements articulated in the Agreement.

The State had not finalized the qualitative instrument and methodology to collect data and assess performance for these metrics. Thus, the Co-Neutrals are unable to report performance toward these metrics for 2023.¹⁴²

¹⁴¹ A meeting is considered “conducted” when the State’s data indicate that it was not canceled, it occurred on or before the due date, and it was a “Runaway/missing 30-day Review.” Due dates were calculated as every 30 days after the start of the runaway episode.

¹⁴² CYFD reports that the CYFD QA unit has begun implementing an IPP fidelity tool that was developed in consultation with consultants, and that the State plans to outline use of this tool in a qualitative plan as required by the DVP.

Discussion

Throughout 2023, CYFD continued to contract with a technical assistance provider, the Child Welfare Group (CWG)¹⁴³ to assist with staff training, coaching, and implementing the IPP framework on a county-by-county basis. CYFD reports the county-based rollout was planned to assist in identifying offices that could be leaders in statewide IPP implementation as well as offices where additional supports for staff were needed. Co-Neutral staff attended a three-day IPP training session in 2023 and found it to be thorough in highlighting the importance of engaging families, their supports, and their strengths. The training emphasized the core values and principles of New Mexico's Practice Model, and outlined important practice fundamentals and skills for CYFD staff that, if implemented with fidelity, will help the agency to transform its approach to work with children, families, and communities.

In September 2023 and January 2024, the Co-Neutrals conducted visits to eight CYFD county offices to hear directly from staff about their work, including their experiences with IPP implementation. While many staff felt that IPP could be useful to them, staff largely expressed that their current job responsibilities do not allow them time to prepare and conduct IPPs. Staff reported feeling strained by the length of time it takes to become certified in IPP, with some recalling training and certification timelines as long as six months. Staff also shared confusion on the purpose of IPPs, and spoke of children's cases where they are holding similar meetings multiple times per week due to requirements for IPP and non-IPP case staffings.

Staff's experiences were reflected in the data collected for 2023, which showed that IPPs were mostly not happening as required for children placed in foster homes (11% of required meetings held timely) or for children on missing or runaway status (3% of required meetings held timely). Additionally, the Co-Neutrals collected IPP data for Appendix B commitments and found that current practice is not meeting the outcomes as defined in the Plan.¹⁴⁴

Based upon the data and feedback from staff, the Co-Neutrals recommend CYFD reexamine the original IPP Plan to determine whether revisions are necessary to streamline the number and types of required meetings for children, better ensure that staff have the skills and support needed for the meetings, and to provide additional clarity to staff on the purposes and anticipated results from any meetings.

¹⁴³ CWG is a policy and practice organization that provides technical assistance to states to improve outcomes for children and families. More information on CWG can be found [here](#).

¹⁴⁴ Data on IPPs for Appendix B commitments can be found in App. B, TO 3.2; App. B, TO 4.1; and App. B, TO 4.2

10. Development of Quality Assurance, Improvement, and Evaluation Plan (App. A, TO 5.1)

FSA Requirement	<i>CYFD and HCA will create and implement a Quality Assurance, Improvement, and Evaluation Plan, including quality management tools and measures to be used for reporting on CYFD and HCA’s capacity to meet the needs of Children in State Custody, including measures for reporting on providing and improving quality of care, collaborating across Departments, and for providing transparency and accountability. The Plan will include: consistent definitions and terms across CYFD and HCA, data exchange and matching across CYFD and HCA, clarification of existing measures and indicators, self-assessments, metrics as indicators of system performance (including process indicators, client outcomes, and system impact), a continuous quality improvement process that provides information in real time to decision-makers, and a process for responding to findings from the Plan. CYFD will develop a meaningful quality assurance process to ensure that training, policy, and procedure is being properly utilized and integrated into daily processes. The Co-Neutrals must approve the Quality Assurance, Improvement, and Evaluation Plan. CYFD and HCA will develop the Quality Assurance, Improvement, and Evaluation Plan by June 1, 2021. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	The State met the Performance Standard for this TO in 2022. Performance toward plan implementation will be monitored and assessed in App. A, TO 5.2 below.

Discussion

The State’s “Phase 1”¹⁴⁵ Quality Assurance, Improvement, and Evaluation Plan (QAIEP) was approved by the Co-Neutrals on December 9, 2022.¹⁴⁶ Phase 1 requires the State to develop internal capacity and cross-departmental coordination between CYFD and HCA. The QAIEP is described as a framework for quality improvement, and identifies key practice points to be monitored by the QAIEP Executive Leadership Team to assist in identifying where CYFD and HCA’s policies and processes are working successfully, and where practices need to be improved.

¹⁴⁵ As the State builds capacity to implement the QAIEP as described in the FSA, the QAIEP is expected to change and evolve. Thus, the QAIEP approved by the Co-Neutrals in December 2022 is considered a “Phase 1” approval.

¹⁴⁶ The State’s Phase 1 QAIEP can be found [here](#).

11. Implementation of Quality Assurance, Improvement, and Evaluation Plan (App. A, TO 5.2)

<i>FSA Requirement</i>	<i>CYFD and HCA will... fully implement [the QAIEP] by December 1, 2021. (Due by December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Discussion

The State's Phase 1 Plan provides specific strategies to begin the work of the QAIEP, including the creation of tiered committees which were initially formed in 2022. The State reports that both the Continuous Quality Improvement (CQI) Committee and QAIEP Steering Committee continued to meet during the year. However, substantial turnover among executive and managerial staff in both agencies largely stalled the State's progress in 2023 in carrying out commitments to the work of the QAIEP and its various committees.

One area of progress within the QAIEP is the work of CYFD's QA unit. This unit was built and staffed in 2022 and has worked collaboratively with the Co-Neutral team to complete qualitative reviews relevant to *Kevin S.* commitments.¹⁴⁷ However, sharing the results of the reviews with departmental leaders and implementing change plans in response to review findings has rarely occurred. The State has indicated that it plans to implement this part of the QA process in 2024. For the QA process to be effective, HCA and CYFD need to build processes where information from data is regularly shared with leadership as well as staff working in the field to increase awareness and create sustainable, effective changes for improvement.

¹⁴⁷ The QA Unit includes one supervisor and five staff, and is dedicated to assessing implementation, quality, and fidelity of *Kevin S.* deliverables.

ii. Appendix B: Least Restrictive and Appropriate Placements

The FSA commitments in Appendix B require CYFD and HCA to “build a system for placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment.”¹⁴⁸ The parties describe this system as including:

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

The State’s foster care system should be used “as temporary an arrangement as possible, with [the] goal [of] being [able] to provide children in out-of-home placements a safe, nurturing, and permanent home quickly.”¹⁴⁹

a. Implementation Targets Not Previously Achieved

In prior reports, the Co-Neutrals assessed the State had met the Performance Standard for all of the Appendix B ITs, specifically: *Development of Recruitment and Retention Plan* (App. B, IT 1.1), *Publish Guidance Prohibiting Retaliation* (App. B, IT 2.1), *Development and Promotion of Warm Line for Resource Parents* (App. B, IT 3.1), *Promotion of Internal Grievance Procedure for Youth* (App. B, IT 3.2), and *Development of a Grievance Procedure for Resource Families* (App. B, IT 3.3). Thus, these ITs will not be reassessed in this or future reports.

¹⁴⁸ FSA, pg. 5a.

¹⁴⁹ Ibid.

b. Target Outcomes Due Between 2020 and 2023

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

<i>FSA Requirement</i>	By December 1, 2020, no child under 18 will be placed in any hotel, motel, out-of-state provider, office of a contractor, or state agency office unless in extraordinary circumstances necessary to protect the safety and security of the child as documented in the child’s record and approved by the Secretary or the Protective Services Director of CYFD. In any such extraordinary circumstance, CYFD shall provide notice to the child’s Guardian ad Litem and Youth Attorney immediately where possible, and not more than 24 hours after the placement of the child. Notification to the dependency court to which the child’s case is assigned must occur within 3 business days. When a child is placed with an out-of-state provider, notice to the child’s Guardian ad Litem, Youth Attorney, and the dependency court to which the child’s case is assigned will be given prior to the move, pursuant to statute. (Due December 1, 2020)
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

BTOL1.1(i) – secondary metric: The percent of children with any office, hotel/motel, or out-of-state RTC/group placements in the cohort during reporting year.*

The Co-Neutrals’ analysis of data submitted by the State found that in 2023, 199 (7%) of 2,944^{150,151} children in state custody experienced a placement to at least one of the settings covered by this commitment – a hotel/motel, office, or out-of-state facility. As shown in Table 16, this is more than double the rate from 2022, when 82 (3%) of 2,755 children experienced a placement to one of those settings. The number of children who had any placements to out-of-state facilities has declined from

¹⁵⁰ The metrics reported in this section were calculated from placement data submitted by the State as validated by the Co-Neutral team’s qualitative review. The Co-Neutral team’s qualitative review was based on real-time data submitted monthly by the State that had not gone through the State’s quality-assurance process, and there were many placements that appeared in the Sandbox placement data that were submitted by the State on May 1, 2024 (and resubmitted with revisions on June 27, 2024) but did not appear in the real-time data. As a result, the Co-Neutrals were able to review most, but not all, office placements and made manual adjustments to the Sandbox data as needed.

¹⁵¹ During qualitative case reviews, the Co-Neutral team identified discrepancies between the State’s structured data and information in children’s FACTS case records for several placements. The State corrected most of these discrepancies in the data resubmitted to the Co-Neutrals on June 27, 2024. However, four additional corrections were made for placements applicable to this metric: three placements (for three unique children) were initially categorized as out-of-state residential placements but were recoded to acute hospitalizations, while the start date for another placement was corrected (25 days earlier than shown in the Sandbox data).

57 in 2019 to 18 in 2023, while the number of children with placements in offices has risen from 34 in 2019 to 185 in 2023 – and more than doubled from 2022 to 2023. There were no reported hotel/motel placements in 2023.

Table 16: Children with any Placement to a Hotel/Motel, Office, or Out-of-State Facility, 2019 – 2023

Category	2019 (N = 3,881)		2020 (N = 3,344)		2021 (N = 2,949)		2022 (N = 2,755)		2023 (N = 2,944)	
	#	%	#	%	#	%	#	%	#	%
Children with any placement in applicable setting ¹⁵²	83	2%	63	2%	102	4%	82	3%	199	7%
Children with placement to any applicable setting, by type of setting										
Out-of-state facility	57	1.3%	31	0.9%	27	0.9%	14	0.5%	18	0.6%
Office (including Receiving Center)	34	0.9%	32	1.0%	85	2.9%	71 ¹⁵³	2.6%	185	6.3%
Hotel/motel	0	0%	2	0.1%	3	0.1%	6	0.2%	0	0.0%

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from FACTS *episodes* files submitted 5/2/22 (2019-22), 5/1/23 (2022), and 5/1/24 (2023); manual *Hotel Stays* file submitted 3/31/22 (2020); and manual *Named Plaintiff – Office Stay Manual Record* file submitted 5/2/22. Findings for 2022 and 2023 reflect adjustments informed by case record reviews of FACTS documentation conducted by the Co-Neutral team.

This metric is reported at the child-level (i.e., a child with multiple placements to a hotel/motel, office, or out-of-state facility is counted only once). But as additional detail to inform the Co-Neutrals’ assessment of the State’s efforts, the Co-Neutrals also examined the total number of placements to each placement type by month (see Table 17). Placements in offices increased most months beginning in June 2024. There were no new out-of-state placements between January and April 2023, but those placements resumed and continued every month from May 2023 through the end of the year.

¹⁵² Some children had placements to more than one setting covered by this metric. Therefore, numbers by setting or placements are higher than the total number of unique children.

¹⁵³ Does not include two office placements that appear in the Sandbox data for which no supporting documentation was available in the case record (both in February 2022).

Table 17: Placements to Hotel/Motel, Office, and Out-of-State Facility by Month, 2023

Month	Total placements	Placements by setting		
		Out-of-state facility	Office	Hotel/motel
January	11	0	11	0
February	20	0	20	0
March	18	0	18	0
April	24	0	24	0
May	21	2	19	0
June	28	1	27	0
July	41	3	38	0
August	47	3	44	0
September	36	3	33	0
October	20	2	18	0
November	44	3	41	0
December	31	2	29	0
Total	341	19	322	0

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from FACTS *episodes* files submitted 5/2/22 (2019-22), 5/1/23 (2022), and 5/1/24 (2023); manual *Hotel Stays* file submitted 3/31/22 (2020); and manual *Named Plaintiff – Office Stay Manual Record* file submitted 5/2/22. Findings for 2022 and 2023 reflect adjustments informed by case record reviews of FACTS documentation conducted by the Co-Neutral team.

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

The Co-Neutral team examined FACTS data for each congregate placement in which the State recorded the allowable circumstance for that placement (e.g., “extraordinary circumstances,” “medical necessity,” or “best interest”) and the date the State made that determination. This information is recorded in FACTS, typically by caseworkers at the time of placement.

The Co-Neutral team conducted independent reviews of children’s records in an effort to validate the State’s representation of these placements in FACTS.¹⁵⁴ In reviewing children’s FACTS records, the Co-Neutral team determined that some placements that appeared as new placements subject to the “extraordinary circumstances” requirement were not new placements as defined by the DVP (e.g., acute hospitalizations incorrectly recorded in FACTS). Moreover, there were

¹⁵⁴ Data, as submitted by the State, show that caseworkers recorded in FACTS that the State made an ‘extraordinary circumstances’ determination on or before the date of placement for 195 (57%) of the 341 new placements to an office or out-of-state facility in 2023.

placements that appeared in the State’s June 27, 2024 data resubmission that did not appear in the unvalidated real-time data submitted by the State at a regular cadence throughout the year and used by the Co-Neutrals for qualitative reviews. For the new placements to offices and out-of-state facilities that did appear in the data and were reviewed, the Co-Neutral team determined that children’s placements did not meet the extraordinary circumstances standards set forth by the parties in Appendix B of the FSA.

BT01.1(ii) – qualitative metric: Qualitative review of extraordinary circumstance determination for placements to hotels, motels, or offices.¹⁵⁵

For this metric and the other qualitative metrics discussed below, the Co-Neutral team developed protocols and instruments and conducted reviews of children’s FACTS records to assess whether CYFD made placements pursuant to the extraordinary circumstances, medical necessity, and best interest standards in the FSA.¹⁵⁶

The Co-Neutral team reviewed 238 county office placements experienced by 127 unique children in 2023.¹⁵⁷ None (0%) of the 238 office placements reviewed by the Co-Neutral team reflected extraordinary circumstances necessary to protect the safety and security of the child, as required by FSA Appendix B. Over half (59%) of the office placements reviewed included no documented reference to safety and security threats. Nearly one-third (30%) of documentation described the safety threat warranting the office placement as a risk of homelessness due to placement unavailability, as with similar findings for risk of victimization (27%) and/or exposure to elements (25%).¹⁵⁸ For 20 percent of placements, the documentation cited the same (or very similar) language: “This office stay is approved and meets the extraordinary circumstance to ensure the safety and security of the child, e.g. to prevent homelessness, risk of victimization (trafficking, physical harm, emotional harm), exposure to the elements.” In approximately one-third of the

¹⁵⁵ In reviewing extraordinary circumstances determinations, the Co-Neutral team assessed whether documentation in the child’s record demonstrated the placement was necessary to protect the safety and security of the child, and that the placement was approved by the CYFD Secretary or PSD Director prior to the placement occurring, consistent with the FSA. The lack of alternative or available placements is insufficient to meet the extraordinary circumstances standard set forth in the FSA.

¹⁵⁶ The Co-Neutrals provided these instruments to the State for feedback, and all of the State’s suggestions were incorporated. The Co-Neutral team participated in an initial orientation and training on the FSA standards and review instruments, and participated in a FACTS training conducted by CYFD staff. The Co-Neutral team implemented a quality control process during the reviews, which included inter-rater reliability and second-level reviews of identified surveys. Findings from these reviews were provided to the State for review and feedback in advance of publication of this report.

¹⁵⁷ The Co-Neutral team conducted qualitative reviews in 2023 and early 2024 using real time data submitted by the State pursuant to the MOU and CAP. The State’s full 2023 data submission provided to the Co-Neutrals on May 1, 2024 (and resubmitted with revisions on June 27, 2024) identified an additional 84 office placements had occurred. The Co-Neutral team reviewed five of these placements to determine if there were any deviations in practice between the office placements identified in the real time data and the office placements included in the full 2023 data submission, and found the practice to be consistent. Sampling represents a 95% confidence interval with a <4% margin of error.

¹⁵⁸ Multiple “threat” reasons could be documented for a single placement; thus, a child could have both risk of homelessness and victimization cited for a single placement.

instances where the boilerplate language was used, no other context or documentation was included to substantiate the necessity for an office placement. The State's lack of alternative placements does not satisfy the extraordinary circumstances standard.

In 91 of the 238 office placements reviewed, documentation in FACTS shows a Memorandum for Decision (MFD)¹⁵⁹ was submitted for approval of the placement. However, only two of the MFDs included documented approval by the CYFD Secretary or PSD Director prior to the placement.^{160,161} The Co-Neutral team reviewed the MFDs that were documented in FACTS and found that they generally contained information about many daily efforts to secure placements for children housed in offices. These efforts included repeated outreach and documented denials from resource family providers, TFC providers, shelters, and other congregate care providers.

Although critical incidents affecting children in CYFD office settings have raised serious concerns for children's safety, the vast majority of children in 2023 were sent to be housed in offices without the prior written approval of the CYFD Secretary or PSD Director.

The Co-Neutral team's review of 2023 office placements showed:

- The average age of children at the time of office placement was 12 years old. Most children (64%) were between the ages of 12 and 17, and 16 percent of children were ages five and younger.
- Of the 152 office placements with documentation of the specific office used, approximately one-third (32%) were documented as taking place in the Receiving Center in Bernalillo County, 22 (14%) were documented in the Dona Ana County office, 21 (14%) were documented in the Chaves County office, and 21 (14%) were documented in the Otero County office.
- As further indication of the lack of available resource homes for children, 24 percent (56) of office placements served as the child's first placement upon entering foster care in 2023; in 2022, 11 percent of office placements served as a child's first placement upon entering care. Thirty-four percent (81) of the office placements reviewed occurred following a child's discharge from a shelter, group home, supervised independent living, or community home; 23 percent (55) of office placements occurred following a child's discharge from a non-

¹⁵⁹ An MFD is the CYFD template that caseworkers complete to request approval by a manager, deputy director, director, and/or CYFD Secretary. As used in the context of approval for office stays, PCs are required to include in the MFD all efforts to identify appropriate placements for the child and the extraordinary circumstances that threaten the child's safety and security.

¹⁶⁰ The MFDs approved by the Cabinet Secretary or PSD Director were for office placements that occurred in January 2023 and April 2023.

¹⁶¹ Of the remaining 89 MFDs, 64 were documented as approved by CYFD staff *other than* the Cabinet Secretary and PSD Director *prior* to the placement, and 14 were documented as approved by CYFD staff *other than* the Cabinet Secretary or PSD Director *after* the placement had begun.

relative resource home; and six percent (15) of office placements occurred following a child's discharge from acute hospitalization or placement in a residential treatment center.

- Over half of the office placements (57%, or 135 of 238) lasted no more than two nights, and 26 percent (62 of 238) lasted five or more nights. The lengths of stay for the 238 office placements reviewed are set forth in Table 18 below.

Table 18: Length of Stay of Office Placements Reviewed in 2023

Length of Placement	Number of Placements	Percent of Placements
1 night	76	32%
2 nights	59	25%
3 nights	27	11%
4 nights	14	6%
5 nights	4	2%
6 nights	7	3%
More than 6 nights	51	21%
Total	238	100%

Source: Case record review of FACTS documentation conducted by the Co-Neutral team.

CYFD county offices and the Receiving Center are not licensed for the placement of children and rely upon CYFD staff to provide 24-hour supervision and care. County offices where children routinely stay overnight require that staff work a specified number of shifts each week or month in addition to their full-time job activities and responsibilities. Many CYFD staff reported to the Co-Neutrals that a significant number of children housed in offices have serious emotional disorders, but staff were not provided with adequate training on how to meet children's needs. This includes no training on the proper storage and administration of medication, despite the fact that many children housed in offices are prescribed multiple medications. Staff report concerns for the children's and their own safety, and staff calls to 911 are frequently used for behavior management or crisis intervention. The act of involving law enforcement, which could be avoided if children were appropriately placed and receiving necessary services, only adds to children's trauma and destabilizing experiences in many instances.

Pursuant to the parties' 2023 CAP, CYFD was required to provide the Co-Neutrals with notice of critical incidents that occurred within office or congregate care settings between July and December 2023.¹⁶² The CAP defines critical incidents as any situation that results in either a 911 call, an allegation of harm, an allegation of abuse and/or neglect, an allegation of restraint/seclusion, or a change in licensure of a facility. The State provided the Co-Neutrals with documentation of 52 critical incidents that occurred between July 1, 2023 and January 5, 2024 in CYFD county offices.

¹⁶² CAP Section I.4.

Most (88%) critical incidents were 911 calls made by CYFD staff in response to a child's behavior within the office.

*BTO1.1(iii) – qualitative metric: Qualitative review of extraordinary circumstance and medical necessity determinations for placements to out-of-state congregate settings.*¹⁶³

The number of new placements to out-of-state facilities increased in 2023 – 19¹⁶⁴ as compared to 14 in 2022. There were no new out-of-state placements made between January and April 2023, but placements continued each month thereafter through the end of the year (see Table 19 below). The average age of children at the time of placement was 12 years old; 35 percent (6 children) were ages 15 to 17, 41 percent (7 children) were ages 11 to 13, and nearly one-quarter (24%) were ages eight to 10.

None of the placements reviewed by the Co-Neutral team reflected that the out-of-state placement was due to extraordinary circumstances necessary to protect the safety and security of the child, as required by FSA Appendix B. One-third (33%) of the out-of-state placements included no documented reference to safety and security threats. For those placements where threats were referenced in documentation, the most common threats were of self-harm (8 placements), and threats to others (7 placements).¹⁶⁵ While these circumstances may have been pertinent to a medical necessity determination and the need for therapeutic services, the Co-Neutrals were unable to determine that such threats necessitated a child's placement out of the state of New Mexico to ensure the child's safety. Documentation demonstrates an MFD was submitted to and approved by the CYFD Secretary or PSD Director prior to three (17%) of the 18 out-of-state congregate placements.^{166,167}

Reviewers from CYFD and the Co-Neutral team relied on the CYFD FACTS record and MCO documentation to determine whether the placement was made pursuant to the medical necessity standard, which requires that the MCO determine medical necessity is met for the level of care provided and, pursuant to the FSA medical necessity definition, that such determination took into consideration whether community-based mental health services have been or could be provided. Of

¹⁶³ In assessing extraordinary circumstances determinations, the Co-Neutral team assessed whether documentation in the child's record demonstrated the placement was necessary to protect the safety and security of the child, and that the placement was approved by the CYFD Secretary or PSD Director prior to the placement occurring. The lack of alternative or available placements is insufficient to meet the extraordinary circumstances standard set forth in the FSA.

¹⁶⁴ A total of 18 unique children experienced new out-of-state placements in 2023; one child experienced two placements during the period.

¹⁶⁵ Multiple "threat" reasons could be documented for a single placement; thus, a child could have experienced both threats of self-harm and threats to others.

¹⁶⁶ There was one additional MFD documented as submitted prior to the child's placement, however, it does not include approval by the CYFD Secretary or PSD Director.

¹⁶⁷ The MFDs approved by the CYFD Secretary or PSD Director also included the approval of the HCA Secretary or Deputy.

the 18 out-of-state placements reviewed,¹⁶⁸ FACTS and MCO documentation showed that the placement was made pursuant to the medical necessity standard in four (22%) placements – meaning the MCO determined medical necessity was met and such determination was documented as having been made by taking into consideration whether community-based services have been or could be provided. Of the remaining 14 placements, none included documentation reflecting that a finding of medical necessity considered whether community-based services have been or could be provided; four of these placements also did not include documentation that the MCO determined medical necessity was met.

Table 19: Number of Out-of-State Facility Placements that Met Extraordinary Circumstances and Medical Necessity by Month in 2023

Month	Number of Out-of-State Placements	Number of MFDs Submitted and Approved Prior to Placement	Number of Placements Documented as Necessary to Protect the Safety and Security of Child	Number of Placements Documented as Medically Necessary and Considered Community-based Services
January	0	0	0	0
February	0	0	0	0
March	0	0	0	0
April	0	0	0	0
May	2	0	0	0
June	1	0	0	0
July	3	1	0	1
August	3	1	0	1
September	2	0	0	0
October	2	0	0	1
November	3	0	0	0
December	2	1	0	1
Total	18	3 (17%)	0 (0%)	4 (22%)

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

Discussion

The Co-Neutrals’ analysis of data submitted by the State found that in 2023, seven percent of children in state custody experienced a placement to at least one of the settings covered by this commitment – a hotel/motel, office, or out-of-state facility – more than double the rate from 2022. The Co-Neutrals assess that none of the children’s placements in offices or out-of-state facilities in 2023 met the extraordinary circumstances standard. CYFD staff and the Co-Neutral team were

¹⁶⁸ One of the 19 out-of-state placements was not reviewed for the qualitative metric, as the placement was made by the child’s guardian prior to the child entering foster care. The child entered foster care while already placed at the facility. As the State did not newly make this placement, it was not reviewed within this qualitative metric.

unable to find that single, child-specific contracts or agreements to maintain the children within the state were documented in any of the records for the children newly placed out of state in 2023.

There were 28 children in out-of-state facilities for at least 30 days in 2023, including many children placed during the previous year. Similar to 2022, a significant issue identified by CYFD staff and the Co-Neutral team during reviews of children's out-of-state placements was the number of safety concerns documented within the facilities where New Mexico children were placed.¹⁶⁹ In 2022, CYFD reported initiating a practice of contacting someone within the state where the facility was located to determine if the facility had any licensing violations within the previous 12 months, if there were any current sanctions, and if the state in which the facility was located currently placed children in their state's custody at the facility. For the 18 out-of-state placements from 2023 assessed for the qualitative metric, CYFD staff and the Co-Neutral team found documentation that some information related to licensing, sanctions, or placement of in-state children was collected for five (28%) of the placements.

For the first time during this review, for nearly all the placements reviewed, reviewers had access to MCO documentation reflecting the initial authorization for placement and requests for continued authorizations. Reviewers found instances in which MCO documentation did not align with what was documented in the child's FACTS record, including references to discharge plans developed by the MCO that were different than what was documented in the FACTS record. There were a number of records which revealed a lack of care coordination or diligent discharge planning. Most striking, however, were references to critical incidents or other safety issues that were not consistently documented in the CYFD record. Reviewers were unable to determine if this meant that the MCO failed to notify the CYFD legal guardian of the incident or if communication was occurring that was not documented. Following the review of January through June 2023 placements, CYFD staff added questions to the July through December 2023 review instrument related to identification of critical incidents or safety and well-being concerns. Of the 23 out-of-state placements assessed during that six-month period, CYFD staff and the Co-Neutral team identified documentation related to use of physical restraints in 14 children's records, use of chemical restraint in 10 children's records, and medical neglect in six children's records.¹⁷⁰ The Co-Neutrals discussed these findings and circumstances with CYFD and HCA leadership, and the State reports instituting new processes to better monitor and assess the safety of children in out-of-state placements.

Pursuant to the parties' June 2023 CAP, following the review of records for children placed out of state, the State provided the Co-Neutrals with an updated notice of critical incidents that had occurred in out-of-state facilities. The updated notice included the following critical incidents related to 20 children placed out of state between July and December 2023:

¹⁶⁹ During case record reviews, it is part of the Co-Neutrals' practice to notify CYFD and HCA leadership of any safety concerns that are identified within the record.

¹⁷⁰ More than one of each of these incidents may have been found in individual children's records.

- 94 instances of chemical or physical restraint, or seclusion;
- 67 allegations of both harm and instances of chemical or physical restraint or seclusion;
- 47 allegations of harm;
- Eight allegations of abuse or neglect; and
- Two allegations of both harm and abuse or neglect.

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

<i>FSA Requirement</i>	<i>By December 1, 2020, HCA and CYFD will conduct a joint clinical review of any out-of-state placement, where the child's out-of-state placement is not the child's permanency plan, at least on a monthly basis. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

The Joint Clinical Review (JCR) process is outlined in paragraph 11.4 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC).¹⁷¹ The procedure states that the JCR is a process utilizing the IPP framework that is required for children who are placed in out-of-state facilities to provide a forum to: review the child's treatment plan and updates; review or create a discharge plan, including identification of in-state resources that need to be developed and in place for the child to return to New Mexico; identify any gaps in the medical and behavioral health care being provided, and create strategies to address any identified gaps.

JCR meetings are expected to occur every 30 days, are to be coordinated by the CYFD PC caseworker, and must include specified participants. These participants include: the child or youth, child or youth's parent or other family members, PC or primary assigned caseworker, PC or primary assigned worker's supervisor, CBHC staff, MCO care coordinator or other care coordinator representative, case manager from the out-of-state facility, GAL or Youth Attorney (YA), Tribal representative (as applicable), and representative from the Office of Tribal Affairs (OTA) (as applicable).

¹⁷¹ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

DVP Metrics and Validated Performance Data

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

The Co-Neutrals’ analysis of the State’s data shows there were 161 JCR meetings required in 2023 for children in out-of-state placements, and 88 (55%) of them were conducted¹⁷² on time.¹⁷³ This is a decrease from 2022, when 186 (72%) of 258 required JCR meetings were conducted on time.

As additional information, the Co-Neutrals examined the rate of timely JCR meetings by month and found that it decreased over the course of the year (from 81% in the first half of the year to 31% in the second; see Table 20).

Table 20: Completed and Required Joint Clinical Review Meetings for Out-of-State Residential Placements in 2023, by Month

Month	Total required JCR meetings	Completed and timely JCR meetings	Percent of required JCR meetings completed timely
January	14	12	86%
February	12	9	75%
March	14	13	93%
April	13	11	85%
May	10	9	90%
June	12	7	58%
July	11	6	55%
August	13	4	31%
September	14	4	29%
October	16	5	31%
November	15	4	27%
December	17	4	24%
Total	161	88	55%

Source: Analysis of Sandbox *Placement* file submitted 6/27/24 (supplemented by service type detail from FACTS *episodes* file submitted 5/1/24), Sandbox *Meetings* file submitted 6/27/24, and adjustments informed by the case record review of FACTS documentation conducted by the Co-Neutral team.

¹⁷² A meeting is considered “conducted” when the State’s data indicate that it was not canceled, it occurred on or before the due date, and it was an “Out-of-State 30-Day Review.” Due dates were calculated as every 30 days after the start of the placement and were unaffected by a move from one out-of-state placement to another.

¹⁷³ As described in further detail below, the Co-Neutrals’ qualitative review of the case records found that there were 160 total 30-day periods during which a JCR meeting was due, and that 98 (61%) were completed. These findings differ from the quantitative metric because the methodology of the qualitative review differed in two main ways. First, the qualitative review counted meetings if they were documented as having been conducted for the required purpose regardless of how they were categorized in FACTS (for the quantitative metric, meetings were excluded if they were categorized as anything other than an “Out-of-State 30-Day Review”). Second, the qualitative review counted JCR meetings as due or completed based on the calendar month, not 30-day periods.

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

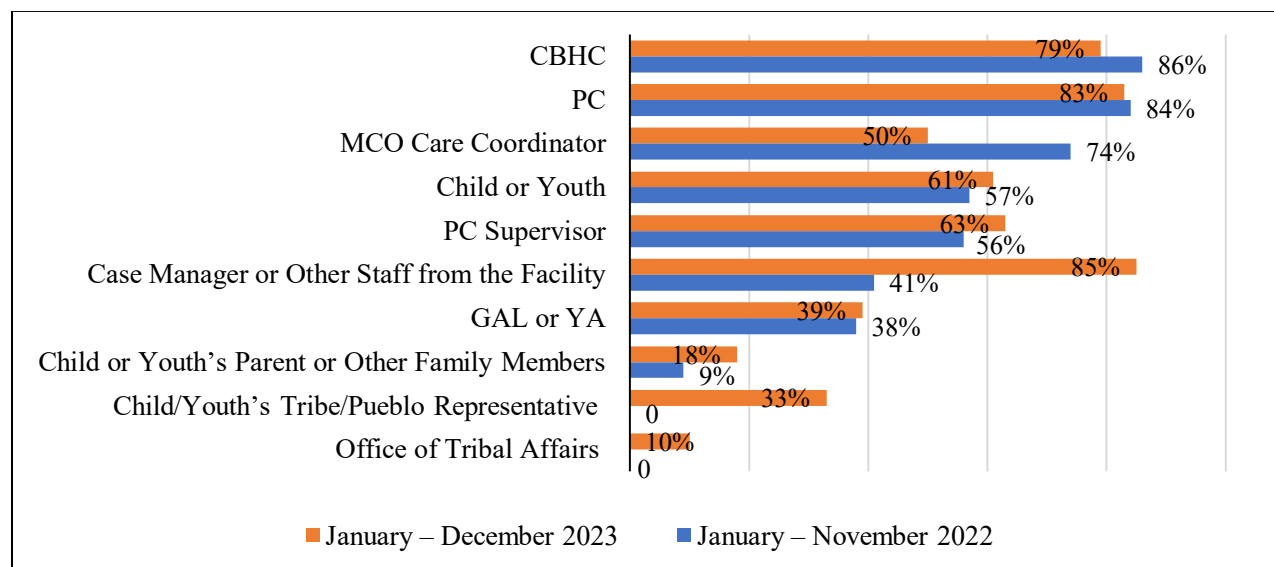
Reviewers from CYFD and the Co-Neutral team reviewed the FACTS and MCO records for all applicable placements of children who were in facilities out-of-state between January and December 2023, including children placed out-of-state in 2022 who remained in those placements for at least 30 days in 2023. For the 30 placements reviewed, a total of 160 JCR meetings were required between January and December 2023.¹⁷⁴ Reviewers confirmed that 98 (61%) JCR meetings were documented as completed.¹⁷⁵ None (0%) of the completed JCRs included all required attendees and documented discussion of all required meeting components including review of the child’s treatment plan, discharge plan, and identification of in-state resources that need to be developed and in place for the child to return to New Mexico.

Of the 98 JCR meetings that were documented as completed between January and December 2023, the PC and case manager or other staff from the facility were the most consistently documented attendees in the meetings (see Table 21 below). MCO care coordinator attendance in JCR meetings declined in 2023 as compared to 2022.

**Figure 6: Attendees of Completed Joint Clinical Review Meetings,
January 2022 – December 2023¹⁷⁶**

N = 201 JCRs Completed January – November 2022

N = 98 JCRs Completed January – December 2023



Source: Case record reviews of FACTS and MCO documentation conducted by CYFD staff and Co-Neutral team.

¹⁷⁴ Ibid.

¹⁷⁵ This qualitative review did not examine the timeliness component as measured in the quantitative metric discussed above. Reviewers identified if a JCR meeting occurred at any time during the applicable month.

¹⁷⁶ The Co-Neutrals’ initial review was conducted in December 2022, thus, practice through November 2022 was assessed.

In comparing attendance in the first six months of 2023 as compared to the last six months of 2023, attendance by the CBHC caseworker, PC, child or youth, PC supervisor, child or youth's parent or other family members, child or youth's Tribe representative, and OTA staff, all declined. MCO care coordinator attendance improved.

**Table 21: Documented Participants in Completed Joint Clinical Review Meetings,
January – December 2023**

Participant Type	January – June 2023 <i>N=60 completed</i>					July – December 2023 <i>N=38 completed</i>				
	Number Required to Attend	Attended		Invited, did not attend		Number Required to Attend	Attended		Invited, did not attend	
		#	%	#	%		#	%	#	%
CBHC	60	53	88%	-	-	38	24	63%	-	-
PC	60	53	88%	-	-	38	28	74%	2	5%
MCO Care Coordinator	60	27	45%	1	2%	38	22	58%	2	5%
Child or Youth	59	40	68%	1	2%	38	19	50%	2	5%
PC Supervisor	60	42	70%	3	5%	38	20	53%	1	3%
Case Manager or Other Staff from the Facility	60	51	85%	-	-	38	32	84%	-	-
GAL or YA	60	25	42%	-	-	38	13	34%	1	3%
Child or Youth's Parent or Other Family Members	60	14	23%	2	3%	38	4	11%	1	3%
Child/Youth's Tribe/Pueblo Representative	15	6	14%	6	40%	6	1	17%	3	50%
Office of Tribal Affairs	15	2	13%	3	20%	6	0	0%	3	50%

Source: Case record reviews of FACTS and MCO documentation conducted by CYFD staff and Co-Neutral team.

Reviewers assessed if each of the following topics were documented as discussed during the JCR meeting: review of the medical necessity determination, child or youth's goals of care and treatment preferences, child or youth's family's goals of care and treatment preferences, and discharge plan. Of the 98 JCRs that were held, 28 (29%) had documentation that a discharge plan was reviewed or created, five (5%) had documentation that the child or youths' goals of care and treatment preferences were discussed, two (2%) had documentation that the child or youth's family's goals of care and treatment preferences were discussed, and none (0%) included documentation that the medical necessity determination was discussed in the meeting.¹⁷⁷

¹⁷⁷ Documentation from some meetings showed more than one required topic was discussed.

Discussion

The quantitative and qualitative data shows that the frequency of completing JCR meetings as required decreased over time in 2023, and the CYFD staff and Co-Neutral teams' case record reviews revealed that none of the meetings included all of the required participants and discussion topics. The State has acknowledged that tracking and documenting meetings remains a challenge which they have attempted to resolve by creating flags and prompts within FACTS that include reminders for discharge planning and discussions. The State reports that in mid-2023, CYFD PSD and BHS leadership reviewed practice around JCR meetings and developed educational material for staff related to how and where to document meetings in FACTS. CYFD and HCA report that following the qualitative review discussed above, practice issues were raised to the Executive Leadership level and there has been strengthened dialogue between the agencies around specific concerns, including medical necessity and discharge planning. Additionally, CYFD reports that in March 2023, a new position titled the Optimal Placement Coordinator was filled; this position is dedicated to review out-of-state placements and assist with discharge planning.

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

<i>FSA Requirement</i>	<i>A CYFD caseworker known to the child will conduct in-person visits every month. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Monthly visits to children in out-of-state placements are required to assess the child's safety and well-being and to ensure the child's needs are being met. Paragraph 11.6 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) provides that a child's assigned PSD worker or their supervisor is required to conduct these visits.¹⁷⁸ Paragraph 11.6 specifically states:

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

¹⁷⁸ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

child/youth's needs are being met. PSD Worker and Supervisor will ensure contact is maintained between the child and their family.

DVP Metrics and Validated Performance Data

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

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

Per the DVP, the first visit is due by the end of the month following the child's placement, and visits with the child are due once every month thereafter until the placement ends. For this analysis, the number of visits due was calculated based on the start of the placement¹⁷⁹ until the end of the period placed out of state (or end of the reporting year).

In reviewing the data provided by the State for this quantitative metric in conjunction with the data collected for the corresponding qualitative metric, the Co-Neutrals are unable to validate the quantitative performance data provided by the State.^{180,181}

*BTO2.2(ii) – qualitative metric: Validation of known worker indicator.*¹⁸²

Reviewers from CYFD and the Co-Neutral team reviewed the FACTS records for all children placed out-of-state for at least 30 days in 2023 to determine if a PSD worker visited the child each month they were placed out of state. If someone other than the child's assigned PC or PC supervisor visited the child to assess if the worker was "known to the child," documentation was reviewed to determine if the supervisor approved the worker to conduct the visit and that the worker had a relationship with the child.

Of the 154 required visits between January and December 2023, 78 (51%) visits were completed by the child's primary PC (see Table 22 below). An additional nine (6%) visits were completed by the assigned worker's supervisor, and two (1%) visits were completed by a worker known to the

¹⁷⁹ If the placement began before the start of the reporting year, the first visit was due in January.

¹⁸⁰ In 2023, data submitted by the State show there were 27 children in out-of-state facilities for at least 30 days during the reporting year, with a total of 153 visits required; the State's data shows that 146 (95%) of those visits were conducted on time by any worker, not limited to a caseworker known to the child.

¹⁸¹ Quantitative data submitted by the State for the 153 visits due for 27 children placed in out-of-state facilities show 119 (78%) visits were completed on time and by a worker recorded in FACTS as "known to the child." As discussed below, qualitative review of children's FACTS records identified performance was 58 percent.

¹⁸² Over the last four years, the Co-Neutrals have had numerous conversations and written exchanges with the State to confirm alignment on the child's primary PSD worker as the proxy for worker known to child, with documented exceptions as outlined in the procedure.

child. Thus, based upon documentation in the child’s record, 58 percent of required visits were conducted by a worker known to the child.

Table 22: Worker Visits to Children Placed Out-of-State, Required and Completed, January – December 2023

Months in Period Assessed	Number of Worker Visits Required	Visits by Primary Worker		Visits by Primary Worker’s Supervisor		Visits by Worker Known to Child, but Not Primary Worker		Visits by Worker Not Known to Child		No Visit Documented	
		#	%	#	%	#	%	#	%	#	%
Jan - June 2023	72	41	57%	7	10%	2	3%	9	13%	13	18%
July – Dec 2023	82	37	45%	2	2%	0	0%	17	21%	26	32%
Total¹⁸³	154	78	51%	9	6%	2	1%	26	17%	39	25%

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

In 12 (40%) of the 30 placements reviewed, children were visited in each applicable month during the review period. Among the 18 placements that had at least one missed monthly visit, for 15 (83%) instances, there was no documented reason for the missed visit. Among the 26 placements that contained information about the type of worker who visited the child, 11 (42%) children were exclusively visited by their primary workers.

Discussion

Visits to children placed out of state by adults who they know and with whom they have a relationship are a critical component to assessing children’s safety when they are far from home, evaluating their treatment progress, and maintaining connections. The Co-Neutrals found that 58 percent of the completed visits were conducted by a worker known to the child. This is a decline from 2022 when 69 percent of required visits were conducted by a worker known to the child. There was also an increase in the percentage of required visits that were not documented as having been completed at all – from 17 percent in 2022 to 25 percent in 2023. Performance for the second half of 2023 shows nearly one-third (32%) of required visits were not documented as completed.

¹⁸³ Percentages may not total 100 due to rounding.

4. Out-of-State IPP Meeting and Development of Discharge Plans (App. B, TO 2.3)

<i>FSA Requirement</i>	<i>Within the first 30 Days of the placement, the out-of-state Individualized Planning Meeting team will develop a discharge plan which includes identification of in-state resources that need to be developed for the child to return to New Mexico. The CYFD caseworker will do so by working with HCA or its designee to secure services that could be funded by Medicaid. Individualized Planning Meetings, which may take place during scheduled treatment team meetings for children in residential care, will be held every 30 Days to support the child and identify steps necessary to promote discharge. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Paragraph 11.4 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) states that discharge planning is a required component of the monthly JCR meeting for children placed in out-of-state facilities.¹⁸⁴ Specifically, paragraph 11.4 states, in relevant part:

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

The procedure requires that the JCR team plan for the child or youth's discharge to a less restrictive placement in New Mexico and that the plan be documented and uploaded to FACTS.

DVP Metrics and Validated Performance Data

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

¹⁸⁴ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

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

The Co-Neutrals were unable to validate 2023 data for this metric because this metric relies on a data collection process that the State was not using consistently in 2023. In 2022, the State embedded a survey tool into FACTS to collect information on the components of and participants in meetings (including whether a discharge plan was developed or reviewed), but the State reported that very few of these surveys were completed in 2023. Data from this survey tool will be necessary to validate this metric for 2024.

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

Reviewers from CYFD and the Co-Neutral team reviewed the FACTS and MCO records for all children who were in out-of-state facilities for at least 30 days in 2023 to determine if a discharge plan was developed and/or reviewed to identify next steps to promote the child's return to New Mexico. Discharge plans were reviewed to identify if they included the following components: steps necessary to promote discharge, identification of available community-based mental health services and supports that could be provided, and identification of in-state resources that need to be developed for the child to return to New Mexico.

Of the 160 required discharge plans between January and December 2023, 28 (18%) plans were documented; none of the plans included all required components. Specifically, 10 discharge plans documented the steps necessary to promote discharge, six plans identified available community-based mental health services and supports that could be provided, and three plans identified in-state resources that need to be developed for the child to return to New Mexico.¹⁸⁵ Documentation for an additional seven JCR meetings included a discharge plan, but the plan did not include any of the components identified above.

¹⁸⁵ Some plans included more than one required component.

Table 23: Discharge Plans Required and Completed January – December 2023

Months in Period Assessed	Number of Discharge Plans Required	Discharge Plans Developed and/or Reviewed		Discharge Plans that Included All Necessary Components	
		Number	Percent	Number	Percent
January - June 2023	76	15	20 %	0	0%
July – December 2023	84	13	15%	0	0%
Total	160	28	18%	0	0%

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

Discussion

Documentation of practice in 2023 shows that discharge planning was not completed for most children placed out of state. In the parties' June 2023 CAP, the State committed to additional strategies to bring children who are placed out of state back to New Mexico, including establishing a specialized review team to develop plans to bring nine identified children back to New Mexico and into safe, least restrictive, and appropriate settings.¹⁸⁶ The State formed the required team in 2023, and team members participated in meetings related to six of the identified children between July and December 2023; at the conclusion of their work, they determined that their efforts had an insignificant impact on the number of children who remained out of state due to procedural and resource issues. Specific findings and recommendations, as documented by one member of the team,¹⁸⁷ are bulleted below. The Co-Neutral team has also identified most of the issues listed below in their review of records of children placed in offices and out of state.

- The most common impediment to successfully transitioning New Mexico children in offices and out-of-state facilities back to New Mexico communities is the scarcity of available resource families and treatment foster families.
- More clinical information must be provided about New Mexico children who are out of state and in offices.
- The out-of-state facilities currently treating New Mexico children lack specialization and sometimes competence in treating children with the typical presenting conditions.
- The process for making referrals to potential community-based settings in New Mexico needs to be improved and fundamentally redesigned.

¹⁸⁶ CAP Section I.3.

¹⁸⁷ The team member shared their findings and recommendations with State staff for feedback and comment; most feedback provided by State staff were incorporated into the final findings and recommendations.

- The protocol for internal CYFD placement meetings needs to be revamped to become more efficient, more productive, and less time-consuming.
- CYFD needs to provide significantly greater incentives to care for these most difficult-to-serve children.
- When a child is in an out-of-state facility, essential evaluations should be mandatory.
- CYFD should design, train, and adequately reimburse a pool of resource and treatment resource families explicitly reserved for this population with higher, complex needs.
- CYFD and HCA both need internal doctoral-level psychologists and psychiatrists devoted to managing the care of the Medicaid population and specifically children in resource homes.
- Summary histories with critical medical, developmental, and psychological information on complex cases would improve care.

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

FSA Requirement	<i>By December 1, 2021, for any child placed in a congregate care setting due to a medical necessity determination that the child requires residential treatment, the finding of a medical necessity will be clinically reviewed every 30 days, or more frequently as needed. The finding of medical necessity must take into consideration whether community-based mental health services have been or could have been provided. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Paragraph 10 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) requires that placement in clinical congregate care facilities occur only when determined to be medically necessary.¹⁸⁸ New Mexico's Children's Code¹⁸⁹ defines medically necessary services as clinical and rehabilitative physical, mental, or behavioral health services that are:

- (1) essential to prevent, diagnose or treat medical conditions or are essential to enable the child to attain, maintain or regain functional capacity;

¹⁸⁸ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

¹⁸⁹ NMSA § 1978, 32A-6A-4(T).

- (2) delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical, mental and behavioral health care needs of the child;
- (3) provided within professionally accepted standards of practice and national guidelines; and
- (4) required to meet the physical, mental and behavioral health needs of the child and are not primarily for the convenience of the child, provider or payer.

The finding of medical necessity must be determined by the child's MCO, and pursuant to the FSA, the finding of medical necessity must take into consideration whether community-based mental health services have been or could be provided.

DVP Metrics and Validated Performance Data

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

An IPP team is required to review the determination of medical necessity for a child's congregate care placement at least every 30 days a child spends in any clinical placement to an in-state or out-of-state facility. The Co-Neutrals' analysis of State data shows that there were 386 required medical necessity reviews for children in clinical congregate care settings, and that 192 (50%) of these were conducted¹⁹⁰ on time.¹⁹¹ This is a decrease from 2022 when 285 (60%) of 473 required reviews were conducted on time.

As additional information, the Co-Neutrals found the rate of timely reviews by month decreased over the course of the year (from 63% in the first half of the year to 37% in the second; see Table 24).

¹⁹⁰ A meeting is considered "conducted" when the State's data indicate that it was not canceled, it occurred on or before the due date, and it was a "30-day Congregate/Restrictive Setting" meeting or an "Out-of-State 30-Day Review." Due dates were calculated as every 30 days after the start of the placement and were unaffected by a move from one clinical congregate placement to another.

¹⁹¹ As described in further detail below, the Co-Neutrals' qualitative review of the case records found that there were 210 total 30-day periods during which a medical necessity review was due and that 122 (58%) were conducted on time. This differs from 386 because it excludes clinical congregate placements that were out of state; these out-of-state placements were reviewed during the qualitative case record review for App. B, TO 1.

**Table 24: Completed and Required Reviews for Clinical Congregate Placements in 2023,
by Month**

N = 386 required reviews

Month	Total Required Reviews	Completed and Timely Reviews	Percent of Required Reviews Completed Timely
January	32	25	78%
February	31	20	65%
March	38	26	68%
April	33	21	64%
May	29	14	48%
June	27	13	48%
July	27	13	48%
August	31	10	32%
September	34	16	47%
October	35	14	40%
November	33	10	30%
December	36	10	28%
Total	386	192	50%

Source: Analysis of Sandbox Placement file submitted 6/27/24 (supplemented by service type detail from FACTS episodes file submitted 5/1/24), Sandbox Meetings file submitted 6/27/24, and adjustments informed by the case record review of FACTS documentation conducted by the Co-Neutral team.

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

Reviewers from CYFD and the Co-Neutral team reviewed the FACTS and MCO records for all applicable placements of children who were in facilities in New Mexico between January and December 2023, including children placed in 2022 who remained in those placements for at least 30 days in 2023; in total, there were 69 placements experienced by 62 unique children.¹⁹² The average age of the children at the time of placement was 13 years old; nearly three-quarters (73%) were between the ages of 12 and 17, 23 percent of children were between the ages of eight and 11, and five percent were between four and seven years old.

Of the 69 placements reviewed, 16 were made prior to 2023 and were not assessed for initial medical necessity determinations. Of the remaining 53 placements, 25 had documented medical necessity determinations by the MCO for the initial placement, and reviewers assessed that 12 of those took into consideration whether community-based mental health services have been or could have been provided. Overall, for the 53 applicable placements, 23 percent were made pursuant to

¹⁹² Following completion of the State and Co-Neutrals' case record review, the Co-Neutrals discovered five additional clinical congregate care placements were made in 2023. Given the timeline of this report, the Co-Neutrals were unable to incorporate the five additional placements in this analysis.

the FSA medical necessity standard.¹⁹³ None of the 53 placements had a documented IPP or child and family team meeting held prior to the placement.

Over half (60%, or 32 of 53) of the placements within clinical congregate care facilities were initially made for the purposes of an acute hospitalization of the child. However, due primarily to the lack of appropriate alternative placements when the child was ready for discharge, these stays extended beyond 30 days, and in some cases, for months. For 25 placements – including those that began as an acute hospitalization or as a facility placement – the placements were determined at some point during the placement to no longer be medically necessary, but the children remained in the placement.¹⁹⁴

Discussion

The State’s quantitative data shows that 50 percent of the required monthly meetings for children in clinical congregate care facilities in 2023 were conducted within 30 days; this is a 10 percent decline in performance since 2022.

Following the review of records for children placed in clinical congregate care facilities in New Mexico, the State provided an updated notice of critical incidents pursuant to the CAP. The updated notice included the following critical incidents related to 22 children placed in clinical facilities in New Mexico between July and December 2023:

- 117 instances of chemical or physical restraint or seclusion;
- 19 allegations of both harm and instances of chemical or physical restraint or seclusion;
- Nine allegations of harm;
- Four allegations of abuse or neglect; and
- One allegation that included both abuse or neglect and an allegation of harm.

¹⁹³ Four of the placements were for children who were moved from CYFD county offices to a clinical congregate care facility over the Thanksgiving holiday. No documentation or information was provided to indicate that these placements were medically necessary.

¹⁹⁴ For 23 placements, MCO documentation reflects that the placement was authorized using a Days Awaiting Placement (DAP) approval. DAP is defined within at least one MCO providers documentation as, “The member is covered by Medicaid, and the members has a DSM diagnosed condition that has required acute psychiatric level of care; the member no longer meets continued stay criteria for inpatient acute psychiatric care and/or does meet discharge criteria and there is a specific discharge plan in place to a residential level of care but documented barriers to implementation of that plan exist that are beyond the control of the provider or facility; and the provider has made reasonable efforts to identify and obtain the services needed to implement the discharge plan, and continues to actively work to identify resources to implement that plan.” Based upon review of the FACTS records, children in eight of the 23 placements that received continued approval based upon DAP were placed in a residential facility after their discharge.

6. 30-Day IPP Meetings for Clinical Congregate Care (App, B. TO 3.2)

<i>FSA Requirement</i>	<i>Individualized Planning Meetings will be held every 30 Days for any child placed in a congregate care setting due to a medical necessity determination to support the child and identify steps necessary to promote discharge. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Paragraph 10.1 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) requires that IPP or teaming meetings occur when a child is placed in a congregate care setting due to medical necessity.¹⁹⁵ Similar to the JCR monthly meetings for children placed out of state, meetings pursuant to this commitment are expected to be held to identify the steps necessary to promote discharge and ensure that the team reviews available community-based behavioral health services and supports that have already been provided or could be provided. The PC caseworker is responsible for coordinating these meetings and is required to invite specific participants to the meeting. The content of the meetings is required to be documented and entered into FACTS. Pursuant to the FSA, the finding of medical necessity must be clinically reviewed at least every 30 days, and the medical necessity finding should take into consideration whether community-based mental health services and support could be provided.

DVP Metrics and Validated Performance Data

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

The Co-Neutrals were unable to validate 2023 data for this metric because this metric relies on a data collection process that the State was not using consistently in 2023. In 2022, the State embedded a survey tool into FACTS to collect information on the components of and participants in meetings (including whether a discharge plan was developed or reviewed), but the State reported that very few of these surveys had been completed in 2023. Data from this survey tool will be necessary to validate this metric for 2024.

¹⁹⁵ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

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

Reviewers from CYFD and the Co-Neutral team reviewed the FACTS and MCO records for all applicable placements of children who were in clinical congregate care facilities in New Mexico between January and December 2023, including children placed in 2022 who remained in those placements for at least 30 days in 2023.¹⁹⁶ For the 69 placements reviewed, a total of 210 IPP meetings to discuss discharge planning were required between January and December 2023. Reviewers confirmed that 123 (59%) meetings were documented as completed.¹⁹⁷ None (0%) of the completed meetings included all required attendees and documented discussion of all required meeting components, including review of the medical necessity finding, supports and services being provided to the child, steps necessary to promote discharge, and identification of community-based mental health services that the child needs upon discharge.

Of the 123 meetings that were documented as completed between January and December 2023, the PC caseworker and mental health professional/therapist were the most consistently documented attendees in the meetings (see Table 25 below). Participation by the MCO care coordinator, GAL or YA, OTA, and child's Tribe or Pueblo representative declined in the latter six-month period of 2023 as compared to the first six-month period. Although the IPP model includes as a primary principle youth and family voice and choice, and team-based collaborative decision-making, the children or youth were documented as present in approximately half (54%) of completed meetings, and the child's parent or other family members were present in only 14 percent of meetings.

¹⁹⁶ Following completion of the State and Co-Neutrals' case record review, the Co-Neutrals discovered five additional clinical congregate care placements were made in 2023. Given the timeline of this report, the Co-Neutrals were unable to incorporate the five additional placements in this analysis.

¹⁹⁷ This qualitative review did not examine the timeliness component as measured in the quantitative metric discussed above. Reviewers identified whether a meeting occurred at any time during the applicable month.

**Table 25: Documented Participants in Completed IPP Meetings for Children Placed
In-State Clinical Congregate Care Placements, January – December 2023**

Participant Type	January – December 2023	January – June 2023		July – December 2023	
	<i>N=123</i>	<i>N=67 completed</i>		<i>N=56 completed</i>	
	Attended	Attended	Invited, Did Not Attend	Attended	Invited, Did Not Attend
CBHC	54%	49%	9%	59%	2%
		(33/67)	(6/67)	(33/56)	(1/56)
PC Caseworker	74%	69%	3%	80%	0%
		(46/67)	(2/67)	(45/56)	(0/56)
MCO Care Coordinator	43%	49%	10%	36%	0%
		(33/67)	(7/67)	(20/56)	(0/56)
Child or Youth	54%	54%	3%	55%	2%
		(36/67)	(2/67)	(31/56)	(1/56)
PC Supervisor	50%	51%	0%	50%	2%
		(34/67)	(0/67)	(28/56)	(1/56)
Case Manager or Other Facility Staff	36%	37%	1%	34%	2%
		(25/67)	(1/67)	(19/56)	(1/56)
GAL or YA	45%	55%	0%	32%	2%
		(37/67)	(0/67)	(18/56)	(1/56)
Child’s Parent or Other Family	14%	13%	7%	14%	2%
		(9/67)	(5/67)	(8/56)	(1/56)
Child’s Tribe/ Pueblo Representative	20%	36%	27%	0%	11%
		(4/11)	(3/11)	(0/9)	(1/9)
Office of Tribal Affairs	15%	27%	0%	0%	0%
		(3/11)	(0/11)	(0/9)	(0/9)
Mental Health Professional/Therapist	62%	61%	0%	63%	0%
		(41/67)	(0/67)	(35/56)	(0/56)
Any Provider for Child or Parents	20%	22%	0%	18%	0%
		(15/67)	(0/67)	(10/56)	(0/56)

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

Discussion

The qualitative data shows that the frequency of completing IPP meetings as required occurred 60 percent of the time, and the CYFD staff and Co-Neutral teams' case record reviews revealed that none of the meetings included all of the required participants and discussion topics.

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

<i>FSA Requirement</i>	<i>Any placement in a congregate care setting that is not supported by a determination of medical necessity, including placement in specialized group homes such as Transitional Living Placements, Maternity Group Homes, or settings for Commercial Sexual Exploitation of Children, must be supported by a determination of the IPM team, including a mental health professional, that it is in the best interests of the child. The best interest determination will be reviewed by the IPM team, including a mental health professional, at least every 90 Days, or more frequently as needed. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Paragraph 10.5 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) requires that the placement of any child in a congregate care setting that is not supported by medical necessity be supported by a determination of an IPP team – which includes a mental health professional – that the placement is in the child's best interest.^{198,199} The IPP team must meet at least every 90 days and review the best interest determination for the child's continued placement within that setting.

¹⁹⁸ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

¹⁹⁹ Paragraph 10.3 of the Procedure defines best interest as "...assurance that the health, safety, and protection of the child or youth are a priority, and the child or youth will be given care, treatment, and guidance that will assist the child or youth in developing into a self-sufficient adult. Best interest also takes into consideration the importance of maintaining cultural connection, sibling connections, and other close family bonds as well as the wishes of the child or youth."

DVP Metrics and Validated Performance Data

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

The Co-Neutrals’ analysis of the State’s data shows that 155 IPP 90-day congregate care meetings²⁰⁰ for best interest determinations were required for children in non-clinical congregate settings and that three (2%)²⁰¹ of these were conducted²⁰² on time. This is similar to the rate in 2022, when two (2%) of 115 required meetings were conducted on time.

Table 26: Completed and Required Reviews for Non-Clinical Congregate Placements in 2023, by Month

Month	Total Required Reviews	Completed and Timely Reviews	Percent of Required Reviews Completed Timely
January	15	0	0%
February	14	1	7%
March	7	0	0%
April	15	1	7%
May	18	1	6%
June	4	0	0%
July	12	0	0%
August	20	0	0%
September	7	0	0%
October	17	0	0%
November	20	0	0%
December	6	0	0%
Total	155	3	2%

Source: Analysis of Sandbox *Placement* file submitted 6/27/24 (supplemented by service type detail from FACTS *Episodes* file submitted 5/1/24), Sandbox *Meetings* file submitted 6/27/24, and adjustments informed by the case record review of FACTS documentation conducted by the Co-Neutral team.

²⁰⁰ There were 38 children with one review due, six children with two reviews due, 11 children with three reviews due, and 18 children with four reviews due.

²⁰¹ The three reviews completed were for two distinct children; one child had two 90-day reviews in 2023, and the other child had one.

²⁰² A meeting is considered “conducted” when the State’s data indicate that it was not canceled, it occurred on or before the due date, and it was a “Best Interest Determination IPP.” Due dates were calculated as every 90 days after the start of the placement and were unaffected by a move from one non-clinical congregate setting to another.

BTO4.1(ii) – qualitative metric: Qualitative review of best interest determinations for placements to congregate settings.²⁰³

CYFD staff and the Co-Neutral team reviewed the FACTS records for a sample of applicable placements of children in non-clinical congregate care settings²⁰⁴ in New Mexico between January and December 2023; the sample included 65 placements made in 2023 experienced by 45 unique children.²⁰⁵ This review assessed whether an IPP meeting was held prior to the placement being made to determine that the placement was in the child’s best interest. A total of 65 IPP meetings were required to determine that the placement was in the child’s best interest; reviewers found that none (0%) of the required meetings were documented as completed.

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

For this metric, a sample of 70 non-clinical congregate care placements experienced by 49 unique children were reviewed, including placements made prior to 2022 but that continued into 2023. Of the 70 placements, 13 of the placements lasted 90 days or longer, and 19 IPP meetings were required.²⁰⁶ The team reviewed documentation in FACTS for each of the 13 placements, and none (0%) showed that the best interest standard was met and affirmatively determined by an IPP team, inclusive of a mental health professional, every 90 days of the placement.

Of the 13 placements reviewed, one placement included documentation of two IPPs meetings completed within the period under review – one meeting was within 90 days of the prior meeting, and the second meeting was just beyond 90 days of the prior meeting. Neither meeting had documentation that a mental health professional, PC supervisor, CBHC staff, or MCO care coordinator participated. Documentation also does not reflect that those who were in attendance determined that the placement was in the child’s best interest.

²⁰³ In assessing best interest placement determinations, the reviewers used the FSA App. B, TO 4 requirements, specifically, that there is documentation of a best interest determination by the IPP team, which includes a mental health professional.

²⁰⁴ Per the FSA, these settings include community homes, transitional living placements, maternity group homes, and other non-clinical congregate care settings (excluding shelters). CYFD began using crisis stabilization placements in late 2022, which are also subject to this standard. CYFD reports these placements provide a temporary home-like setting for youth in need of intensive supportive services to stabilize them by assessing and engaging with youth using a trauma responsive approach. CYFD reports these programs were added for the specific purpose of reducing office stays.

²⁰⁵ There were a total of 240 new non-clinical congregate care placements that began in 2023; sampling represents a 95% confidence interval with a 10% margin of error. This includes placements of any duration, including many that lasted less than 90 days and are not included in the IPP metrics.

²⁰⁶ Six of the placements were for 180 days or longer and required two IPP meetings during the period.

Discussion

Documentation of practice in 2023 shows that placements of children in non-clinical congregate care settings in New Mexico were not made pursuant to the best interest standard. Additionally, required staffings within 90 days were rarely held, and those that were held did not meet the qualitative requirements. CYFD reports that it recognizes that practice around IPP meeting timeliness, participation, and discussion topics is an area for improvement.

Following the review of records for children placed in non-clinical congregate care facilities in New Mexico, the State provided the Co-Neutrals with an updated notice of critical incidents pursuant to the CAP. The updated notice of critical incidents involved three children placed in non-clinical facilities in New Mexico between July and December 2023: two allegations of harm, and one allegation of abuse or neglect.

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

FSA Requirement	<i>If extraordinary circumstances require placement of a child in a shelter, CYFD will conduct an Individualized Planning Team meeting within 48 hours to identify an appropriate placement to which to move the child and any medically necessary services needed by the child, and notify the child's legal representative of the result of the review. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Paragraph 10.6 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) requires that children are only placed in a shelter when extraordinary circumstances exist.²⁰⁷ After placement, the PC must conduct an IPP within 48 hours to identify an appropriate placement to move the child and to provide any medically necessary services needed by the child. If the child remains in the shelter for 90 days, a subsequent IPP meeting should be held to identify a more appropriate placement and necessary medically necessary services.

IPP meetings are to be coordinated by the CYFD PC caseworker, and the following participants must be invited to the meeting: child or youth, PC or primary assigned worker's supervisor, CBHC staff, MCO care coordinator or other care coordinator representative, and the child or youth's GAL or Youth Attorney. The PC may also include the following individuals: child or youth's parent or other family members, case manager from the shelter, Tribal representative (as applicable),

²⁰⁷ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

representative from the OTA (as applicable), and mental health professional assigned to the child or youth.

DVP Metrics and Validated Performance Data

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

The Co-Neutrals’ analysis of the State’s data shows there were 213 48-hour shelter placement reviews required in 2023²⁰⁸ and 29 (14%) of them were conducted²⁰⁹ on time. This is a decrease from 2022, when 50 (22%) of 227 required reviews were conducted on time.

Thirty-three required shelter placement reviews were conducted late (after 48 hours); on average, these late reviews occurred 25 days after the shelter placement.²¹⁰ One hundred and fifty-one required shelter placement reviews were not conducted at all.

The Co-Neutrals also examined the data by month and found that the rate of timely reviews declined over the course of the year (from 20% in the first half of the year to 5% in the second; see Table 27).

²⁰⁸ Counts reflect analysis of data as submitted by the State; the Co-Neutral team has not reviewed each new placement to shelters reflected in the data submitted by the State to validate that a 48-hour IPP meeting was required.

²⁰⁹ A meeting is considered “conducted” when the State’s data indicates that it was not canceled, it occurred on or before the due date, and it was a “Shelter Placement/48hr” meeting. Due dates were calculated as two days after the start of each placement.

²¹⁰ For late meetings, there were often multiple shelter placements that occurred before the meeting took place (e.g., one child had separate shelter placements on 3/29 and 4/8 and the earliest meeting for either placement was on 5/11). In such cases, the Co-Neutrals counted the days between the meeting and each preceding placement that required a meeting (e.g., the 43 days from 3/29 to 5/11 and the 33 days from 4/8 to 5/11 were both included in the average).

Table 27: Completed and Required Reviews for Shelter Placements in 2023, by Month

Month	Total Required Reviews	Completed and Timely Reviews	
		Number	Percent
January	19	6	32%
February	20	6	30%
March	21	3	14%
April	19	3	16%
May	22	3	14%
June	19	3	16%
July	14	1	7%
August	16	0	0%
September	17	3	18%
October	14	1	7%
November	14	0	0%
December	18	0	0%
Total	213	29	14%

Source: Analysis of Sandbox *Placement* file submitted 6/27/24 (supplemented by service type detail from FACTS *episodes* file submitted 5/1/24), Sandbox *Meetings* file submitted 6/27/24, and adjustments informed by the case record review of FACTS documentation conducted by the Co-Neutral team.

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

The Co-Neutrals were unable to validate data for this metric because this metric relies on a data collection process that the State was not using consistently in 2023.²¹¹ In 2022, the State embedded a survey tool into FACTS to collect information on the components of and participants in meetings (including whether the child’s legal representative attended the meeting or was notified of the result), but the State reported that very few of these surveys had been completed in 2023. Data from this survey tool will be necessary to validate this metric for 2024.

²¹¹ In the qualitative review discussed for metric App B, TO 4.2(iii) below, the Co-Neutral team found that of the 14 IPP meetings held within 48 hours of a shelter placement, five included documentation that the legal representative was notified of the result of the review; in all five instances, the legal representative was a participant in the meeting.

BTO4.2(ii) – qualitative metric: Qualitative review of extraordinary circumstance determinations for placements to emergency shelter.²¹²

The Co-Neutral team reviewed a sample²¹³ of 109 shelter placements experienced by 86 unique children to determine if extraordinary circumstances justified such placements. The average age of the children at the time of placement was 14; almost half (49%) of the 86 children were between the ages of 15 and 17, 40 percent were between the ages of 12 and 14, and 10 percent were between the ages of five and 11.

The Co-Neutral team reviewed documentation in FACTS for the sample of 109 placements, and none (0%) of the shelter placements identified specific safety and security threats which necessitated the shelter placement. Documentation for 89 of the placements had no reference to safety and security threats; risk of homelessness was referenced in documentation for nine placements, and risk of victimization was referenced in six placements.²¹⁴

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

Of the sample of 109 shelter placements reviewed by the Co-Neutral team, nine of the placements lasted for less than 48 hours. Documentation in FACTS for the remaining 100 placements was reviewed; although meetings were documented within 48 hours for 14 placements, none (0%) included all applicable participants nor documented that the meeting identified an appropriate prospective placement for the child and any medically necessary services that were needed.

Discussion

Documentation of practice in 2023 does not provide evidence that placements of children in shelter settings were made pursuant to the extraordinary circumstances standard. Additionally, required staffings were not routinely held within 48 hours (only 14% of required meetings were timely, a decline from 2022), and of those that were held, data from the qualitative review show that an appropriate placement to move the child was not identified.

²¹² In assessing extraordinary circumstances determinations, the Co-Neutral team assessed whether documentation in the child's record demonstrated the shelter placement was necessary to protect the safety and security of the child.

²¹³ There were 213 shelter placements in 2023; sampling represents 95% confidence interval with a 7% margin of error.

²¹⁴ Multiple "threat" reasons could be documented for a single placement; thus, a child could have both risk of homelessness and victimization cited for a single placement.

9. Children in Out-of-Home Care in Licensed Foster Home Placements (App. B, TO 5.1)

<i>FSA Requirement</i>	<i>Every child in out-of-home care will be in a licensed foster home placement unless a current finding of medical necessity requires otherwise or an Individualized Planning Meeting team determines that a non-clinical setting is in the child's best interest. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Paragraph 10 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) requires that every child be placed in a licensed foster home placement unless a current finding of medical necessity requires otherwise, or an IPP team determines that a non-clinical setting is in the child's best interest.²¹⁵

DVP Metrics and Validated Performance Data

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

In 2023, 436 children (15%) experienced at least one placement to a setting that was not a licensed foster home (licensed foster homes include relative, non-relative, fictive kin, pre-adoptive or Treatment Foster Care placements). This is an increase of two percentage points from the next highest annual percentage of children placed in settings other than licensed homes since the State began reporting its performance in 2019 (see Table 28).

²¹⁵ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

Table 28: Children with Placements to Settings Other Than Licensed Foster Homes, 2019 – 2023

Year	Children in state custody at any point, per year	Children with placements to settings other than licensed foster homes	
		N	%
2019	3,881	462	12%
2020	3,344	373	11%
2021	2,949	395	13%
2022	2,755	282	10%
2023	2,944	436	15%

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-22); Manual *Hotel Stays* file submitted 3/31/22 (2020); Sandbox *Provider License* files submitted 3/31/22 (2019 and 2020), 8/25/22 (2021), 5/1/23 (2022), and 6/27/24 (2023). Findings for 2022 reflect adjustments informed by case record review of FACTS documentation conducted by the Co-Neutral team.

Of these 436 children, 98 (22%) children experienced at least one placement to a foster home that was not licensed at the time of placement, and 91 (93%) of these 98 spent 10 or fewer days in that setting before it was licensed.²¹⁶

²¹⁶ Four children spent 11 to 20 cumulative days in unlicensed settings and three children spent 21 to 60 days in unlicensed settings.

Table 29: Children with Placements to Foster Homes Not Licensed at Time of Placement in 2019 – 2023

Placement setting	2019	2020	2021	2022	2023 ²¹⁷	
	<i>N</i> =3,881	<i>N</i> =3,344	<i>N</i> =2,949	<i>N</i> =2,755	<i>N</i> = 2,944	
Foster Family Home (Relative)	1%	1%	2%	2%	73	2%
Foster Family Home (Fictive Kin)	<1%	<1%	<1%	<1%	24	1%
Foster Family Home (Non-Relative)	<1%	<1%	0%	<1%	4	<1%
Pre-Adoptive Family	0%	<1%	0%	0%	0	0%

Source: Analysis of Sandbox *Placement* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-22); Manual *Hotel Stays* file submitted 3/31/22 (2020); Sandbox *Provider License* files submitted 3/31/22 (2019 and 2020), 8/25/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

Over half of the children who experienced a new placement to a setting other than a licensed foster home only experienced one of these placements in 2023 (265 children, 61%). One-third had two to six of these placements in 2023 (146 children, 33%), and 25 children (6%) experienced more than six of these placements in 2023.

Table 30: Distribution of the Number of Placements to Settings Other Than Licensed Foster Homes Per Child in 2023

Number of placements to settings other than licensed foster homes in 2023	Children with any placements to settings other than licensed foster homes	
	Number	Percent
1	266	61%
2	73	17%
3	41	9%
4	16	4%
5	11	3%
6	4	<1%
7	6	1%
8	4	<1%
9	5	1%
10 or more	10	2%
Total	436	100%

Source: Analysis of Sandbox *Placement* file and Sandbox *ProviderLicense* files submitted 6/27/24, with adjustments informed by case record review of FACTS documentation conducted by the Co-Neutral team.

²¹⁷ The sum of the rows for 2023 (101) does not match the total number of children who experienced at least one placement to a foster home not licensed at the time of placement (98) because three children experienced a placement to an unlicensed relative foster home and a placement to unlicensed fictive kin foster home and were therefore counted in each row.

Non-Hispanic Black children were more likely than children identified with other racial or ethnic groups in the cohort to experience at least one placement to a setting other than a licensed foster home (32 of 138, or 23%). ICWA-eligible children were less likely than other groups to experience at least one placement to a setting other than a licensed foster home (37 of 339, or 11%).

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

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

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

Discussion

The State’s data collection capacity will need to improve substantially in order to determine whether children’s congregate care placements meet the extraordinary circumstances, medical necessity, or best interest standards set forth in the FSA.

10. Annual Target for New Culturally Reflective Resource Homes (App. B, TO 6.1 and 6.2)

<i>FSA Requirement</i>	<i>Beginning on December 1, 2020, and on an annual basis by December 31 each year thereafter, the Co-Neutrals will approve a Target Outcome for CYFD to approve a specified number of new culturally reflective foster homes during the following year. (Due December 31, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

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

The DVP defines newly licensed resource homes as: in-state non-relative resource homes licensed and active on the final day of the reporting period that were not licensed a year earlier.²¹⁸ In 2023, 129 non-relative resource homes were recruited and licensed in New Mexico, the same as the number recruited in 2022 (129).

Seventy-four percent (95) of the 129 new homes licensed in 2023 had at least one non-relative placement during the calendar year; 13 percent (17) were dually licensed homes with only relative placements, and the remaining 13 percent (17) did not have any placement in 2023.²¹⁹

Table 31: New Active Non-Relative Resource Homes²²⁰ Recruited in 2023, by Placement Status

Placement Status of New Active Non-Relative Resource Homes	Number of New Active Non-Relative Resource Homes	Percent of New Active Non-Relative Resource Homes
With At Least One Non-Relative Placement	95	74%
With Only Relative Placements	17	13%
With No Placements	17	13%
Total	129	100%

Source: Analysis of monthly *Active Provider* batch reports submitted 5/1/24 and *Placement Sandbox* file submitted 6/27/24.

²¹⁸ This is a point-in-time comparison of homes. The methodology counts the number of homes that are licensed, active, and available for placement at the end of the reporting period (e.g., December 31st) that did not have an active license at the end of the prior reporting period (e.g., December 31st of the prior year).

²¹⁹ The Co-Neutral team examined the first active month for the 17 new homes active in 2023 that did not have a placement because placements are less likely for homes licensed late in the year. Nine homes (53%) were first active in the first quarter of the year (January through March), three (18%) in the second quarter (April through June), two (12%) in the third quarter (July through September), and three (18%) in the fourth quarter (October through December).

²²⁰ Includes homes dually licensed as relative and non-relative homes. Relative placements include fictive kin.

**Table 32: New Active Non-Relative Resource Homes Recruited in 2023,
Statewide and by County²²¹**

County	New homes with non-relative placement	New dually licensed homes with only relative placement	New homes without placement	All new homes
Statewide	95	17	17	129
Bernalillo	17	1	4	22
Dona Ana	14	2	4	20
San Juan	5	3	1	9
Valencia	6	3	0	9
Chaves	6	1	0	7
Lea	6	1	0	7
McKinley	5	1	1	7
Otero	2	2	2	6
Santa Fe	6	0	0	6
Curry	3	1	0	4
Luna	3	0	1	4
Taos	3	0	1	4
Grant	2	0	1	3
Cibola	2	0	0	2
Eddy	2	0	0	2
Lincoln	2	0	0	2
San Miguel	1	1	0	2
Sandoval	1	0	1	2
Sierra	2	0	0	2
Torrance	2	0	0	2
Colfax	1	0	0	1
Harding	1	0	0	1
Hidalgo	1	0	0	1
Los Alamos	1	0	0	1
Rio Arriba	1	0	0	1
Roosevelt	0	0	1	1
Socorro	0	1	0	1

Source: Analysis of monthly Active Provider batch reports submitted 5/1/24 and Placement Sandbox file submitted 6/27/24.

²²¹ This reflects the county at the time the provider was licensed. The Table includes only counties with at least one home recruited during the period. Treatment Foster Care (TFC) homes are not included.

As the FSA requires the State to recruit culturally reflective resource homes, the Co-Neutrals also examined the household demographics of non-kin resource homes recruited in 2023 with at least one non-relative placement during the year. Forty-seven percent (45) of the 95 new homes had at least one parent who was identified as Hispanic in the data; 11 percent (10) of new homes had a parent who was identified as non-Hispanic American Indian or Alaska Native²²² in the data; three percent (3) of new homes had at least one parent who was identified as non-Hispanic Black or African American in the data;²²³ and two percent (2) of new homes had a parent who was identified as non-Hispanic Asian or Pacific Islander in the data.²²⁴

Table 33: New Active Non-Relative Resource Homes Recruited in New Mexico in 2023 with At Least One Non-Relative Placement, by Race and Ethnicity²²⁵
N = 95 new resource homes with at least one non-relative placement

Race/ethnicity of resource parent(s)	Number of new homes	Percent of new homes
Non-Hispanic White	41	43%
Hispanic	45	47%
Non-Hispanic American Indian (alone or in combination)	10	11%
Non-Hispanic Black (alone or in combination)	3	3%
Non-Hispanic Asian or Pacific Islander (alone or in combination)	2	2%

Source: Analysis of monthly *Active Provider* batch reports submitted 5/1/24 and *Placement Sandbox* file submitted 6/27/24.

The percentage of newly recruited non-relative homes with at least one Hispanic resource parent is lower than the percentage of children in state custody identified as Hispanic at the end of 2023 (61%). The percentage of newly recruited non-relative homes with at least one non-Hispanic Black parent and the percentage with at least one non-Hispanic Asian or Pacific Islander parent is close to the percentage of children in state custody in these categories, but these categories remain underrepresented across newly recruited non-relative homes. The percentage of newly recruited non-relative homes with at least one parent who identified as non-Hispanic American Indian or Alaska Native (11%) is representative of the number of children in care on December 31, 2023 identified as ICWA eligible.²²⁶

²²² This includes individuals for whom other races were also indicated.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ The total does not sum to 95 because categories are not mutually exclusive; resource parents who identify as multiple races are counted in each category that applies, and households with resource parents with different race-ethnicity identified appear in multiple categories.

²²⁶ The number of children in care on December 31, 2023 who were ICWA eligible (212, 11%) is higher than the number of children in state custody identified as American Indian or Alaska Native using the race and ethnicity data in the Sandbox cohort files at the end of 2023 (127, 7%).

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

The Co-Neutrals approved a recruitment target for calendar year 2023 of 190 newly licensed non-relative resource homes. The establishment of the target began with the State using the Annie E. Casey Foundation’s Wildfire Foster Home Estimator tool to estimate the current overall statewide need for 2023. However, given the State’s performance in licensing new resource homes in the prior three years, the State believed that the estimate produced by the tool, 265 new non-relative foster homes, was not feasible for 2023. Thus, the State proposed using the number of new homes the State licensed in 2019 (190 homes) as the recruitment target for 2023. This was the State’s performance prior to the COVID-19 pandemic and is higher than 2021 and 2022 performance. Although this target would not fully meet the estimated need, the Co-Neutrals agreed with the State taking a phased-in approach to increasing resource homes and approved a target of 190 new non-relative resource homes for 2023.²²⁷ CYFD recruited 129 homes in 2023 (68% of the target).

Table 34: New Active Non-Relative Resource Homes Recruited in New Mexico in 2023, by Month License was First Active and Effective²²⁸

Month license was first active and effective	Number of homes recruited
All months	129
January	9
February	11
March	11
April	8
May	14
June	13
July	12
August	7
September	11
October	13
November	7
December	13

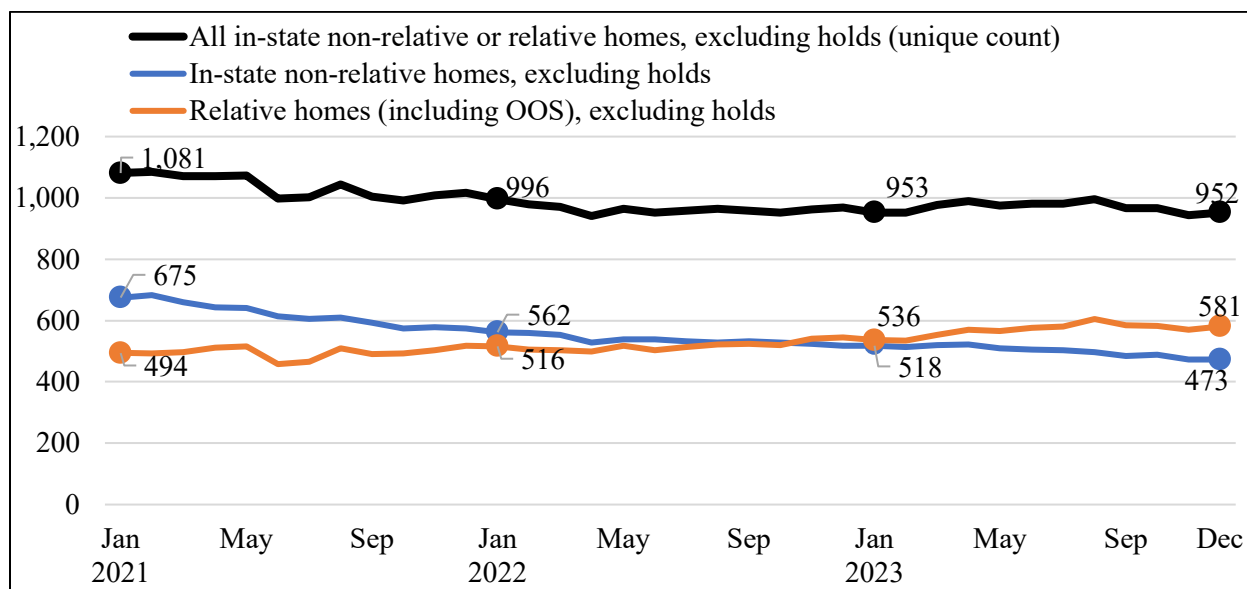
Source: Analysis of monthly *Active Provider* batch reports submitted 5/1/24 and *Placement Sandbox* file submitted 6/27/24.

²²⁷ The Co-Neutrals approved a target for 2024 of 265 new non-relative foster homes licensed, and 319 new treatment foster care placements.

²²⁸ The number of active homes (i.e., no placement hold) with effective "Foster Home" or "Specialized Foster Home" licenses on December 31, 2023 that were not licensed on December 31, 2022 and did not have an active effective license at any time in the prior 12 months. Treatment Foster Care homes were not counted.

As additional detail to inform the Co-Neutrals’ assessment of the State’s efforts, the Co-Neutrals examined the total number of homes available in this period, including relative homes. As shown in Figure 7, the total number of homes with a foster care, specialized foster care, or relative foster care license has not increased since 2021; the decline in non-relative resource homes has not been offset by the increase in relative placements.²²⁹

Figure 7: Total Number of Resource Homes with Active Effective Licenses by Month and Type, 2021 – 2023²³⁰



Source: Analysis of monthly Active Provider batch reports submitted 5/1/24.

Discussion

The State recruited 129 new non-relative resource homes in 2023, the same number as the prior year, and below the target of 190. Pursuant to Section I.2. of the parties’ June 2023 CAP, the State committed to an additional public/private strategy to recruit and retain resource families. Specifically, in five high-needs counties (Bernalillo, Dona Ana, Santa Fe, San Juan, and Chaves/Eddy), CYFD would assign one Licensing and Support Specialist to focus exclusively on recruitment until at least September 30, 2023, or until a private contractor had fully ramped up its capacity in those five designated counties. Additionally, CYFD committed to enter into contracts with at least one private provider by September 30, 2023 to focus on foster home recruitment and retention with specific capacity focused on growing new foster homes in each county throughout the State. The State’s failure to focus adequate capacity on resource home recruitment in each

²²⁹ The number of non-relative homes includes homes with effective “Foster Home” or “Specialized Foster Home” licenses, excluding homes not in New Mexico. The number of relative homes includes out-of-state homes. Monthly counts exclude homes with placement holds during the specified month (“NO OOHP PLACE REC”). Homes with both relative and non-relative licenses are counted only once in the total but appear separately in each count.

²³⁰ Ibid.

county made the shortage of safe homes worse in 2023 and contributed to the housing of children, including very young children, in offices.

In September 2023, the Co-Neutrals met with Licensing and Support Specialists in two of the five identified county offices, and no one interviewed in either office was able to identify a Licensing and Support Specialist whose sole, or even primary, responsibility was resource home recruitment. Staff reported that due to vacancies and the workload of other staff in their units, that in addition to recruitment, they had other substantial assignments such as completing adoption disclosures, providing training for resource parents, and supervising children who were placed in the CYFD office. Staff pervasively reported that there was no funding available for resource family recruitment activities.

Per the CAP agreement, in July 2023, CYFD reported that they executed a contract with a private contractor to develop recruitment and retention strategies to increase the number of family-based placements throughout the state. The contractor had proposed a plan for a “spider-web networking” model that includes holding house meetings to use word-of-mouth advertising to generate applicants, and was developing a mobile app to assist with placement matching and resource parent support. The contractor also reported meeting with County Based Recruitment Teams and other CYFD statewide and regional Licensing and Support Specialist to discuss general recruitment, targeted recruitment, support, and retention of resource parents.

The Co-Neutrals reviewed and provided feedback on CYFD’s county-based resource home recruitment plans developed in 2023. Many of the activities described in the plans did not include dates and were difficult to measure. Some activities were unlikely to be effective, and none of the plans appeared to have a monitoring or evaluation component to track strategies as needed to meet the goals. Based upon numerous discussions the Co-Neutrals had with staff across New Mexico regarding these plans, implementation was very uneven; recruitment work was frequently sidelined in consideration of other local office priorities, such as the swelling investigations backlog and excessive caseloads.

11. Annual Target for New Treatment Foster Care Placements (App. B, TO 6.3 and 6.4)

<i>FSA Requirement</i>	<i>Beginning on December 1, 2020, and on an annual basis by December 31 each year thereafter, the Co-Neutrals will approve a Target Outcome for ... HCA to approve a specified number of new treatment foster care placements during the following year. (Due December 31, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

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

The DVP defines a new treatment foster care (TFC) placement as the placement of a child who is eligible for treatment foster care, or their accompanying sibling, to a licensed treatment foster home that they have not resided in within the previous 365 calendar days. The Co-Neutrals' analysis of data submitted by the State showed that there were 183 new TFC placements²³¹ from January 1, 2023 to December 31, 2023 that meet the definition above. The number of new TFC placements in 2023 was lower than in 2022 (203).

Table 35: New Treatment Foster Care (TFC) Placements in 2023

Type of TFC Placement	New Placements	Percent of New TFC Placements
Total new TFC placements	215	100%
New TFC Placements Counting Towards Target	183	85%
For Children Receiving TFC Services	180	84%
For Siblings of Children Receiving TFC Services	3	1%
New TFC Placements Not Counting Towards Target (children without TFC services)	32	15%

Source: Analysis of Sandbox *Placements* files submitted 6/27/24.

As additional information, the Co-Neutrals examined the number of new TFC placements per child. One hundred twenty-seven unique children had at least one new TFC placement in 2023 (including three who were placed with their siblings eligible for TFC services).²³² Most (94, or 74%) of these children experienced one new TFC placement in 2023, 20 (16%) were placed in two TFC homes, and 13 (10%) were placed in three or more TFC homes (see Table 36).

²³¹ This count reflects analysis of data as submitted by the State; the Co-Neutral team has not validated data for each TFC placement.

²³² This does not include moves between homes after initial placement; as noted above, new placements are defined as placements to a TFC home that the child has not resided in within the previous 365 calendar days.

Table 36: Number of New TFC Placements Per Child in 2023

Number of new TFC placements	Number of children	Percent of children
1	94	74%
2	20	16%
3	7	6%
4	4	3%
5	1	<1%
6	0	0%
7	1	<1%
Total	127	100%

Source: Analysis of Sandbox *Placements* file submitted 6/27/24.

As additional information, the Co-Neutrals examined the length of time children spent in new TFC placements that had ended by December 31, 2023. Of the 183 new TFC placements in 2023, 111 had ended on December 31, 2023 (61%), and 72 were ongoing (39%). Of the 111 placements that had ended, 41 (37%) lasted one week or less, 15 (14%) lasted two to four weeks, and 55 (50%) lasted longer than a month.

Table 37: Duration of New TFC Placements Made in 2023

Duration of placement	Number of new TFC placements	Percent of new TFC placements
Ended by 12/31/2023	111	61%
A week or less	41	37%
2-4 weeks	15	14%
1-3 months	37	33%
4-6 months	7	6%
7+ months	11	10%
Ongoing as of 12/31/2023	72	39%
A week or less	2	3%
2-4 weeks	5	7%
1-3 months	12	17%
4-6 months	26	36%
7+ months	27	38%
Total	183	100%

Source: Analysis of Sandbox *Placements* file submitted 6/27/24 (2023).

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

The Co-Neutrals approved a target of 290 new TFC placements for 2023, and the State made 183 new TFC placements during the year (63%).

Table 38: Number of New TFC Placements Made in 2021 – 2023

Assessment period	TFC target	New TFC placements	Percent of target achieved
July – December 2021	132	84	64%
January – December 2022	264	203	77%
January – December 2023	290	183	63%

Source: Analysis of Sandbox *Placements* files submitted 7/19/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

Discussion

As shown in the data presented above, the State’s performance was less than two-thirds the 2023 target for new TFC placements, and was below the number of TFC placements made in 2022. The State has not historically maintained a list of children for whom TFC placements were needed but not available, so in prior reporting years, the Co-Neutrals were not able to assess progress toward meeting actual need. Pursuant to the CAP, the State instituted new processes and procedures for MCO care coordinators to seek and secure TFC placements for children. These procedures are outlined in LOD #100 (effective August 14, 2023) which includes the following:²³³

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

²³³ LOD #100 can be found [here](#). HCA reports that a new LOD will be re-issued under Turquoise Care, as LOD #100 expired when the new MCO contracts began.

The MCOs are required to collect data related to this process and the results. Data submitted by HCA indicate that between August 15, 2023 and December 31, 2023, CYFD sent referrals to MCOs for TFC services for 23 children, and five (22%) of these children were ultimately placed in TFC.²³⁴ There were an additional 10 requests for reauthorizations of TFC services for children who were already in a TFC placement to authorize them to remain in their placement as the initial authorizations were time limited; two of these were for two of the five children who received referrals for new TFC services and were ultimately placed in TFC in the period. All 10 of these reauthorization requests were approved.²³⁵

Among the 18 children who were referred and not placed in TFC, MCOs sent referrals to an average of seven TFC agencies per child. HCA reports that the TFC agencies took an average of six days to respond to referrals. Agencies denied 84 percent of these referrals, and no response was recorded by the MCO to the remaining 16 percent. The most common reason for the TFC agencies to deny placement as documented by the MCOs was the lack of an appropriate treatment match (74% of denied referrals). There were no substantial differences in the response trends between the three MCOs.²³⁶

The Co-Neutrals spoke with four TFC providers in late 2023 to discuss current strengths and challenges in providing TFC services. They all expressed concerns with the shrinking capacity of this service across the state and were unable to identify specific strategies that the State was implementing to prevent further loss. Themes from these conversations are bulleted below:

- Similar to CYFD, TFC providers are also experiencing challenges in recruiting new resource home providers, and they have lost previously licensed TFC providers due to reported challenges in working with CYFD.
- In order to support more TFC homes, private agencies report needing additional capacity and staffing within their agencies, specifically treatment coordinators and therapists.
- Placements in TFC are based on whether the service is clinically appropriate for the child and if there is a therapeutic match with an available home. Providers report that they decline placement if they do not have a home that is a therapeutic match with the child. However,

²³⁴ The summary presented here is based on the unvalidated data the Co-Neutrals received from HCA and thus may not be a comprehensive view of TFC services in the third and fourth quarters of 2023. It is possible that referrals and placements took place that are not reflected in the submitted data.

²³⁵ The data submitted by the State do not describe why reauthorizations were necessary for these placements. Two of the reauthorizations were requested by CYFD within a month of the initial placement. For the other eight reauthorizations, the data did not include the date of the initial referral for TFC services or the initial placement.

²³⁶ In 2023, children in state custody were enrolled with one of three MCOs: Presbyterian Health Plan (PHP), Western Sky Community Care (WSCC), or Blue Cross Blue Shield (BCBS). Also in 2023, HCA solicited proposals for a single MCO to provide Medicaid services for all children in state custody, which was awarded to PHP and went into effect on July 1, 2024.

providers express that if there were more TFC homes, there would be a larger pool from which to match children with an appropriate and available home.

- Lack of available and supportive community-based services in rural communities throughout the state was cited as a challenge to TFC placements. Agencies indicated TFC families are hesitant to accept children with challenging needs and behaviors if they do not have the supports necessary to successfully care for the child.
- Agencies cited interpretation and application of the Every Student Succeeds Act (ESSA)²³⁷ as a significant roadblock to finding TFC placements for children. Providers and other stakeholders report that when a therapeutic match is identified, it could be outside of the transportation zone of the child’s school of origin and require significant transportation support, resulting in the home not being selected as appropriate. Despite many reported meetings among CYFD and providers to address and resolve this issue, there has not been any reported progress.

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

FSA Requirement	<i>By December 1, 2022, at least 40% of children in out-of-home care will be placed with kin; CYFD will use Seneca Family Finding software to attempt to identify and locate family members for every Child in State Custody within 48 hours of entering State custody. (Due December 1, 2022)</i>
Co-Neutrals’ Finding	Based upon the Co-Neutrals’ review and consideration of all available information, the State met the Performance Standard for this TO in 2023. The Co-Neutrals have assessed that the State met the Performance Standard for BTO7.1 for a continuous period of 24 months, and that this TO is no longer subject to monitoring in the Co-Neutrals’ reports.

DVP Metrics and Validated Performance Data

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

The Co-Neutrals’ analysis of data submitted by the State found that of the 1,754 children who, on December 31, 2023, had been in care for eight or more days and were in an out-of-home placement, 877 (50%) were placed with relatives or fictive kin.²³⁸ The share of children placed with kin has significantly increased each year since 2019.

²³⁷ New Mexico’s State Plan for the Every Student Succeeds Act can be found [here](#).

²³⁸ This count reflects analysis of data as submitted by the State; the Co-Neutral team has not validated each relative or fictive kin placement.

Table 39: Children Placed with Relatives or Fictive Kin on December 31, 2019 - 2023

	2019	2020	2021	2022	2023	
	<i>N=1,950</i>	<i>N=1,820</i>	<i>N=1,601</i>	<i>N=1,559</i>	<i>N=1,754</i>	
	%	%	%	%	#	%
Placed with relative or fictive kin	31%	36%	44%	47%	877	50%
<i>By type of placement:</i> ²³⁹						
Foster Family Home (Relative)	29%	34%	40%	40%	754	43%
Foster Family Home (Fictive Kin)	2%	1%	3%	6%	109	6%
Treatment Foster Care (Relative)	<1%	<1%	<1%	1%	14	1%

Source: Analysis of Sandbox *Cohort_Dec31* and *Placements* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from FACTS *episodes* file submitted 5/2/22 (2019-21), 5/1/23 (2022), and 6/27/24 (2023).

BTO7.1(ii) – primary metric: For all episodes of custody that began during the reporting year, the percent where the child’s first placement was with kin, including fictive kin.

The Co-Neutrals’ analysis of data submitted by the State found that of all 1,319 entries into state custody in 2023 (for 1,251 unique children), 969 led to an episode of custody that lasted eight days or more. In 428 (44%) of these 969, the child’s first placement was with kin (relatives or fictive kin).²⁴⁰ This is similar to the rate in 2022 (43%).

BTO7.1(iii) – primary metric: For all episodes of custody longer than 48 hours that began during the reporting year, the percent for which CYFD used Seneca Family Finder to identify kin within 48 hours of removal.

The Co-Neutrals cannot report on this commitment because of insufficient quantitative data.

Discussion

CYFD met the required performance for this standard in 2022 and 2023. There continues to be no quantitative data available on the State’s use of Seneca Family Finder. Based upon records reviewed and information collected during conversations with staff and other stakeholders, the State uses this and other strategies to identify and place children with kin caregivers. The overall results throughout 2022 and 2023 were positive.

²³⁹ Per the DVP (and consistent with federal reporting requirements developed by the United States Department of Health and Human Services, Administration for Children and Families), the analytic universe excludes children in care fewer than eight days; therefore, counts do not match counts shared in the Contextual Summary (Section III of this report), which includes all children in state custody on December 31st of each reporting year, regardless of length of episode.

²⁴⁰ Source: Analysis of Sandbox *Cohort_Entries* and *Placements* files submitted June 27, 2024.

13. Placement Stability (App. B, TO 8.1)

FSA Requirement	<i>For children under 18 in out-of-home care, the rate of moves from a placement setting shall not exceed three moves per 1,000 days in care. The educational consequences of a change in placement must be considered in all placement change determinations and must be discussed at Individualized Planning Process meeting and any change in placement that impacts the child's education must be accompanied by a written plan to ensure continuity in the child's education. (Due December 1, 2022)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

BTO8.1(i) – primary metric: Of all children in state custody during the reporting year, the rate of placement moves per 1,000 person-days in foster care within said reporting year.

The Co-Neutrals' analysis of the State's data shows that children in state custody in 2023 spent a total of 678,045 person-days in care, and experienced 2,389 total placement moves.²⁴¹ This amounts to a rate of 3.52 moves per 1,000 person-days, which exceeds the FSA maximum of three moves per 1,000 person-days. The rate of placement moves has been roughly the same since 2021 (see Table 40).

Table 40: Number of Placement Moves and Person-days, 2019-2023

Year	Total moves	Total person-days	Rate of moves per 1,000 person-days
2019	3,140	855,714	3.67
2020	2,108	784,470	2.69
2021	2,447	685,960	3.57
2022	2,228	629,657	3.54
2023	2,389	678,045	3.52

Source: Analysis of Sandbox *Placement* files submitted, 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), supplemented by service type detail from Sandbox *EpisodesOfCustody* file submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

As additional information, the Co-Neutrals also compared the rate of placement moves for different racial and ethnic groups (see Table 41). The rate of moves per 1,000 person-days was higher for non-Hispanic Black children (5.33) than for non-Hispanic White children (3.97) and Hispanic

²⁴¹ These counts reflect analysis of data as submitted by the State; the Co-Neutral team did not validate each placement move or adjust the underlying data to account for discrepancies identified in qualitative reviews.

children of any race (3.36). Also, the placement moves rate was lower for ICWA-eligible children (3.14) than non-ICWA-eligible children (3.57). However, it is notable that the placement moves rate for ICWA-eligible children increased substantially from 2022 to 2023 (from 1.99 to 3.14).

**Table 41: Number of Placement Moves and Person-days in 2023,
by Race/Ethnicity and ICWA Eligibility**
*N = 2,944 children in state custody*²⁴²

Race/ethnicity	Number of children in state custody	Total moves in 2023	Total person-days in 2023	Moves per 1,000 person-days
Hispanic ethnicity (of any race)	1,730	1,425	423,989	3.36
White (non-Hispanic)	589	540	135,884	3.97
Black or African American (non-Hispanic)	138	167	31,306	5.33
American Indian or Alaska Native (non-Hispanic)	214	139	45,096	3.08
Asian (non-Hispanic) ²⁴³	4	n.a.	n.a.	n.a.
Native Hawaiian or Other Pacific Islander ²⁴⁴	1	n.a.	n.a.	n.a.
Multi-race (non-Hispanic)	71	46	14,868	3.09
Unknown	197	69	26,044	2.65
ICWA-eligible				
Yes	339	231	73,659	3.14
No	2,605	2,158	604,386	3.57
Total	2,944	2,389	678,045	3.52

Source: Analysis of Sandbox *Placement* files and *Cohort* files supplemented by service type detail from Sandbox *EpisodesOfCustody* file, submitted 6/27/24 (2023).

BTO8.1(ii) – qualitative metric: Qualitative review of educational continuity considered at IPP reviews prior to placement changes.

BTO8.1(iii) – qualitative metric: Qualitative review of IPPs for children prior to placement moves.

²⁴² One child who appeared in the *Placements* Sandbox file for 2023 did not appear in any of the *Cohort* Sandbox files. The Co-Neutrals were unable to determine why this child had been excluded and decided to include their total placement moves (zero) and number of days in care (40) in the numerator and denominator, respectively. Including or excluding these 40 days has a negligible effect on the placement moves rate; the rate is 3.53 per 1,000 person-days in care either way. Because the child was not in the cohort data, the Co-Neutrals are unable to report race and ethnicity information for this child; the child’s numerator and denominator for this metric were included in the “Unknown” race category and the “non-ICWA-eligible” category.

²⁴³ Because the number of children in this category is so low, details on placement stability were left out of the table for privacy reasons. As a result, the sums of the rows in these columns do not match the totals.

²⁴⁴ Ibid.

The State had not developed the qualitative instrument and methodology to collect data and assess performance for these metrics. Thus, the Co-Neutrals are unable to report performance toward these metrics for 2023.

Discussion

The State’s performance in 2023 once again did not meet the required FSA standard, and was relatively unchanged from the previous two years. In fact, children’s placement stability has only slightly changed from the onset of *Kevin S.* tracking in 2019.

14. Achieving Permanency (App. B, TO 9.1)

<i>FSA Requirement</i>	<i>Of all children in care for 12-23 months at the start of a 12-month period, 40% will achieve permanency within 12 months of the start of that period. (Due December 1, 2023)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State met the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

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

The Co-Neutrals’ analysis of data submitted by the State found that of the 385 children who were in care for 12 to 23 months at the start of the reporting period (January 1, 2023), 163 (42%) reached permanency by the end of the year, positively exceeding the TO Performance Standard.^{245,246} The percentage of children who reached permanency has been over 40 percent since 2020, while the number of children who had been in care for 12 to 23 months at the start of the reporting period has declined each year since 2019.

²⁴⁵ Per the DVP, permanency includes discharges from foster care to reunification with the child’s parents or primary caregivers, living with a relative, guardianship, or adoption. Youth entering care at age 17 who turn 18 while in care or discharge at age 18 are not counted as achieving permanency.

²⁴⁶ The Sandbox *Exits* file submitted by the State on June 27, 2024 was missing exit reasons for all but one child. The Co-Neutrals requested from the State, and received on August 13, 2024, a supplemental file to fill in these missing exit reasons. This supplemental file contained exit reasons for all but 92 exits. The Co-Neutral team then reviewed the case records for these 92 exits and collected exit reasons for all but 10. These 10 exits with unknown reasons are not included in this analysis.

As additional information, the Co-Neutrals examined rates of permanency by race and ethnicity. Of the racial and ethnic groups represented in the cohort, non-Hispanic White children were underrepresented in reaching permanency (31 of 88, or 35%).

Table 42: Children Who Reached Permanency of Those Who Had Been in Care Between 12 and 23 Months, 2019 – 2023

Year	Total children in care 12-23 months as of January 1 of reporting year	Children in care 12-23 months who reached permanency during reporting year	Percentage of children in care 12-23 months who reached permanency during reporting year
2019	619	229	37%
2020	523	222	42%
2021	438	178	41%
2022	398	169	42%
2023	385	163	42%

Source: Sandbox *EpisodeOfCustody* and *Cohort* tables submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023), with supplemental information from *2023 Exits Including Duplicate Children* submitted 8/13/24 and adjustments informed by case record review of FACTS documentation conducted by the Co-Neutral team.

The Co-Neutrals also examined the ages and custody end reasons of eligible children who reached permanency in the period under review. Age was calculated as of exit date. Of the 163 children who reached permanency in 2023, 54 percent (88) were six years old or younger, 28 percent (45) were seven to 11 years old, and 18 percent (30) were 12 to 17 years old. Of the 61 children who exited to an adoption, 75 percent (46) were six years old or younger.

Table 43: Age at Exit and Custody End Reason for Children Who Reached Permanency in 2023

N = 163 eligible children

Age at exit	Custody end reason				All reasons
	Adoption finalized	Court dismissed case	Subsidized guardianship	Reunification	
0-6 years	46	0	16	26	88
7-11 years	8	0	16	21	45
12-17 years	7	0	14	9	30
All ages	61	0	46	56	163

Source: Sandbox *EpisodeOfCustody* and *Cohort* tables, submitted 6/27/24.

Discussion

Data submitted by the State shows that 42 percent of children who were in care for 12 to 23 months as of January 1, 2023 reached permanency by December 31, 2023. This TO became due on December 1, 2023, and the State met the required level of performance.

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

<i>FSA Requirement</i>	<i>CYFD will create a CYFD Workforce Development Plan that will ensure CYFD's workforce has adequate qualifications, expertise, skills, and numbers of personnel. The CYFD Workforce Development Plan will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement. The plan will include a specific hiring plan that identifies, by county, the number of staff, credentials, and training required to meet the objectives identified in the CYFD Workforce Development Plan and outlines strategies to recruit and retain staff. The Plan will require that all caseworkers and supervisors have sufficient educational credentials and/or directly relevant experience. It will require that CYFD have a sufficient number of caseworkers to ensure that no caseworker will carry a case load of greater than the current professional standard identified by the Child Welfare League of America (CWLA). It will also include sufficient numbers of staff trained and able to implement ICWA guidelines using culturally responsive practices. The Plan will describe specific strategies to attract and retain diverse, high-quality staff with appropriate qualifications and skills. Co-Neutrals must approve the CYFD Workforce Development Plan. CYFD will develop the Workforce Development Plan by December 1, 2020 and fully implement it by December 1, 2021. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	The State met the Performance Standard for this TO in 2022. Performance toward plan implementation will be monitored and assessed in App. B, TO 10.2 below.

Discussion

The State's Workforce Development Plan (WDP)²⁴⁷ was approved by the Co-Neutrals on July 13, 2023. The Plan includes empirical caseload standards for case carrying staff; strategies for recruitment, hiring, training, and retention of CYFD PSD staff; development of leadership among staff with a supervisory practice framework, competencies, mentorship program, and "data scholars."²⁴⁸

The caseload standards, including graduated caseloads for new staff, are as follows:

- *Investigation Case Workers*²⁴⁹ – in 2022, the standard will be no more than 17 active cases. In 2023 and beyond, the standard will be no more than 12 cases (families) total; no primary assignments for first two months after completion of New Employee Training (NET), no more than three primary assignments at a time during months three and four after NET, and no more than six primary assignments at a time during months five and six after NET.
- *Permanency Coordinators (PC)*^{250,251} – no more than 15 children on a caseload at a time; assigned as primary for no more than five children at a time for first two months after completion of NET (only transferred cases), no more than eight primary assignments at a time during months three and four after NET (can include new cases), and no more than 12 primary assignments at a time during month five and six after NET.

²⁴⁷ CYFD's Workforce Development Plan can be found [here](#).

²⁴⁸ The data scholars training for managers and supervisors provides basic data literacy for staff. CYFD reports the training was effective historically in supporting a more data-informed practice. CYFD reports the training was part of CYFD's Striving Toward Excellence Program (STEP) that began in 2015, but was discontinued in 2020 due to the Covid-19 pandemic. CYFD reports implementation of the program will begin again in 2024.

²⁴⁹ Investigation Case Workers conduct the investigation of alleged child abuse and/or neglect after receiving a report from Statewide Central Intake (SCI). The Investigation Case Worker completes the initial child protective service investigation and is the primary worker on the case through the disposition decision of the investigation (normally up to 45 days). (DVP, pg. 6)

²⁵⁰ In 2024, CYFD renamed the position of Permanency Planning Workers (PPWs) to Permanency Coordinators (PCs).

²⁵¹ Permanency Coordinators (PC) manage cases for children who are in state custody or a legal intervention, including foster care, as well as a "maintain at home" determination, where the child is not removed from the home. The PC is assigned at the conclusion of the investigation, through a case transfer staffing from the primary Investigation Case Worker. They are responsible for assessment and case planning, and providing ongoing support to the children and family. They assess the unique circumstances of each case and work with the family to establish a plan. These plans may include timely reunification with the child's family or another permanency situation, such as guardianship, adoption, or Other Planned Permanent Living Arrangement. (DVP, pgs. 6-7)

- *In-Home Services Providers*²⁵² – no more than eight cases (families).
- *Licensing and Support Specialists*^{253,254} – beginning July 1, 2022, the caseload standard for Licensing and Support Specialists will be equal to: 15 adoption cases, or 20 licensed families, or 15 home studies. For workers with mixed caseloads, the standard will weight each piece of work. For example, each adoption case would equal 6.67% of a caseload (1 caseload divided by 15); each family would equal 5% of a caseload, and each home study would equal 6.67% of a caseload. There will be no more than three to five licensed family or adoption assignments to workers in months one to two after NET, and no more than one home study will be assigned in months one to two after NET once a worker has completed the SAFE Home Study Training; no more than five to eight licensed family or adoption cases, and no more than two new home studies will be assigned during months three to four after NET; and no more than 10 licensed family or adoption cases, and no more than four new home studies will be assigned during months five to six after NET. Following completion of month six, the worker can be assigned no more than 20 licensed family cases, or 15 adoption cases, or 15 home studies.

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

<i>FSA Requirement</i>	<i>CYFD will fully implement the CYFD Workforce Development Plan. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

As explained in the previous report, the Co-Neutrals have had concerns about the accuracy of the State's caseload data. Interviews with caseworkers in 2023 revealed substantial discrepancies between the State's system of record and caseworkers' own reports of their caseloads. Some

²⁵² In-Home Service Workers promote the safety of children, reduce the risk, and reduce the recurrence of maltreatment of children by their parent and/or guardian without the intervention of the courts, providing intense in-home service supports to the family. (DVP, pg. 7)

²⁵³ In 2024, CYFD renamed the position of Placement Workers to Licensing and Support Specialists.

²⁵⁴ Placement Case Workers are responsible for initial and ongoing licensure of resource families and provide ongoing support to each family. They may conduct a home study assessing resource family applicants, support placements with families to whom they are assigned, assist in matching children with families, and provide supports to the resource families following placement to ensure needs are met and retention of the family as a resource family. Placement Case Workers also complete the final adoption case work and serve as a child's primary caseworker once a child is placed for adoption following the termination of parental rights. (DVP, pg. 7)

discrepancies remain as of the publication of this report, but by late 2023, the Co-Neutrals had determined that the accuracy of the caseload data had improved enough to use it for the quantitative metrics below.

The Co-Neutrals examined data from CYFD²⁵⁵ on all individuals who were assigned cases in FACTS on January 5, 2024, since this was the soonest date that the State was able to provide caseload data with sufficient detail²⁵⁶ to determine the applicable caseload standard for each individual²⁵⁷ assigned as primary on a case. Results from analysis of these data are described below as a proxy for caseloads at the end of 2023.²⁵⁸

*BTO10.2(i) – primary metric: Of all casework staff, the share who have primary caseloads consistent with established caseload standards.*²⁵⁹

The Co-Neutrals’ analysis of CYFD data found that of the 204 case-assignable individuals assigned as the primary caseworker for at least one case on January 5, 2024, 82 (40%) had caseloads at or below the applicable caseload standard.²⁶⁰

As defined in the CYFD WDP, Investigations Case Workers may be assigned as primary caseworkers for a maximum of 12 investigations; PCs may be assigned as a primary for a maximum of 15 children; IHS workers may be assigned as primary for a maximum of eight cases; and

²⁵⁵ The State submitted data from three sources: (1) primary case assignments for January 5, 2024 were from FACTS, (2) position titles and start dates of individuals were from CYFD’s Human Resources system (SHARE), and (3) NET completion dates for individuals were from Cornerstone (an online training platform). The State completed a name match to link the SHARE and Cornerstone data to the FACTS assignment data. The State was not able to find a current match in SHARE for 15 workers who were assigned as primary on at least one case on January 5, 2024; in the data submitted to the Co-Neutrals, six individuals were listed as “Termination,” four were listed as “No longer with Agency,” two as “Temp,” and three as “Not found.”

²⁵⁶ Previous caseload data submissions did not include each individual’s job title, the date each individual completed NET, or the individual’s start date. This information is required to determine the applicable caseload standard for a given individual assigned as primary on a case.

²⁵⁷ The State provided the Co-Neutral team with a list of all individuals assigned as the primary caseworker on at least one case as of January 5, 2024. The DVP defines case-assignable caseworkers as, “staff with any of the following titles – Investigation Case Worker, Permanency Coordinator, In-Home Services Provider, or Licensing and Support Specialist – who have completed NET and are eligible for case assignments.” Individuals with supervisory and managerial titles are not case-assignable, nor are staff with titles such as “Investigations Case Aide,” “Kinship Specialist,” and other positions that do not typically require case-carrying duties.

²⁵⁸ Per the DVP, the Co-Neutrals had intended to review data for one randomly selected day each quarter in 2023. However, due to concerns identified by the Co-Neutrals about the quality of caseload, assignment, and staffing data in FACTS – as identified in the previous Annual Report – the Co-Neutrals did not conduct reviews throughout the year. The analysis described in this section was completed as part of the Co-Neutrals’ role validating the commitments related to BTO10.2 in the parties’ June 2023 CAP.

²⁵⁹ Employees were included in this metric if they were a CYFD employee in a case-assignable role as of January 5, 2024 (the list of case-assignable job titles can be found in the DVP). Supervisors, managers, and other non-case-assignable roles were excluded.

²⁶⁰ Excludes 15 workers who were assigned as primary workers but did not appear in CYFD’s SHARE as current staff on January 5, 2024.

Licensing and Support Specialists for a maximum of either 15 adoption cases, 20 licensed families, or 15 home studies.

The WDP also prescribes graduated caseloads for case-assignable caseworkers who have recently completed NET), such that the maximum number of investigation or permanency cases to which an individual may be assigned as a primary worker depends on the number of months since the caseworker completed NET.²⁶¹ Although the DVP requires the State to submit dates of NET completion for all individuals assigned as primary on at least one case, the data the State submitted did not include a NET completion date for 268 of the 364 individuals assigned as primary on at least one case.²⁶² Of these 268 individuals, 200 were in case-assignable roles. Individuals in case-assignable roles are only eligible for case assignment after completing NET, and the graduated caseload period is calculated from the NET completion date. Therefore, the Co-Neutrals cannot determine with certainty which and how many primary cases an individual in a case-assignable role on January 5, 2024 was eligible to carry.²⁶³ Per the methodology agreed upon in the DVP, the applicable caseload standard for individuals with mixed caseloads weights each case according to its type (e.g., an investigations case counts as one-twelfth or 8% of the standard, a child in a permanency case counts as one-fifteenth or 7% of the standard, and so on).

²⁶¹ The State agreed that in the first two months after completing NET, a worker cannot be assigned as primary for any investigation case but can be assigned as primary for up to five permanency cases. In the third and fourth months after NET, a worker can be assigned as primary for up to three investigations cases or eight permanency cases. In the fifth and sixth months after NET, a worker can be assigned as primary for up to six investigations cases or 12 permanency cases. After the sixth month following NET completion, a worker is eligible for full caseloads. There is no graduated caseload standard for placement or in-home services.

²⁶² According to the State, NET completion dates were not captured in the system of record for individuals hired before 2021, so it is not possible for the State to provide data on NET for these individuals.

²⁶³ For this analysis, the Co-Neutrals assumed that case-assignable caseworkers missing a NET completion date who were hired in 2021 or later and did not have a senior job title (e.g., “Investigations Senior Case Worker” or “Permanency Planning Senior Worker”) (n = 81) had not completed NET and were thus ineligible to carry cases. If a case-assignable worker missing a NET completion date had a senior job title (n = 79), or they had a non-senior job title but were hired before 2021 (n = 40), they were assumed to be eligible to carry a full caseload. The year 2021 was selected as the cutoff for these assumptions because in 2021 the DVP was finalized, and the Co-Neutrals and the State reached agreement on caseload standards and the commitment that caseworkers needed to complete NET before being assigned any cases.

Table 44: Individuals Assigned as Primary on Any Case, by Compliance with Caseload Standard²⁶⁴

	Number of individuals	Percent with primary assignments (N=364)	Percent of case-assignable staff (N=204)
Total caseload compliant w. standard	82	23%	40%
0 – 50%	33	9%	16%
51 – 100%	49	13%	24%
Total caseload above standard	122	34%	60%
101 – 200%	53	15%	26%
201 – 400%	53	15%	26%
More than 400%	16	4%	8%
Ineligible for assignment	160	44%	n.a.
Ineligible – new hire (w. NET)	6 ²⁶⁵	2%	
Ineligible – hired after 2020 (no NET)	81	22%	
Ineligible – role	73	20%	

Source: Analysis of FACTS, SHARE, and Cornerstone data submitted by CYFD on January 12, 2024.

BTO10.2(ii) – primary metric: Of all children in out-of-home care, the number whose cases are assigned to any non-case-assignable casework staff, including supervisors, managers, case aides, administrators, or directors.

The Co-Neutrals’ analysis of CYFD data found that 160 individuals who were not case-assignable were assigned as the primary caseworker for at least one case on January 5, 2024 (44% of all individuals assigned as primary to any child’s case). This included 46 supervisors, 27 others in non-case assignable roles (e.g., County Office Managers, Investigation Case Aide, Kinship Specialist), and another 81 individuals who appeared to be ineligible to carry cases because there was no record in the submitted data that they had completed NET. Another six individuals were assigned as the

²⁶⁴ This table reflects the analytic assumptions described in the footnote above. To assess the sensitivity of findings to the specific assumptions, the Co-Neutrals calculated compliance using a range of assumptions. Under the most stringent assumptions – that individuals with no record of NET completion who were hired after 2020, regardless of their job title, are ineligible to carry cases – 20% of individuals had caseloads compliant with the standard, while 27% had caseloads above the standard, including 16% whose caseloads were above 200 percent of the standard. Under more flexible assumptions – that all individuals with missing NET dates completed NET on their date of hire – 32% of individuals had caseloads compliant with the standard, while 46% had caseloads above the standard, including 25% whose caseloads were above 200% of the standard.

²⁶⁵ In the Co-Neutrals’ memo assessing the State’s implementation of the CAP, the Co-Neutrals reported slightly different findings than appear in this Table: 54 (not 53) workers within 101-200% of the standard, 54 (not 53) within 201-400% of the standard, and four (not six) who were new hires with NET. These numbers changed because, after the release of that memo, the Co-Neutrals received records of recent NET completion for two senior workers whose caseloads were within 101-400% of the standard. This analysis assumes that senior workers missing a record of NET completion are eligible for a full caseload. But if a senior worker is not missing a record of NET completion, and NET was completed recently, the relevant graduated caseloads standard will apply. As a result, these two workers were reclassified from eligible workers in the 101-400% categories to ineligible workers who had recently completed NET.

primary worker on at least one case, but were ineligible for case assignment per the State's graduated caseload standard as these cases were assigned within two months of NET completion.²⁶⁶

State data shows 2,044 cases had individuals assigned as primary who were not case-assignable at the time of assignment per the DVP, including 1,069 investigations, 721 permanency cases, 246 placement cases, and eight in-home service cases. The data submitted did not specify the number of children on each case on the reference date, so the Co-Neutrals are not able to calculate the number of children assigned to non-case-assignable casework staff (i.e., the metric as described in the DVP).²⁶⁷

²⁶⁶ For this analysis, the Co-Neutrals assumed that case-assignable caseworkers missing a NET completion date who were hired in 2021 or later and did not have a senior job title (e.g., "Investigations Senior Case Worker" or "Permanency Planning Senior Worker") (n = 81) had not completed NET and were thus ineligible to carry cases. If a case-assignable worker missing a NET completion date had a senior job title (n = 79), or they had a non-senior job title but were hired before 2021 (n = 40), they were assumed to be eligible to carry a full caseload. The year 2021 was selected as the cutoff for these assumptions because in 2021 the DVP was finalized, and the Co-Neutrals and the State reached agreement on caseload standards and the commitment that caseworkers needed to complete NET before being assigned any cases.

²⁶⁷ As noted above, the Investigations, IHS, and Placement caseload standards are calculated at the case level (i.e., families), while the Permanency caseload standard is at the child level. Without knowing the number of children on each investigation, permanency, and IHS case as of the reference date, the Co-Neutrals cannot determine the total number of children assigned to non-case-assignable workers.

Table 45: Summary of Cases by Category of Assigned Worker and Type

Case/child count	Permanency		Investigation		Placement		In-Home Services	
	1,982		3,664		962		14	
No current employee assigned as primary caseworker	45	2%	133	4%	47	5%	0	0%
No primary worker assigned	40	2%	30	1%	39	4%	0	0%
Not assigned to current staff ²⁶⁸	5	0%	103	3%	8	1%	0	0%
Assigned to ineligible worker	721	36%	1,069	29%	246	26%	8	57%
Ineligible - role	263	13%	202	6%	81	8%	6	43%
Ineligible - new hire (NET)	27	1%	33	1%	1	0%	0	0%
Ineligible - new hire (no NET)	431	22%	834	23%	164	17%	2	14%
Assigned to caseworkers with caseloads that exceed the standard	973	49%	2,342	64%	393	41%	4	29%
101-200%	438	22%	343	9%	278	29%	0	0%
201-400%	488	25%	1,012	28%	115	12%	4	29%
+400%	47	2%	987	27%	0	0%	0	0%
Assigned to caseworkers with compliant caseload	243	12%	120	3%	276	29%	2	14%
0-50%	54	3%	22	1%	38	4%	2	14%
51-100%	189	10%	98	3%	238	25%	0	0%

Source: Analysis of FACTS, SHARE, and Cornerstone data submitted by CYFD on January 12, 2024.

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

The Co-Neutrals’ analysis of data submitted by the State found that in 2023, there were 486 caseworker staff with at least one day of employment with CYFD, and they combined for 79,429 workdays.²⁶⁹ The number of workdays was significantly lower than in any previous year because CYFD stopped hiring caseworkers and supervisors between May and September 2023. One impact of this hiring stoppage is to make a year-to-year turnover comparison difficult because 2023 not only included thousands fewer workdays, but also many fewer new caseworkers, and CYFD historically experiences high turnover among that group.²⁷⁰ Eighty-two of the 486 staff voluntarily

²⁶⁸ This includes temporary workers and workers who had left CYFD.

²⁶⁹ For this metric, the DVP defines a workday as any weekday, with no exclusions for holidays or time off.

²⁷⁰ While the total count of workers was similar in 2022 and 2023, the share of workers in 2023 who started a new position in the year (51% - 248 of 486 unique workers) was higher than the share of workers in 2022 who started a new position in that year (31% - 149 of 479 unique workers). One-third of the 248 unique workers who started new positions in 2023 were new hires (162 unique workers); the data provided by the State for 2022 did not include detail necessary to distinguish between new hires and promotions. Of the 162 new hires in 2023, 40 percent began their service in the last third of the year after the hiring freeze ended. Having so many new staff concentrated in the last part of the year explains the relatively low number of workdays used in the calculation.

terminated employment in 2023,²⁷¹ which results in a turnover rate roughly equivalent to one caseworker leaving voluntarily for every four full-time equivalents (FTEs) each year.²⁷²

Table 46: Voluntary Turnover Rate for Protective Services Workers, 2019 – 2023

Year	Workers	Total workdays	Number of voluntary terminations	Turnover rate
2019	492	86,884	88	0.10
2020	484	94,437	88	0.09
2021	481	94,356	116	0.12
2022	479	85,440	141	0.17
2023	486	79,429	82	0.10

Source: Analysis of *CYFD list calendar 2019c* and *CYFD list calendar 2020c* SHARE files, submitted 6/27/22; *DT82522-2021-Staff* SHARE file, submitted 8/25/22 (2021), *Sandbox StaffPosition* table submitted 5/1/23 (2022); *Sandbox StaffPosition* table submitted 6/27/24 (2023).

As additional information, the Co-Neutrals also examined the length of tenure for the 82 staff who voluntarily terminated employment (see Table 47). More than half (45, 55%) had been employed at CYFD for less than one year. Twenty-nine percent (24) had been employed at CYFD for one to three years, while 16 percent (13) had been employed for four years or longer. This is a change from 2022, when the typical tenure for caseworkers who voluntarily left was longer. In 2022, 35 percent stayed less than one year and around 50 percent stayed one to three years (the rate for caseworkers who had been employed four years or longer was similar).

Table 47: Length of Tenure Before Termination for Eligible Employees, in 2023

N = 82 voluntary terminations in 2023²⁷³

Length of tenure before voluntary termination	N	%
Less than one year	45	55%
1 to 3 years	24	29%
4 to 6 years	7	9%
7 to 9 years	3	4%
10 or more years	3	4%
Total	82	100%

Source: Analysis of *Sandbox StaffPosition* table submitted 6/27/24.

²⁷¹ No staff had a voluntary termination more than once in 2023.

²⁷² A rate of 0.10 terminations per 100 person-days worked (82 divided by 79,429 times 100) roughly equates to one termination per 1,000 person-days worked. There were 260 DVP-defined workdays in 2023, so 1,000 person-days roughly equates to four full-time equivalents (FTEs) for the year.

²⁷³ Percentages do not add up to 100% due to rounding.

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

Prior to the introduction of the caseload standard as reflected in the WDP described above, CYFD assessed caseloads by calculating a simple average of cases per worker by case type. This secondary metric was included in the DVP as a developmental step to track CYFD's performance using a methodology consistent with the State's then existing approach. The WDP caseload standards are now in effect, and the State's caseload data now include the information required²⁷⁴ for the Co-Neutrals to evaluate compliance with those standards as described in metrics BTO10.2(i) and BTO10.2(ii) above. As a result, the Co-Neutrals propose that this secondary metric of average caseloads not be calculated moving forward.²⁷⁵

The Co-Neutrals' analysis of data submitted by the State showed that on January 5, 2024, there were 3,664 investigation cases and 88 investigation caseworkers²⁷⁶ statewide, resulting in a simple average of 42 cases per caseworker. On this date there were also: 1,982 permanency cases and 64 permanency caseworkers (31 cases per worker), 962 placement cases and 50 placement caseworkers (19 cases per worker), and 14 in-home cases and two in-home caseworkers (seven cases per caseworker). Of the 6,622 total cases statewide, 552 (8%) were assigned to a CYFD employee in a non-case-assignable role.

Discussion

The State has made significant progress addressing issues with the quality of its caseload data, which the Co-Neutrals confirmed during interviews with CYFD staff during site visits to eight county CYFD offices across New Mexico in January 2024. These improvements in caseload data accuracy happened in late 2023 and early 2024,²⁷⁷ so they were not early enough to allow for full reporting on 2023 caseloads but created a good foundation for reporting on caseloads throughout

²⁷⁴ Previous caseload data submissions did not include each individual's job title, the date each individual completed NET, or the individual's start date. This information is required to determine the applicable caseload standard for a given individual assigned as primary on a case

²⁷⁵ Before the implementation of the WDP, CYFD assessed caseloads by calculating a simple average of cases per worker by case type (which is captured by the secondary metric for BTO10.2). These simple averages did not account for NET completion or graduated caseloads standards, and they could be misleading; for example, a high average caseload could mean all workers have high caseloads, or it could mean that most workers have manageable caseloads but a small number have extremely high caseloads. The methodology in the DVP evaluates compliance at the worker level, so that CYFD and the Co-Neutrals can see exactly how many workers have compliant or non-compliant caseloads on a given date.

²⁷⁶ Employees were included in this metric if they were a CYFD employee in a case-assignable role as of January 5, 2024 (the list of case-assignable job titles can be found in the DVP). Supervisors, managers, and other non-case-assignable roles were excluded. Unlike the primary metric, NET was not considered; case-assignable caseworkers were included regardless of whether, or how recently, they completed NET.

²⁷⁷ The Co-Neutrals have had concerns about the accuracy of the State's caseload data due to interviews with caseworkers that revealed substantial discrepancies between the State's system of record and caseworkers' own reports of their caseloads. Some discrepancies remain as of the publication of this report, but by late 2023, the Co-Neutrals had determined that the accuracy of the caseload data had improved enough to use it for the quantitative metrics below

2024. Still, some issues to strengthen caseload data accuracy remained at the end of 2023. For example, 84 cases had no primary worker assigned on January 5, 2024 in the data submitted, and 15 individuals assigned as primary workers did not appear to be current CYFD employees (assigned as primary workers for a total of 141 cases). When the Co-Neutral team reviewed reported caseloads with some CYFD staff during interviews in January 2024, the results were mixed. Some staff agreed on reported caseload assignments, and others reported meaningful discrepancies between their understanding of their caseloads and the counts reflected in FACTS. Additionally, some supervisors and managers reported that they were assigned to work on cases as the primary worker but those assignments were not reflected in FACTS.

Although the Co-Neutrals approved CYFD's WDP in July 2023, the Co-Neutrals were unaware at the time that CYFD had stopped routine hiring of case-carrying staff and supervisors across the state in May 2023 and largely continuing until September 2023 while leadership was planning for a reorganization.²⁷⁸ CYFD did not begin routine hiring again until October 2023, and many staff and supervisors reported the training academy was not able to accommodate the influx of workers needing NET, which created delays in new staff receiving training, and in turn, their ability to begin assisting with caseload assignments.

In the Co-Neutrals' visits to county offices in September 2023 and January 2024, caseworkers, supervisors, and managers described workforce challenges and practice issues that negatively impacted their ability to do their jobs – high caseloads (including supervisors and managers acting out of their role by carrying cases); vacant supervisor positions resulting in lack of support to frontline staff; high investigative backlogs delaying safety assessments of children; requirements for staff to complete on-call shifts to either respond to emergency investigations overnight (that they may or may not be adequately trained to respond to) or to provide supervision to children sleeping in offices; and lack of time to provide consistent and necessary communication with relative and non-relative caregivers.

In October 2023, CYFD implemented a reorganization of PSD that provided for specialization by position type, and was intended to reduce administrative burdens from programs by transferring HR tasks under HR staff, and financial tasks under Administrative Services. Overall, scores of CYFD staff – caseworkers, supervisors and managers – reported to the Co-Neutrals that the reorganization was abrupt, poorly timed at a period of high caseloads and a large investigations backlog, and was implemented with inadequate communication, resources, and clarity. Even months after it began, many staff reported to the Co-Neutrals there continued to be a lack of

²⁷⁸ There were rapid-hire events held in May and August 2023 for some case-carrying staff (not supervisors and senior workers), however, the results did not keep pace with attrition, and left many positions vacant, resulting in high caseloads for caseworkers and supervisors. Unvalidated data from CYFD's Together We Thrive dashboard shows the following vacancy rates in PSD for mid to late-2023: July 2023, 26.4%; August 2023, 30.6%; September 2023, 31.4%; October 2023, 33.9%; November 2023, 34.7%; and December 2023, 39.3%. These data have not been independently validated by the Co-Neutrals, and the Co-Neutrals are unaware of the methodology that was used to calculate the vacancy rates. The Together We Thrive dashboard can be found [here](#).

communication over roles and responsibilities, and it had resulted in creating silos within offices and an erosion of teamwork.

Assessing and adjusting staff salaries was an important component of the WDP, and CYFD reports completing a pay equity initiative in 2023 which included reviewing resumes, licensure, and education to balance pay amongst key position types based on staff specific qualifications, resulting in more balanced compensation across PSD staff. Staff confirmed that salaries were assessed for equity in late 2023, and in some cases were adjusted in a positive direction though not by an amount that had made much of a difference to workers given the reported uptick in benefits costs to staff. Staff also reported to the Co-Neutrals that the criteria used to make salary equity adjustment determinations were not transparent or clearly communicated to staff. Once the salaries were adjusted for equity, some staff reported the amount in their paycheck actually decreased. During site visits with staff in 2023 and 2024, the Co-Neutrals continued to hear concerns from staff related to the inequity in pay band classification with PC positions receiving the lowest pay.

iii. Appendix C: Indian Child Welfare Act

The commitments in Appendix C of the FSA require CYFD and HCA to “serve Native American families, build a relationship with each of the New Mexico Tribes and Pueblos, and comply with the Indian Child Welfare Act (ICWA) in its letter and intent.” The State must “comply with ICWA and shall make every effort to ensure that all Native Children and families receive appropriate support and services.”^{279, 280}

The Co-Neutrals previously determined that the State met the Performance Standards for three ITs in 2020 and 2021: specifically, *Draft and Promote Passage of State ICWA law* (App. C, IT 1.1),²⁸¹ *Maintain a Full-time Employee Responsible for Developing, Maximizing, Coordinating, and Overseeing Provision of Culturally Responsive Services* (App. C, IT 4.1); and *Create and Maintain a Dedicated ICWA unit in the 2nd Judicial District* (App. C, IT 8.1). No additional ITs were met in 2023.

As required by the FSA, discussion in this section focuses on the State’s efforts in 2023.²⁸² Within CYFD’s Office of Tribal Affairs (OTA) and other initiatives by CYFD and HCA, there is work currently underway that the Co-Neutrals anticipate will produce positive outcomes for Native children and families in 2024 and beyond. Throughout 2023 and 2024, the Co-Neutrals have engaged in multiple conversations with OTA leadership and staff, as well as leadership from a number of New Mexico’s Nations, Pueblos, and Tribes, and recognize that progress toward Appendix C commitments requires respect, trust, time, and commitment. Essential to this work is ensuring that OTA has the staff and resources it needs to communicate, collaborate, and engage

²⁷⁹ FSA, pg. 8a.

²⁸⁰ Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-63.

²⁸¹ The Indian Family Protection Act (IFPA) was introduced and passed in the 2022 legislative session, and was signed into law by Governor Michelle Lujan Grisham on March 3, 2022. IFPA codifies into state law provisions of the federal ICWA, and provides new language within New Mexico’s Children’s Code which directs CYFD to, among other requirements, make the following efforts for Native children who come to the attention of the child welfare agency: conduct affirmative efforts to determine a child’s Tribal affiliation; coordinate with the relevant tribe when conducting an investigation involving a Native child; provide active notification to the relevant tribe for any custody proceeding relating to a Native child; provide Tribal courts the option to assume jurisdiction of the matter; meaningfully collaborate with Tribal courts to ensure appropriate jurisdiction; give tribes the right to intervene in proceedings subject to IFPA; work with families and tribes to reunite a Native child with their tribe; and follow language access requirements for proceedings. The law also requires the State to complete “active efforts” to maintain or reunite a child with their family; “active efforts” are defined as “efforts that are affirmative, active, thorough and timely and that represent a higher standard of conduct than reasonable efforts.” The full text can be found [here](#).

²⁸² On June 30, 2023, the parties entered into the CAP to address the State’s failure to meet Performance Standards in 2021 as outlined in the Co-Neutrals’ Annual Report released on November 15, 2022. In reaching agreement on the CAP, the parties recognized that each of the Nations, Pueblos, and Tribes are sovereign entities and not parties to the FSA or CAP, and that nothing in either of these agreements is binding upon the Nations, Pueblos, or Tribes, and cannot commit the Nations, Pueblos, or Tribes to any activity or engagement. None of the Nations, Pueblos, and Tribes are in any way obligated to engage with or enter into an agreement or contract with CYFD or HCA by virtue of the FSA or CAP.

with the Nations, Pueblos, and Tribes, and to educate and support CYFD staff. New positions have been and continue to be added to OTA which will increase their capacity and ability to do this.²⁸³

a. Implementation Targets Not Previously Achieved

1. Development of Processes and Procedures to Promote Traditional Interventions (App. C, IT 2.1)

FSA Requirement	<i>With the input of New Mexico’s Tribes and Pueblos, CYFD and HCA will develop processes and procedures to promote traditional interventions as first-line interventions and services, using an assessment tool for Native Children in State Custody, modifications of existing assessment tools, or other means recommended by Native experts. The form of the assessment tool or other means shall be approved by the Co-Neutrals, but the Co-Neutrals shall not withhold approval of the assessment tool if it is reasonably calculated to achieve the Goals of this Agreement. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023. Important foundational work continued in 2023.

Discussion

Beginning in 2021, CYFD collaborated with New Mexico’s Nations, Pueblos, and Tribes on developing processes and procedures to promote traditional interventions as first-line interventions and services for Native children and families. The intent of the processes was to determine what CYFD needed to do to support Native children in state custody’s access to traditional interventions and services, and to effectively respond to requests for assistance; these processes were not intended to assess children and families with respect to cultural ties and needs nor to reduce culture or tradition to “tools”. Corresponding guidelines and procedures would include how often the process would take place; who participates in the process; and the roles and responsibilities of the State to support a Native child in state custody in having regular and consistent access to interventions which promote cultural connectedness.

Through this work, Tribal leaders have expressed significant concerns to the State and Co-Neutrals about the development and use of an assessment tool, and the State’s role in identifying or promoting cultural interventions or services, which the Co-Neutrals understand and the State has heeded. Given the sacredness of cultural interventions and traditional ceremonies, the development and identification of these interventions is an exclusive role of the Nations, Pueblos, and Tribes. Pursuant to the parties’ CAP, the State organized and facilitated two listening sessions with New

²⁸³ For example, OTA plans to hire a Deputy Director, two more Indian Child Welfare Consultants, two attorneys with subject matter expertise, and administrative staff with new positions in FY2025.

Mexico Nations, Pueblos, and Tribes in 2023 – one in May and one in November – to hear directly from Tribal leadership on how to address the needs of Native children in state custody. In response to the feedback received, CYFD continued developing processes to offer support in promoting traditional interventions and services to Native children in state custody, including how to provide payments for cultural connectedness activities that recognize Tribal sovereignty. CYFD reports that this process was developed with input from Tribal representatives, and was piloted in June and July 2023.

Guidelines for this process define cultural activity as “any activity or engagement that introduces, strengthens, and maintains the cultural connectedness as approved by the child’s Nation, Pueblo, or Tribe.” Traditional healing is defined as “any non-westernized intervention to address behavioral health, medical health, physical health, or spiritual health needs which are provided by a traditional healer or traditional ceremony accepted by the child’s [Nation, Pueblo, or Tribe].” To access funding, the primary caseworker; family; child; or Nation, Pueblo, or Tribe makes a request directly to OTA. A receipt is not required, nor is any disclosure of information or details regarding the intent or specific practice of the cultural activity or traditional healing. All payments are issued as disbursements prior to the cultural activity or traditional healing. Continued work to develop this process has included discussions with CYFD’s Administrative Services Division (ASD) and New Mexico’s Department of Finance and Administration (DFA). CYFD reports that as of mid-2024, \$10,500 had been allocated toward ensuring 11 Native children and youth were able to participate in traditional and cultural activities in collaboration with Native leaders, partners, families, and communities.

2. Pursue Federal Funding through Medicaid and Title IV-E (App. C, IT 3.1)

<i>FSA Requirement</i>	<i>HCA and CYFD will pursue federal funding to the maximum extent allowable through Medicaid and IV-E funding for traditional and culturally responsive treatments, interventions, and supports, including non-medicalized interventions, for Native Children in State Custody. (Due June 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023. Foundational work continued in 2023.

Discussion

As discussed above, CYFD reports that a process is under development to fund traditional and culturally responsive services for Native children in custody. The current process uses state general funds to support cultural activities and traditional health services, and for those children determined by CYFD’s Title IV-E unit to be Title IV-E eligible, CYFD seeks federal reimbursement at 72 percent.

The State is also working with MCO staff to leverage Medicaid where possible for Native children. As reported last year, HCA has submitted a Medicaid 1115 Waiver proposal to the Centers for Medicaid and Medicare Services (CMS) to maximize Medicaid funding for traditional and culturally responsive treatments. As of the writing of this report, the Waiver proposal is reported to be under review and close to federal approval. Native children enrolled in New Mexico’s Turquoise Care can seek Traditional Medicine Benefit (TMB) reimbursement in the amount of \$250 to \$300 one time each year. Data on utilization of TMBs in 2023 are discussed within App. C, TO 2.1 – *Identification, Access, and Expansion of Culturally Responsive Services*. Additional efforts by CYFD to pursue Tribal access to Title IV-E funding are discussed below in App. C, IT 6.1 – *New Mexico Tribes and Pueblos Access to IV-E Funding*.

3. Native Resource Family Recruitment and Retention Plan (App. C, IT 5.1)

FSA Requirement	<i>CYFD will develop a plan to increase recruitment and retention of Native Resource Families. The plan will include identifying relatives of Native Children, as required by ICWA or the New Mexico Tribe or Pueblo’s preferred placement priorities, as well as identifying other potential Native Resource Families. The plan will include identification of additional supports needed for Native Resource Families, including supports and services that are culturally responsive and are not the same as those provided to non-Native parents, as well as providing assistance for families to navigate Resource Family licensing requirements. One methodology for identifying additional needed supports will be surveying former Native Resource Families to determine why they have stopped serving as a Resource Family and surveying potential Native Resource Families that did not complete the process to determine why they chose not to become a Resource Family. (Due June 1, 2021)</i>
Co-Neutrals’ Finding	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023. Foundational work continued in 2023.

Discussion

In March 2022, CYFD’s OTA began hosting weekly discussions with Nations, Pueblos, and Tribes to review and solicit input and feedback on resource family licensing procedures being drafted by CYFD. These new licensing procedures were effective January 1, 2024, and CYFD reports it includes language reviewed with Tribal partners.²⁸⁴

CYFD reported feedback they received from the Nations, Pueblos, and Tribes that they support CYFD’s efforts toward placement of children with relatives, and do not want CYFD to launch recruitment efforts that establish a pool of non-relative Native resource homes. CYFD also reports

²⁸⁴ CYFD’s licensing procedures can be found [here](#).

that some Nations, Pueblos, and Tribes have expressed an interest in resources to develop their own capacity and processes for licensing Native resource homes. CYFD reports that the OTA Director has met with two identified Tribes to explore the Tribes hiring an additional staff person who would be available to conduct home studies and offer Native families additional support during the licensing process and once they are licensed. Both Tribes have indicated that they will need to get council approval to create these new positions within their Tribal infrastructure.

In further support of these efforts, OTA hired a Native American Resource Parent Consultant in early 2024 who is responsible for improving communication between CYFD PSD staff and Tribal ICWA social workers and community-based providers and stakeholders. CYFD reports that this staff will work with staff within PSD’s Placement Pillar to further develop the Native American Resource Parent Recruitment and Retention Plan.

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

<i>FSA Requirement</i>	<i>CYFD will work with New Mexico Tribes and Pueblos to engage in dialogue, develop agreements, and take any other steps necessary to help New Mexico Tribes and Pueblos better access IV-E funding to improve services for Native Children, including additional funding for legal representation for New Mexico Tribes and Pueblos and Respondents. (Due June 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023. Some foundational work began in 2023.

Discussion

CYFD has committed to creating additional opportunities for New Mexico Nations, Pueblos, and Tribes to leverage Title IV-E federal funding for children in foster care or who are at risk of entering foster care.²⁸⁵ CYFD’s primary strategy for this action has been through development of Joint Power Agreements (JPAs) between the State and New Mexico Nations, Pueblos, and Tribes. Such Agreements would allow the State to pass through Title IV-E federal funds to Tribal Nations for

²⁸⁵ CYFD is the designated Title IV-E agency for New Mexico, and can pass Title IV-E funds to Nations, Pueblos, or Tribes for the care of Native children who meet the eligibility criteria, and who are in the custody of the Nation, Pueblo, or Tribe as a result of caregiver abuse or neglect. Title IV-E reimbursement is potentially available for, for example: monthly maintenance payments for the daily care and supervision of eligible children; administrative costs to manage the program; training of staff and resource parents; recruitment of resource parents; and costs related to design, implementation, and operation of the statewide data collection system.

reimbursable costs. Decisions about whether to enter into a JPA rests with the Nations, Pueblos, and Tribes.²⁸⁶

The parties' June 2023 CAP states that CYFD will inform the Co-Neutrals of the status of JPAs with the explicit knowledge and permission of those Nations, Pueblos, and Tribes. CYFD has informed the Co-Neutrals that they have received permission from three Pueblos to share this information; CYFD offered this update to the Co-Neutrals and as of the end of 2023, no new JPAs had been executed. Between July and December 2023, CYFD reports that OTA met at least once with 10 separate Nations, Pueblos, and Tribes to discuss JPAs, and that OTA has maintained weekly appointments for all interested Nations, Pueblos, and Tribes to discuss agreements, resources, and funding. Given the number of discussions and meetings required to negotiate terms of agreements, and the limited staff available within OTA in 2023, the Co-Neutrals heard reports of some Pueblos and Tribes waiting months for meetings to occur. Decisions about whether to meet with CYFD or enter into agreements with CYFD are at the discretion of each respective sovereign Nation, Pueblo or Tribe.

5. Collection and Analysis of Data to Understand Needs of Native Children, and State's Capabilities to Meet those Needs (App. C, IT 7.1)

<i>FSA Requirement</i>	<i>CYFD and HCA will collect and analyze data sufficient to understand the characteristics and needs of Native Children in State Custody and the capabilities of the State to meet those needs. The data to be collected will include (1) data about Native Children in State Custody, including Tribal membership status, confirmation and correction of birth certificates, removal rates, and placements (including whether children are placed with relative, non-relative Native, or non-relative non-Native Resource Families, Treatment Foster Care, congregate care, residential placement, or other out of home placement); (2) data on the demographics and characteristics of placements available to Native children (including Resource Families); and (3) data on the demographics, characteristics and services provided by treatment providers available to Native Children in State Custody. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023. Foundational work continued in 2023.

²⁸⁶ The Navajo Nation is the only New Mexico Tribe with a Title IV-E direct plan, which allows them to draw down funds directly from the federal government for approved activities and costs. Although the Navajo Nation is its own Title IV-E agency, the Ramah Navajo (Pine Hill) is not.

Discussion

In 2021 and 2022, the State provided the Co-Neutrals with proposed methodologies for a needs assessment to better understand any gaps in the State’s ability to meet the needs of Native children in state custody, and identify where future services are needed. In January 2022, the Co-Neutrals encouraged the State to move from methodology development to collecting and analyzing the data to produce a needs assessment report that would include recommendations and next steps for strategic planning, process improvements, and modifications to current services. The Co-Neutrals also recommended that CYFD and HCA establish a diverse data oversight committee – inclusive of representatives from Nations, Pueblos, and Tribes – to regulate and review data collection processes, procedures, and analysis as the manner in which data are collected and analyzed should respect Tribal sovereignty and reflect cultural sensitivity and humility.

The State reports that throughout 2023, CYFD focused on better data tracking and analysis to understand and anticipate the needs of Native children in care, while also being cognizant of data sovereignty concerns raised by Tribal leaders and partners. The data they have begun collecting include, for example: notice to Tribes that CYFD is initiating an investigation and an invitation for the Tribe to collaborate; timely notice to Tribes of CYFD’s intent to file a petition; outcomes of investigations involving Native children; permanency goals for Native children in care; and number of Native children in ICWA/IFPA-preferred placements. OTA has a Quality Assurance (QA) Manager who maintains quarterly reporting to Nations, Pueblos, and Tribes, and OTA has established a process for Nations, Pueblos, and Tribes to request data from CYFD respective to their communities.

b. Target Outcomes Due between 2020 and 2023

1. Screenings and Referrals for Native Children within 30 Days of Entering Care (App. C, TO 1.1)

<i>FSA Requirement</i>	<i>By December 1, 2021, assessments using the tool developed for Native Children in State Custody or other process developed per Implementation Target 2 above will be conducted within 30 Days of CYFD filing a petition for custody of a Native Child in State Custody. (Due December 1, 2021)</i>
<i>Co-Neutrals’ Finding</i>	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

CTO1.1(i): qualitative metric: Qualitative review of practice for screening and referrals to traditional and culturally-responsive services.²⁸⁷

The State had not finalized the qualitative instrument and methodology to assess performance for this metric. Thus, the Co-Neutrals are unable to report performance toward this metric for 2023.

CTO1.1(ii): primary metric: assessments for Native children within 30 days

Tribal leaders have expressed significant concerns to the State and Co-Neutrals about the development and use of assessments or tools relative to children, and the State's role in identifying or promoting cultural interventions or services, which the State has heeded. As a result, this practice has not been fully implemented by the State, and data pursuant to the DVP was not provided to the Co-Neutrals. Thus, the Co-Neutrals are unable to report performance toward this metric for 2023.

2. Identification, Access, and Expansion of Culturally Responsive Services (App. C, TO 2.1)

<i>FSA Requirement</i>	<i>CYFD will work with New Mexico Tribes and Pueblos, families, and Native Children to identify culturally responsive services. HCA will develop and expand access to traditional and culturally responsive treatments, interventions, and supports. CYFD will develop and arrange for traditional and culturally competent interventions, which may include interventions that are not medicalized and/or have not been evaluated as evidence-based, well-supported, or promising. CYFD and HCA will expand culturally relevant services that can be used as an active effort to keep families intact and to avoid taking children into custody. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

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

²⁸⁷ This qualitative metric will be used to validate multiple related commitments, specifically App. C, TO 1.1, App. C, TO 2.1, App. C, TO 2.2, App. C, TO 2.3, and App. C, TO 3.1.

According to the Co-Neutrals’ analysis of data submitted by the State, there were 232 ICWA-eligible²⁸⁸ children in state custody for at least eight days who were affiliated with a Managed Care Organization (MCO) in 2023, and 33 (14%) of those children were documented as having received Traditional Medicine Benefits (TMB) during the year.^{289,290} Though utilization was low, this represents an increase from 2022, when only one (<1%) of 222 eligible children received a TMB.

Table 48: ICWA-Eligible Children Who Received At Least One TMB in 2023, by MCO²⁹¹

Affiliated MCO	Eligible children	Total children who received at least one TMB	Share who received TMB
Blue Cross Blue Shield of New Mexico	79	6	8%
Presbyterian Health Plan	130	23	18%
Western Sky Community Care	23	4	17%
Total MCO-affiliated children	232	33	14%

Source: Analysis of MCO data submitted 6/27/24.

CTO2.1(ii) – primary metric: Percentage of Native American children in CYFD custody receiving payments and/or reimbursements for cultural activities during the reporting year (including Traditional Medicine Benefits, TMB).

The Co-Neutrals’ analysis of State data shows there were 298 ICWA-eligible children in state custody for at least eight days in 2023; 12 percent of those children are documented as having received payments and/or reimbursements for cultural activities (including TMBs) during the reporting year.²⁹²

²⁸⁸ A child is considered ICWA-eligible if: (a) the Court has affirmatively determined that they are ICWA-eligible, or (b) the Court had not yet made an ICWA-eligibility determination but either their race is identified as “American Indian or Alaska Native” or they are documented in FACTS as having a Tribal affiliation.

²⁸⁹ Source: Analysis of Sandbox *Cohort* and *Episodes of Custody* files and MCO data submitted June 27, 2024. In the MCO data submitted, TMBs are referred to as Traditional Healing Value Added Services.

²⁹⁰ One child was indicated in the MCO data as having received a TMB from Western Sky Community Care, but the *Court Dispositions* data submitted by the State on June 27, 2024 showed that they were not ICWA-eligible in 2023. The child’s race is not identified as “American Indian or Alaska Native” and they are documented in FACTS as not having a Tribal affiliation. According to data submitted by the State, another child was not affiliated with an MCO, but this child was indicated in the MCO data as having received a TMB from Presbyterian Health Plan and was determined to be affiliated with this MCO.

²⁹¹ The universe for this table is limited to ICWA-eligible children who were in care for at least eight days and affiliated with an MCO.

²⁹² One child was indicated in the MCO data as having received a TMB from Western Sky Community Care, but the *Court Dispositions* data submitted by the State on June 27, 2024 showed they were not ICWA-eligible in 2023. The child’s race is not identified as “American Indian or Alaska Native” and they are documented in FACTS as not having a Tribal affiliation.

Table 49: Number of Native American Children Who Received at Least One Payment and/or Reimbursement for Cultural Activities (including TMBs) in 2023²⁹³

Type of benefits received	2023	
	N	%
Total eligible children	298	100%
Children who received benefits	35	12%
Traditional Medicine Benefits (TMBs) only	32	11%
Payments and/or reimbursements for cultural activities only	2	1%
Both TMB and payment/reimbursement for cultural activities	1	<1%

Source: Analysis of MCO data submitted 5/2/22 (2021), 5/1/2023 (2022), and 5/1/24 (2023) and Sandbox Cohort, Episodes of Custody, and MCO Affiliation files submitted 5/2/22 (2021), 6/14/23 (2022) and 6/27/24 (2023).

Discussion

The Co-Neutrals’ analysis of data submitted by the State found that in 2023, 12 percent of applicable ICWA-eligible children received at least one payment for a cultural activity. The State reports that the new processes are informed by Nations, Pueblos, Tribes, and Native families, and are based on their choice, needs, and strengths, and not unilaterally by the State without express engagement and direction. The strategies being developed by the State within OTA rely on input from Nations, Pueblos, Tribes, and Native families, and with the single MCO for children in state custody, should result in easier access and utilization based on decisions made by Nations, Pueblos, Tribes, and Native families about their own unique cultures and traditions next year.

3. IPPs for Native Children to Address Need for Traditional or Culturally Responsive Services, Supports, or Interventions (App. C, TO 2.2)

FSA Requirement	<i>By December 1, 2022, Individualized Planning Meetings for every Native Child in State Custody will address the need for traditional or culturally responsive services, supports, or interventions, including non-medicalized interventions, to meet his or her individualized needs as indicated by his or her assessments. (Due December 1, 2022)</i>
Co-Neutrals’ Finding	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

²⁹³ The universe for this Table is limited to ICWA-eligible children who were in care for at least eight days.

DVP Metrics and Validated Performance Data

CTOI.1(i): qualitative metric: Qualitative review of practice for screening and referrals to traditional and culturally-responsive services²⁹⁴

The State had not finalized the qualitative instrument and methodology to assess performance for this metric. Thus, the Co-Neutrals are unable to report performance toward this metric for 2023.

CTOI.1(ii): primary metric: assessments for Native children within 30 days

The State has not finalized the process and procedures for this metric, thus, data have not been collected to assess performance.

4. Policies to Support Native Children to receive Traditional or Culturally Responsive Services (App. C, TO 2.3)

<i>FSA Requirement</i>	<i>CYFD will make every effort to ensure that services are provided as quickly as possible with consideration of the traditions and culture of the Native child's Tribe or Pueblo, as well as child and family preferences. CYFD will develop policies to ensure that Native Children in State Custody receive traditional or culturally responsive services, supports, or interventions, including interventions which are non-medicalized and/or have not been evaluated as evidence-based, well-supported, or promising, including collecting data on implementation of the protocols. The Co-Neutrals will approve the policies and evaluate the Department's compliance with the policy. The Co-Neutrals shall not withhold approval of the policy if it is reasonably calculated to achieve the goals of this Agreement. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Discussion

As discussed earlier for App. C, IT 2.1 – *Development of Processes and Procedures to Promote Traditional Interventions*, the State continues work to develop and implement the processes and policies that will be utilized to support Native children in their access to traditional or culturally responsive services, supports, or interventions.

²⁹⁴ This qualitative metric will be used to validate multiple related commitments, specifically App. C, TO 1.1, App. C, TO 2.1, App. C, TO 2.2, App. C, TO 2.3, and App. C, TO 3.1.

5. Policy to Provide Direct Assistance for Traditional Ceremonies (App. C, TO 3.1)

<i>FSA Requirement</i>	<i>CYFD will develop a policy to provide or ensure provision of direct assistance for traditional ceremonies, including arranging for all preparation and providing payment if needed, if Native Children want to participate. The policy will 1) provide for Native Children in State Custody to be presented with information about traditional ceremonies with sufficient time to decide whether they want to participate, 2) affirmatively encourage participation, and 3) facilitate all necessary preparation activities. The Co-Neutrals will approve the policy and evaluate the Department's compliance with the policy. The Co-Neutrals shall not withhold approval of the policy if it is reasonably calculated to achieve the Goals of this Agreement. (Due June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023. Foundational work continued in 2023.

Discussion

The State planned to include the requirements of this TO into the policy that was under development for App. C, IT 2.1 – *Development of Processes and Procedures to Promote Traditional Interventions*, and App. C, TO 2.3 – *Policies to Support Native Children to Receive Traditional or Culturally Responsive Services*. The State did not finalize the policy in 2023.

6. Development of Protocols for 30-Day Review Process (App. C, TO 4.2)²⁹⁵

FSA Requirement	<i>CYFD will establish protocols governing the 30-Day review process to include families, Tribal representatives, legal representatives, and Resource Families. The protocols will require that the aim of the placement review will be to determine what actions, services and supports will enable the child to be moved to an ICWA-approved placement. If State ICWA legislation is passed and is more protective than the federal ICWA, a placement may meet this standard by being preferred by or consistent with the State ICWA legislation. The Co-Neutrals shall approve the protocols, but the Co-Neutrals shall not withhold approval of the protocols if they are reasonably calculated to achieve the Goals of this Agreement. The Co-Neutrals will evaluate compliance with the protocols. (Due December 1, 2020)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023. Protocols have been developed and approved by the Co-Neutrals, however, consistent compliance with the protocols, as required by this TO, did not occur in 2023.

Discussion

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

In response to the State's inadequate performance toward placement of Native children in IFPA/ICWA preferred placements as discussed in the Co-Neutrals' 2022 Annual Report, the parties' June 2023 CAP describes CYFD's commitments to increase its processes and procedures to ensure Native children are in ICWA/IFPA-preferred placements.²⁹⁶ In late 2023, the State developed and issued a policy titled, *Out-of-Preferred Placements (OOPP) for Indian Children*²⁹⁷ which rescinded the prior Guidance Memorandum and PIG. This policy articulates the placement preferences pursuant to IFPA and provides a framework for monthly meetings and "OOPP up-

²⁹⁵ Although out of sequence, this report discusses App. C, TO 4.2 prior to discussion of App. C, TO 4.1 in order to provide an explanation of the process and procedure established by CYFD prior to presentation of the data in App. C, TO 4.1.

²⁹⁶ CAP Section II.3.

²⁹⁷ This policy can be found [here](#).

staffings” (described below) for children not in IFPA-preferred placement. This policy was effective December 1, 2023.²⁹⁸

IFPA provides for the following order of placement preference:

- (a) an extended family member of the Indian child;
- (b) a foster home licensed, approved or specified by the Indian child’s tribe; or
- (c) a foster home licensed or approved by a licensing authority in New Mexico in which one or more of the licensed or approved foster parents is Indian.

Prior to placing a Native child in any placement, the primary PSD caseworker should consult with all Nations, Pueblos, or Tribes involved to determine their placement preferences.

Pursuant to the policy, OTA must notify the following required invitees to the scheduled OOPP meeting two weeks in advance: Native youth age 14 and older (unless there is a documented reason for exclusion, e.g., a youth with developmental disability); parents, if parental rights have not been terminated; Tribal representative(s); PSD managers; primary PSD caseworkers; Children’s Court Attorney (CCA); respondent attorneys; guardian ad litem (GAL); youth attorney (YA), if assigned; extended family members/supports identified by the family; and resource parents. OTA facilitates the OOPP meeting, and the primary PSD caseworker and their supervisor are responsible for ensuring the recommendations made during the OOPP meeting are completed prior to the next meeting.

An OOPP up-staffing is a high-level internal review to ensure accountability and follow-through for expeditiously moving Native children into IFPA-preferred placements. After two consecutive OOPP meetings, if a Native child remains in an out-of-preferred placement that is not the first order of preference, up-staffings will be scheduled within two weeks of the last OOPP meeting with the following required participants: PSD Director or their designee; PSD investigations, permanency, and placement Deputy Directors or their designees; and OTA Director or their designee.

While CYFD developed a policy for 30-day review processes and has been conducting reviews, performance data discussed below show that practice in 2023 was not compliant with established protocols and procedures as required by this TO.

²⁹⁸ The CAP required the State to revise and finalize this policy no later than November 1, 2023, and that any revisions to the OOPP procedure previously approved by the Co-Neutrals in January 2021 would be subject to review and approval by the Co-Neutrals. On November 8, 2023, the State provided the Co-Neutrals with the policy for review and comment but omitted to include the referenced attachments which the Co-Neutrals requested. On December 5, 2023, the State provided the Co-Neutrals with the requested information, however, failed to notify the Co-Neutrals that the policy was signed by Secretary Casados on November 16, 2023, and became effective December 1, 2023.

7. 30-Day Review of Native Children in Non-ICWA/IFPA-Preferred Placements (App. C, TO 4.1)

FSA Requirement	<i>By December 1, 2020, when a Native Child is in a non-ICWA-preferred placement, the placement will be reviewed every 30 Days. (Due December 1, 2020)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

CTO4.1(i) – primary metric: Length of time Native American children spent in non-ICWA preferred placements.²⁹⁹

The Co-Neutrals' analysis of the State's data shows that of the 2,944 children in care at any point during 2023, 338 were ICWA-eligible.³⁰⁰ Of these 338 children, 176³⁰¹ (52%) did not spend any time or spent less than a full day in a non-IFPA-preferred placement,³⁰² and 61 (18%) spent more than 180 days in a non-IFPA-preferred placement. Table 49 below shows the number of days spent in non-IFPA-preferred placements for all 338 children. The distribution is similar to 2022, when there were 176 (53%) children who did not spend any time or spent less than a full day in a non-IFPA-preferred placement, and 64 (19%) who spent more than 180 days in a non-IFPA-preferred placement. No category in Table 49 changed more than two percentage points since 2022.

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

To assess changes in the placement process since the adoption of the FSA, the secondary metric limits the analysis to ICWA-eligible children in non-IFPA-preferred placements that began on or after December 1, 2020. As shown in Table 50 below, the Co-Neutrals found that 182 (54%)

²⁹⁹ Per the DVP, these calculations (for both primary and secondary metrics) included temporary absences that occurred within or between non-IFPA-preferred placements. For example, if a child was in a non-IFPA-preferred placement, then was in an acute hospitalization, and then either returned to that same placement or moved to a new non-IFPA-preferred placement, the length of that entire spell would count toward the total.

³⁰⁰ A child is considered ICWA-eligible if: (a) the Court has affirmatively determined that they are ICWA-eligible, or (b) the Court had not yet made an ICWA-eligibility determination but either their race is identified as "American Indian or Alaska Native" or they are documented in FACTS as having a Tribal affiliation.

³⁰¹ This includes 173 children who experienced no non-IFPA-preferred placements, and three who experienced non-IFPA-preferred placements that began and ended on the same day.

³⁰² A placement was considered non-IFPA-preferred if a court hearing deemed the placement non-IFPA-preferred. If there was no Court determination, CYFD's determination was used. If there were no Court or CYFD determinations, the placement was considered non-IFPA-preferred if it was not a relative foster home.

children³⁰³ did not spend any time or spent less than a full day in non-IFPA-preferred placements that began on or after December 1, 2020,³⁰⁴ and 59 (17%) children spent more than 180 days in non-IFPA-preferred placements. This distribution is similar to 2022, when there were 189 (57%) children who did not spend any time or spent less than a full day in a non-IFPA-preferred placement, and 59 (17%) children who spent more than 180 days in a non-IFPA-preferred placement.

Table 50: Number of Children in Non-IFPA-Preferred Placements in 2023 and Placements Made After December 1, 2020, by Total Days Spent³⁰⁵

Number of days in non-IFPA-preferred placements	All placements that overlapped with 2023 (primary metric)		Placements that started on or after December 1, 2020 (secondary metric)	
	N	%	N	%
0	176	52%	182	54%
1-30	46	14%	45	13%
31-90	26	8%	24	7%
91-120	12	4%	12	4%
121-150	13	4%	13	4%
151-180	4	1%	3	1%
180+	61	18%	59	17%
Total	338	100%	338	100%

Source: Analysis of Sandbox *Placement* file, supplemented by service type detail from FACTS *episodes* file, Sandbox *Cohort* and *Court Disposition* files (all files submitted on 6/27/24).

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

The Co-Neutrals’ analysis of the State’s data shows that in 2023, there were 730 required 30-day reviews of non-IFPA-preferred placements, and 183 (25%) of them were conducted³⁰⁶ on time.³⁰⁷ This is a slight improvement from 2022, when 177 (22%) of 807 required reviews were conducted

³⁰³ There were six children who spent time in 2023 in non-IFPA-preferred placements that began before December 2020, which is why there are six more children in the “0 days” category for the secondary metric than the primary metric.

³⁰⁴ This includes 179 children who experienced no non-IFPA-preferred placements that began on or after December 1, 2020, and three who experienced non-IFPA-preferred placements that began and ended on the same day.

³⁰⁵ Percentages do not add up to 100% due to rounding.

³⁰⁶ A meeting was considered “conducted” when the State’s data indicated that it was not canceled, it occurred on or before the due date, and it was an “ICWA Non-Preferred 30-Day Review.” Due dates were calculated as every 30 days after the start of the placement and were unaffected by a move from one non-IFPA-preferred placement to another.

³⁰⁷ As additional information, the Co-Neutrals examined how often children in non-IFPA-preferred placements had *any* team meetings completed for each 30-day period (i.e., counting meetings of any type, whether or not they were labeled an “ICWA Non-Preferred 30-Day Review”). This finding could indicate either that the meeting that occurred did not contain all the required elements of a non-IFPA-preferred 30-day review or that an incorrect meeting type was selected in FACTS. Analysis of the State’s data shows that a meeting of any type occurred within 208 (29%) of the 730 periods in which a non-IFPA-preferred placement review was due.

on time. The Co-Neutrals also examined the data by month and found that the percentage of completed and timely reviews increased over the course of the year (from 18% in the first half of the year to 33% in the second; see Table 51).

**Table 51: Number of Required and Completed Reviews for
Non-IFPA-Preferred Placements, by Month, in 2023**
N = 730 required reviews

Month	Total required reviews	Completed and timely reviews	Percent of required reviews completed timely
January	74	12	16%
February	69	11	16%
March	75	9	12%
April	62	10	16%
May	61	15	25%
June	56	16	29%
July	59	19	32%
August	56	20	36%
September	54	17	31%
October	64	24	38%
November	51	19	37%
December	49	11	22%
Total	730	183	25%

Source: Analysis of Sandbox *Placement* file submitted 6/27/24 (supplemented by service type detail from FACTS *episodes* file submitted 5/1/24), Sandbox *Meetings*, *Cohort*, and *CourtDisposition* files submitted 6/27/24, and adjustments informed by the case record review of FACTS documentation conducted by the Co-Neutral team.

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

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

To collect data for these qualitative metrics, CYFD staff and the Co-Neutral team collaborated in developing protocols and instruments for reviews of children’s records in FACTS to assess if Native children who were placed in non-IFPA-preferred placements received monthly reviews inclusive of the required participants and discussion topics as outlined in CYFD’s procedures.³⁰⁸

³⁰⁸ Reviewers participated in an orientation and training on the FSA standards and the review instrument. CYFD and Co-Neutral staff implemented a quality control process during the reviews, including completing second level reviews of identified surveys.

CYFD staff and the Co-Neutral team reviewed a random sample of 66 Native children³⁰⁹ who were placed in a non-IFPA-preferred placement for at least 30 days between July and November 2023.^{310,311} These 66 Native children experienced a total of 103 placements, of which 89 (86%) placements were not in accordance with IFPA placement preferences. A total of 274 OOPP meetings were required between July and November 2023 for this sample of children, ranging from 52 to 58 each month. Documentation in FACTS showed that of the 274 required OOPP meetings, 107 (39%) OOPP meetings were held.³¹²

Documentation for all 107 OOPP meetings completed between July and November 2023 were reviewed, and none (0%) documented that invitations to attend had been extended to all necessary participants,³¹³ and that all required discussion topics and issues were addressed within the meeting.³¹⁴ Specifically, a Tribal representative or caseworker was present in 31 percent of the meetings held. None (0%) of the meetings included the child or youth; the child's parent or guardian (in 5%, the parent or guardian had been invited to attend but was not present); nor the child or youth's grandparents or other extended family. Other available preferred placements were documented as discussed in 19 percent (20 of 107) of completed meetings, and diligent efforts to identify family as possible placement resources were documented as having been discussed in 34 percent (36 of 107) of completed meetings.

³⁰⁹ Data are based on random sampling and do not include the full universe of applicable Native children and placements during the period under review.

³¹⁰ OTA resumed facilitating OOPP meetings in July 2023, and a new policy governing OOPP meetings took effect on December 1, 2023. Data were collected assessing practice between July and November 2023 to ensure guidance and expectations were consistent across months.

³¹¹ Four children who were originally identified by CYFD as applicable for the review were removed when reviewers determined that they were placed in relative homes during the period under review but their placements were miscategorized in FACTS.

³¹² Data are based on random sampling, and findings differ from the quantitative metric discussed earlier in this section because in addition to only including a sample of children, the methodology of the qualitative review differed in two main ways. First, the qualitative review counted meetings if they were documented as having been conducted for the required purpose regardless of how they were categorized in FACTS (for the quantitative metric, meetings were excluded if they were categorized as anything other than an "ICWA Non-Preferred 30-Day Review"). Second, the qualitative review counted OOPPs as due or completed based on the calendar month, not 30-day periods.

³¹³ CYFD's procedure governing practice during the period under review required that the OOPP staffing must include a representative from the OTA, the PC, and the PC supervisor. Other meeting attendees should include the resource family, the GAL or Youth Attorney, the Native child's parents, the parents' attorneys, grandparents and other extended family members, and the child, as appropriate. The CCA is encouraged to attend, and a representative from the child's Nation, Pueblo, or Tribe must be made aware of the meeting and be invited to participate in a meaningful manner.

³¹⁴ Discussion topics include, but are not limited to: if a preferred placement has been identified since the last OOPP meeting; the reason the child has been placed in an out-of-preferred placement; the barriers to identifying a preferred placement; diligent efforts regarding family identification and next steps; Tribe's position and recommendations for placement; and next steps to move a child to a preferred placement.

Discussion

Quantitative and qualitative data for this TO show that placement meetings to review non-IFPA-preferred placements did not consistently occur when required. Of those that did occur, of the random sample reviewed, none documented inclusion of all required team members and discussion topics. As further context for the effectiveness of the planning in the OOPP meetings that were held, outcome data shows that 10 of the 66 children reviewed moved from a non-IFPA-preferred placement to an IFPA-preferred placement within the period under review, and three of these placements disrupted within the following month.³¹⁵

8. Procedures to Enhance Accountability for ICWA Placement Preferences (App. C, TO 4.3)

<i>FSA Requirement</i>	<i>CYFD will work with New Mexico Tribes and Pueblos to identify any Tribal placement preferences that deviate from ICWA. CYFD will create procedures that enhance accountability for ICWA placement preferences, including allowing the child's tribe or pueblo and extended family members to participate in ICWA-preferred placement reviews, Individualized Planning Meetings and case decision making meetings. (Due December 1, 2020)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023. Procedures to enhance accountability for ICWA placement preferences have been developed, but good faith efforts are needed to ensure Tribal and family member participation in non-ICWA/IFPA-preferred placement meetings and to follow-up on meeting recommendations.

Discussion

CYFD established processes to review non-IFPA-preferred placements for Native children, which requires that OTA schedule and conduct the OOPP meeting and ensure that a representative of the child's Nation, Pueblo, or Tribe and family members are invited to attend. Other attendees in the meeting should also include, but are not limited to, the child's parents, grandparents and other extended family members, and the child, as appropriate.

The case record review described above found that based upon documentation in the child's record, a Native child's family or Nation, Pueblo, or Tribe were not consistently invited to participate in OOPP meetings. Specifically, a Tribal representative or caseworker was present in fewer than one-third (31%) of the meetings held. None of the meetings included the child or youth; the child's parent or guardian (in 5%, the parent or guardian had been invited to attend but was not present);

³¹⁵ Of the seven placements that did not disrupt, three children achieved permanency, and one youth aged out of foster care.

nor the child or youth's grandparents or other extended family. The highest priority ICWA placement preferences are with family and Native resource parents, making these participants essential in developing a plan to move a Native child into an IFPA preferred placement.

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

FSA Requirement	<i>CYFD will develop an ICWA training plan by December 1, 2020, and implement it by December 1, 2021. ICWA trainings will be developed collaboratively with the CYFD's Academy for Training and Professional Development Team, Protective Services Tribal Liaison, CYFD Tribal Liaison, Tribal Advisors, and culturally responsive experts. The ICWA training will include specific information on the history of ICWA, historic relations between Native American people and state and national government, and the history of culturally insensitive social work practices. It will also include skills development in working with Native families and communities, historical trauma, engagement, cultural humility and culturally responsive intervention techniques for Native American parents and youth and community engagement with New Mexico Tribes and Pueblos, as well as best practices for ICWA. The training will include information on New Mexico Tribes and Pueblos, sovereignty, and jurisdictional issues. The Co-Neutrals shall approve the ICWA training plan, but the Co-Neutrals shall not withhold approval of the training plan if it is reasonably calculated to achieve the Goals of this Agreement. The Co-Neutrals will evaluate implementation of the training plan. (Due December 1, 2020)</i>
Co-Neutrals' Finding	The State met the Performance Standard for this TO in 2022. Performance toward plan implementation will be monitored and assessed in App. C, TO 5.2 below.

Discussion

On January 12, 2023, the Co-Neutrals approved the State's Indian Child Welfare Act and Indian Family Protection Act Training and Coaching Plan, dated December 30, 2022.³¹⁶ The Plan was developed by CYFD's Workforce Development Bureau (WDB), OTA staff, and two workgroups – the Tribal Advisory Group (TAG)³¹⁷ and the Native American Training Curriculum Advisory

³¹⁶ The State's approved State's Indian Child Welfare Act and Indian Family Protection Act Training and Coaching Plan can be found [here](#).

³¹⁷ CYFD reports the TAG members include the following representatives: ICWA manager for the Pueblo of Nambe; ICWA worker for the Pueblo of Taos; Director for the Pueblo of Isleta Social Services; ICWA worker for the Jicarilla Apache Tribe; case worker for the Pueblo of Pojoaque Social Services; Director of Navajo Nation Department of Social Services; and Director for the Isleta Pueblo Social Services. CYFD reports that Tribal social and ICWA workers from each Nation, Pueblo, and Tribe were invited to participate in weekly meetings, and WDB conducted individual e-mails and phone calls requesting input on curriculum content when a Tribal representative was unable to attend a weekly meeting.

Group (NATCAG).³¹⁸ As the curriculum is rolled out, CYFD reports that the workgroups will continue to meet to modify content, as needed, and to evaluate the trainings' effectiveness.

The Plan includes three tiered levels of training certificates. These levels are described below:

- ***Tier 1: Novice ICWA/IFPA Certification*** is required for all CYFD PSD employees, including CCAs and OTA staff, and includes four courses,³¹⁹ totaling 22 hours. CYFD reports all courses were available beginning in January 2023. Existing staff were required to complete the Novice Certification by December 31, 2023, and new staff must complete the training within one year of hire.
- ***Tier 2: Advanced Certification*** is required for all CYFD PSD supervisors, managing attorneys, and ICWA unit staff. It consists of five courses,³²⁰ totaling 12 hours. CYFD's goal for completion of the curriculum for all Advanced courses was March 31, 2023. Existing staff are required to complete the training within one year of its availability, new staff are required to complete the training within 18 months of hire, and staff who are promoted into supervisor and managing attorney positions must complete the training within six months of promotion.
- ***Tier 3: Leadership Certification*** is required for County Office Managers, Regional Managers, and Field Deputy Directors. It includes six courses,³²¹ for a total of 26 hours. CYFD's goal for completion of the curriculum for all Leadership courses was December 31, 2023. Existing staff are required to complete the training within one year of its availability, new staff are required to complete the training within 24 months of hire, and staff who are promoted into the applicable positions must complete the training within 18 months of promotion.

The Plan also includes additional trainings required for CCAs and resource parents, and has strategies to provide coaching to staff – including hiring an ICWA/IFPA Coach in OTA – and evaluation of the training.

³¹⁸ CYFD reports the NATCAG members include the following representatives: CYFD's Office of General Counsel (OGC), the Office of the Secretary's (OTS) Special Project Coordinator, CYFD's Resource Parent Training Program Manager, a PSD Deputy Director, a retired State of New Mexico Children's Court Judge, a retired Indian Child Welfare Expert, individuals with lived experience, community partners with relevant expertise (Bold Futures), and Tribal partner representation from the Pueblo of Isleta and the Navajo Nation.

³¹⁹ *Novice* courses include: Cultural Humility in Social Services; Populations of New Mexico; Indian Child Welfare Act Overview – Best Practice for Best Outcomes (e-learning); and ICWA and IFPA In-Depth Training – Applying Best Practices.

³²⁰ *Advanced* courses include: Supervising Indian Child Welfare Act/IFPA Cases; Community Cultural Wealth; Importance of Cultural Connections; Implications of Historical Trauma – Proficient; and Government-to-Government Relations – Proficient.

³²¹ *Leadership* courses include: Accountability and ICWA: Assuring Cultural Responsiveness; Accountability and ICWA: Assuring ICWA Compliance; Collaborative Decision-Making; Values-Based Leadership; Creating an Environment of Cultural Humility; and Community Engagement.

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

FSA Requirement	<i>CYFD will develop an ICWA training plan by December 1, 2020, and implement it by December 1, 2021. The Co-Neutrals will evaluate implementation of the training plan. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

DVP Metrics and Validated Performance Data

CTO5.2(i) – primary metric: Of the staff required to complete ICWA training during a year ending December 31, the percent that completed all levels of training required for their position.

The Co-Neutrals' analysis of data submitted by the State found that on December 31, 2023, there were 1,719 staff employed at CYFD. According to the ICWA/IFPA Training and Coaching Plan, 717 of these 1,719 staff were required to complete ICWA training in 2023.³²² Of these staff, 392 (55%) completed all modules of training for Tier 1: *Novice ICWA/IFPA Certification*.^{323,324}

CTO5.2(ii) – qualitative metric: qualitative review of ICWA training for caseworker staff

The State had not finalized the qualitative instrument and methodology to collect data and assess performance for this metric. Thus, the Co-Neutrals are unable to report performance toward this metric for 2023.

³²² The ICWA/IFPA Training and Coaching Plan includes three cumulative tiers of training, and the tier an employee is expected to reach is based on their position. Certain positions are required to complete all three tiers, while others are required to complete one or two. During 2023, the State had carried out trainings for Tier One: Novice ICWA/IFPA Certification, but the two higher tiers of training were not yet available to staff. Thus, for this metric, the Co-Neutrals counted all workers who were required to complete Tier One: all PSD employees (including CCAs, ICWA Unit, and OTA staff). Rates of training completion for Tier Two and Tier Three trainings could not be calculated. The ICWA/IFPA Training and Coaching Plan states new staff must complete required Tier One trainings within one year of their hire date, so any employees hired after December 31, 2022, are not required to complete ICWA training until after 2023 and are thus excluded from this metric.

³²³ As additional information, the Co-Neutrals calculated the number of staff who completed at least one of the four required trainings: 573 (80%).

³²⁴ Completion of all four training modules within the Notice Tier are required. Completion data for each individual module is as follows: Cultural Humility – 73% of required staff completed; ICWA/IFPA: Best Practices – 64% of required staff completed; Indian Child Welfare Act Overview – 72% of required staff completed; and Populations of New Mexico – 73% of required staff completed.

Discussion

The quantitative data shows that slightly over half of CYFD staff received the required ICWA/IFPA Tier 1: *Novice* training by December 31, 2023. Although the ICWA/IFPA Training and Coaching Plan anticipated that the content and curriculum for Tier 2: *Advanced* and Tier 3: *Leadership* would be completed by March 31, 2023 and December 31, 2023, respectively, this work was not finalized in 2023. CYFD reports that after meeting with Tribal partners, a decision was made to push completion of the curriculum into 2024; an internal workgroup has been established to finalize Tier 2 to present to Tribal partners. CYFD will take the same approach with Tier 3 content. CYFD reports being committed to reaching all required staff with the required training.

CYFD reports providing ICWA/IFPA training to resource parents in their pre-service training – READi NM – with curricula adapted from the ICWA/IFPA Training Plan. The Co-Neutral team conducted interviews with licensed resource parents in the summer of 2024 and asked about their experience with ICWA/IFPA training in 2023. Of the 42 resource parents who had completed the training in 2023, about two-thirds (67%) completed the training online (self-guided), and 26 percent attended via Zoom.³²⁵

When asked how useful the training was in preparing them to care for a child placed in their home, 26 resource parents provided a response.³²⁶ Fifteen resource parents rated the training as extremely useful (7, or 27%) or very useful (8, or 31%). For resource parents who provided this rating, most commented that learning the information and history was helpful, even if some of those parents also stated that they were not likely to have a Native child placed in their home. Among the 11 parents who rated the training somewhat useful (4, or 15%), not so useful (6, or 23%), or not at all useful (1, or 4%), the biggest complaint was that they felt the training did not apply to them, either because they lived in areas with small Native populations or they were not likely to have a Native child placed with them.

³²⁵ One resource parent could not remember the format, and one resource parent attended the training in person.

³²⁶ This excludes resource parents who did not take the training in 2023 or were unsure, and one parent who indicated that they had taken the ICWA/IFPA training but could not remember enough about the training to provide a rating.

iv. Appendix D: Behavioral Health Services

The commitments in Appendix D of the FSA require CYFD and HCA to “structure and build a statewide, community-based mental health system that all children and families will be able to access.”³²⁷ The parties agree a statewide system is necessary to ensure:

- Prompt access to necessary services regardless of where children and families live;
- Access to services that are critical to keeping children with their families or in the most family-like setting possible;
- A diverse and full spectrum of community-based services that will decrease reliance on congregate care, keep families together in their community to the maximum extent possible, and greatly reduce reliance on out of state residential placements.

This statewide, community-based mental health system will provide “medically necessary mental health services... in descending order of preference: at home, in a family setting, or in the most home-like setting appropriate to a child’s needs and consistent with the Children’s Code.”³²⁸

a. Implementation Targets Not Previously Achieved

In prior reports, the Co-Neutrals assessed the State had met the Performance Standard for the following ITs – *Initial Expected Service Utilization Methodology* (App. D, IT 2.1); *Detailed Progress Report on Reimbursement Methodology, Billing Rate Information, and Guidance for Providers* (App. D, IT 3.1a);³²⁹ *Develop and Publish Reimbursement Methodology, Billing Rates, and Provider Guidance* (App. D, IT 3.1); *Publishing Medication Protocols for Public Comment* (App. D, IT 4.1a);³³⁰ *Adopt Regulations Governing Medication Protocols* (App. D, IT 4.1); *Reinstating “No Reject, No Eject” Language in Medicaid Contracts* (App. D, IT 6.1); *Notice of Action and Grievance Protocols* (App. D, IT 7.1); and *Contractually Require Training for Care Coordination Providers* (App. D, IT 9.1). Thus, those ITs will not be reassessed in this or future reports.

³²⁷ FSA, pg. 12a

³²⁸ Ibid.

³²⁹ App. D, IT 3.1a was created and agreed upon by the parties in the August 8, 2020 Parties’ Extension Agreement.

³³⁰ App. D, IT 4.1a was created and agreed upon by the parties in the August 8, 2020 Parties’ Extension Agreement.

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

FSA Requirement	<i>HCA and CYFD will create a Behavioral Health Care Workforce Development Review with the objective of supporting and expanding provider capacity to provide community-based mental and behavioral health services with reasonable promptness that are accessible throughout the State, and particularly in rural areas. The Behavioral Health Care Workforce Development Review will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement, including how HCA works with MCOs on increasing capacity to make available screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services to every Child in State Custody for whom they are medically necessary. HCA will either create or require MCOs to create a specific hiring/contracting plan that identifies, by county, the number of staff and credentials required to meet the objectives identified in the Behavioral Health Care Workforce Development Review. The Co-Neutrals must approve the Behavioral Health Care Workforce Development Review. (Due June 1, 2021)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023.

Discussion

As of December 31, 2023, the State did not produce an approved Behavioral Health Workforce Development Review. HCA's last submission during the period, in September 2023, did not address many explicit requirements set forth in the FSA.³³¹

The FSA requires HCA to create or require MCOs to create a specific hiring and contracting plan to meet the objectives outlined in the Review. In 2023, HCA engaged in a procurement process to determine the MCOs who would provide services for New Mexicans on Medicaid.³³² For the first time, HCA also solicited proposals for a single MCO to provide Medicaid services for all children in state custody.³³³ In August 2023, HCA awarded the single MCO contract to serve children in

³³¹ In 2024, HCA collaborated with the Co-Neutrals and Presbyterian Health Plan (PHP) to develop a revised draft of the Review, which the Co-Neutrals advised the State to begin implementing while addressing minor remaining questions. The Co-Neutrals expect to approve the State's Review in 2024.

³³² Additional information about the procurement process for Turquoise Care can be found [here](#).

³³³ Native children are able to decide whether they enroll with the MCO of their choice or in fee-for-service Medicaid. Additional information about Native children and Turquoise Care can be found [here](#).

state custody to Presbyterian Health Plan (PHP).³³⁴ The Turquoise Care contracts went into effect on July 1, 2024.

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

<i>FSA Requirement</i>	<i>HCA will monitor implementation of a term in all contracts with its designees to require that care coordination include identification of physical, behavioral health, and long-term care needs, and providing services to address said needs, in compliance with Section 4.4 of Centennial Care 2.0 Managed Care Organization contracts with HCA. (June 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023.

Discussion

In 2023, the State's 1115 demonstration waiver³³⁵ defined care coordination as a service available to all MCO-enrolled members. Specifically, care coordination includes:

- Assessing each member's physical, behavioral, functional, and psychosocial needs;
- Identifying the specific medical, behavioral, and Long-Term-Services and Supports (LTSS), and other social support services (e.g., housing, transportation, or income assistance) necessary to meet a member's needs.
- Ensuring timely access and provision of services needed to help each member maintain or improve their physical and behavioral health status or functional abilities while maximizing independence; and
- Facilitating access to other social support services needed to promote each member's health, safety, and welfare.³³⁶

HCA issued LOD #69-1 titled *MCO Requirements for Children in State Custody (CISCs)* on February 28, 2022.³³⁷ Section 4.4.3 of the LOD requires MCOs to assign all children in state custody as a Level Two or Level Three member to receive care coordination as defined above, with

³³⁴ Additional information about PHP as the single MCO serving children in state custody can be found [here](#).

³³⁵ Section 1115 of the Social Security Act provides the federal Centers for Medicare and Medicaid Services (CMS) with the authority to approve experimental, pilot, or demonstration projects that are likely to assist in promoting the objectives of the Medicaid program. If approved, these projects allow states flexibility to design and improve programs by demonstrating and evaluating state-specific strategies and policy approaches for specific populations. New Mexico's 1115 waiver expired on December 31, 2023, and can be found [here](#). Section 4.4 of the Turquoise Care contracts, which were not in effect in 2023, also defines care coordination and can be found [here](#).

³³⁶ New Mexico Human Services Department, *Centennial Care 2.0 Medicaid 1115 Demonstration*, p. 57.

³³⁷ LOD 69-1 can be found [here](#).

the possibility to step down to a lower level not requiring care coordination when appropriate as assessed by the MCO. Additionally, Section 4.4.1 of LOD #69-1 requires the MCO to contact the child's PC within three business days after a child in state custody is enrolled with the MCO, and to assign a care coordinator to begin initial outreach and engagement in services at that time.³³⁸

Care coordination services should support timely access to, and provision of, services necessary to maintain or improve the physical and behavioral health status or functional abilities of children in the least restrictive settings. The Co-Neutrals conducted interviews with CYFD caseworkers, HCA staff, and behavioral health providers across New Mexico in September 2023 and January 2024, and have reviewed many children's FACTS records as part of ongoing validation activities. These conversations and records revealed numerous examples of children's needs going unmet in 2023 with little to no documentation of meaningful care coordination by the MCOs, especially for children placed out of state and for children who are housed in CYFD offices. Additionally, qualitative reviews completed by CYFD's QA unit and Co-Neutral staff found that participation by MCO care coordinators in monthly meetings for children placed in clinical congregate care settings in New Mexico and out of state has not consistently occurred.

As part of the reviews referenced above, in 2023, the Co-Neutrals were provided with documentation from all three MCOs³³⁹ regarding medical necessity determinations for children placed in congregate care facilities. In many instances, the medical necessity documentation revealed a disconnect between the MCO care coordinators and the information documented in children's FACTS records, which demonstrated a general lack of coordination in communicating and monitoring the care children were receiving. The documentation also showed a lack of effective discharge planning, causing some children to stay in restrictive settings longer than was determined to be medically necessary. As the State continues to move forward with transitioning children in state custody to a single MCO, HCA should take a more active oversight and monitoring approach to ensure MCOs are leveraging their networks and providing care coordination as required, which could substantially improve outcomes for children.

³³⁸ HCA incorporated the care coordination requirements from LOD #69-1 into the Turquoise Care contracts, beginning on page 88. The Turquoise Care contracts can be found [here](#).

³³⁹ The three MCOs in 2023 were PHP, Blue Cross Blue Shield (BCBS), Western Sky Community Care (WSCC).

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

<i>FSA Requirement</i>	<i>HCA and CYFD will review and identify the responsibilities shared by both Departments and create a joint process for offering services and supports include screening, assessing, referring, treating and providing transition services to Children in State Custody of the department, including Children in State Custody who were never removed from Respondents' homes or children who have returned to Respondents' homes but who remain Children in State Custody. The goal of this joint process shall be to maximize each child's access to services and to create a unified process for offering services and supports.</i> (June 1, 2021)
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this IT in 2023.

Discussion

The FSA requires the State to review and identify the responsibilities of HCA and CYFD to offer services and supports such as screening, assessing, referring, treating, and providing transition services, and to create a unified process to maximize access to these services for children in state custody. As of December 31, 2023, the State did not develop a joint process for offering services and supports approved by the Co-Neutrals. The State last produced a draft joint process to the Co-Neutrals in September 2022.

All children in state custody are served by both CYFD (as the legal guardian) and HCA (as the agency which oversees Medicaid), and yet, the Co-Neutrals' review of numerous FACTS records and conversations with staff from both agencies revealed that the agencies tasked with procuring services and monitoring the well-being of children in state custody are often not effectively communicating or working together to develop appropriate and responsive treatment and discharge plans for children.

CYFD and HCA must make good faith efforts to identify an explicit, comprehensive, unified process for identifying and monitoring services and supports for children in state custody to maximize each child's access to services.

b. Target Outcomes Due between 2020 and 2023

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

<i>FSA Requirement</i>	<i>HCA will work with MCOs to implement the Behavioral Health Care Workforce Development Review, with the objective of expanding and developing the statewide workforce sufficient to implement the system for delivery of community-based mental and behavioral health services described in this Agreement. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Discussion

As discussed above, HCA did not develop a Behavioral Health Workforce Development Review that met the requirements of the FSA in 2023, and implementation consistent with an approved plan did not occur in 2023.³⁴⁰

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

<i>FSA Requirement</i>	<i>By December 1, 2021, HCA will employ sufficient staff such that it has the internal capacity to effectively oversee, monitor, and manage the MCOs and to oversee and develop policy and procedures related to EPSDT. (Due December 1, 2021)</i>
<i>Co-Neutrals' Finding</i>	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Discussion

The work required in this TO is to be guided by App. D, IT 1.1 – *Behavioral Health Workforce Development Review*. As discussed above, HCA did not develop a Behavioral Health Workforce Development Review that met the requirements of the FSA in 2023, and thus implementation consistent with an approved plan did not occur in 2023.

³⁴⁰ In 2024, HCA collaborated with the Co-Neutrals and Presbyterian Health Plan (PHP) to develop a revised draft of the Review, which the Co-Neutrals advised the State to begin implementing while addressing minor remaining questions. The Co-Neutrals expect to approve the State's Review in 2024.

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

FSA Requirement	<i>By December 1, 2021, HCA will require that MCOs have a provider network sufficient to meet the needs identified in the Behavioral Health Care Workforce Development Review and hiring plans. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Discussion

The work required in this TO is to be guided by App. D, IT 1.1 – *Behavioral Health Workforce Development Review*. As discussed above, HCA did not develop a Behavioral Health Workforce Development Review that met the requirements of the FSA in 2023, and thus implementation consistent with an approved plan did not occur in 2023.

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

FSA Requirement	<i>By December 1, 2021, HCA or its designees will provide incentives for providers to be trained in evidence-based, well-supported, and promising trauma-responsive services, which include intensive case management, High Fidelity Wraparound services, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). Training will comply with professional standards and best practices in adult education, including by incorporating experiential and interactive components and using evaluations to measure effectiveness. (Due December 1, 2021)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

Discussion

In 2023, the New Mexico Legislature appropriated \$20 million to build out children's behavioral health services in the state for all children in New Mexico (not limited to children in state custody). The funds were to be used in FY2024, which began July 1, 2023. These funds were intended to be used by the agencies to support the development of children's behavioral health services, including providing startup funding for new behavioral health providers. According to the New Mexico

Legislative Finance Committee (LFC), these funds largely remained unspent or used for purposes outside of their intent as of the end of FY 2024.³⁴¹

In 2023, the State worked to develop enhanced billing rates and modifiers for eligible practitioners to use when providing evidence-based practices (EBPs) to all children and adults in New Mexico, including for children in state custody. These proposed modifiers and rates are intended to include the startup costs for providers who want to provide EBPs. As part of this effort, the State continued to contract with NMSU COI in 2023 to facilitate and provide training and continuing education at no cost to providers who want to become certified in any of the identified EBPs to access the enhanced modifier billing rates. NMSU COI tracks and maintains a record of certified EBP providers.

HCA issued LOD #10 on July 1, 2024, which provides guidance to clinicians regarding enhanced rates and modifiers for billing for the following EBPs: Multi-Systemic Therapy (MST), Functional Family Therapy (FFT),³⁴² Trauma-Focused Cognitive Behavioral Therapy (TF-CBT), Eye-Movement Desensitization and Reprocessing (EMDR), and Dialectical Behavior Therapy (DBT).^{343,344} CMS approved the addition of the modifiers in late 2023, and eligible providers could bill using the modifiers for services provided after July 1, 2023. However, the State's data indicate that zero services were billed by providers using the modifiers in 2023.³⁴⁵

Additionally, the State reports working to expand the availability of EBPs by working with graduate programs at local New Mexico universities³⁴⁶ to provide initial training in EBPs to interested students, who would then be eligible for internships with providers using the EBP as they work toward licensure and certification. To assist providers in billing for pre-licensed, masters-level mental health clinicians (who are typically unable to bill Medicaid), HCA BHSD maintains a clinical supervisory certification project to allow eligible providers the ability to bill Medicaid for the work of pre-licensed clinicians, which is a key component of efforts to expand the behavioral health workforce.

³⁴¹ During an LFC presentation on September 11, 2024, the LFC highlighted the reauthorization of prior years' unused appropriations for CYFD and HCA, including the \$20 million for children's behavioral health expansion. The LFC's presentation can be found [here](#).

³⁴² The FSA refers to FFT as Functional Family Training, however the modality is widely known as Functional Family Therapy.

³⁴³ Historically, New Mexico providers utilizing clinical interventions such as DBT, TF-CBT, and EMDR would bill Medicaid or insurance for non-specific psychotherapy sessions, which is typical practice. With the addition of the modifiers, HCA will be able to track specific trauma-responsive interventions that are provided to children in state custody.

³⁴⁴ LOD #10 was initially issued as LOD #113 under Centennial Care. MST and FFT are included in LOD #10, however modifiers for those interventions were in use prior to 2023, LOD #10 can be found [here](#).

³⁴⁵ The lack of provider billing for EBPs might seem surprising, but since those services require new certification and fidelity verification, and since the billing guidance only emerged midway through 2023, many providers were still navigating the State's new process at the end of the year.

³⁴⁶ Specifically, New Mexico State University, New Mexico Highlands University, and Western New Mexico University.

5. Community-Based Mental and Behavioral Health Services (App. D, TO 3)

FSA Requirement	<i>By December 1, 2022, the following services³⁴⁷ will be available to every Child in State Custody for whom they are medically necessary, as indicated by the CANS and functional trauma assessments and any follow up. Services will be available immediately where possible and not to exceed 10 Days otherwise. (Due December 1, 2022)</i>
Co-Neutrals' Finding	Based upon the Co-Neutrals' review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2022.

CYFD's requirements with respect to CAT and CANS screenings, and children's behavioral health needs are outlined in Procedure 17 of CYFD's *Permanency Planning Procedures* (8.10.8 NMAC).³⁴⁸ Paragraph 7.3 requires CYFD to arrange for behavioral health services to children and families to address identified needs and meet case planning goals to achieve permanency.

DVP Metrics and Validated Performance Data

ATO2.2(i) – secondary metric³⁴⁹: The sum number of children in the cohort who received either High Fidelity Wraparound services, MST, MCR or FFT during the reporting year.*

The Co-Neutrals' analysis of the State's data shows that of the 2,944 children in state custody at any point in 2023, 121 unique children received at least one session of an indicated trauma-responsive modality – High Fidelity Wraparound (HFW),³⁵⁰ Multi-Systemic Therapy (MST), Mobile Crisis Response (MCR), or Functional Family Therapy (FFT) in 2023. The number of children in state custody who received any indicated modality was lower in 2023 than in any other

³⁴⁷ App. D, TO 3 defines these services as: HFW services; intensive case management; and intensive home-based services, which include mobile crisis response services and evidence-based, well-supported, or promising trauma-responsive therapies such as DBT, MST, TF-CBT, FFT, and EMDR.

³⁴⁸ CYFD's *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

³⁴⁹ Data was not able to be provided for the primary metrics for this commitment, as the modifiers for DBT, TF-CBT, and EMDR were not yet in use during the reporting year.

³⁵⁰ HFW became a Medicaid-billable service as of July 1, 2023, and was a grant-only funded service prior to that. The State did not provide the Co-Neutrals with data and information identifying children in state custody who received HFW through a grant-funded program, but it is possible that additional children received HFW between January – June 2023 who are not reflected in this total.

year since reporting began in 2019 (see Table 12).³⁵¹ Utilization for 2023 was also well-below the State's expected utilization of these services for 2023, as shown in Table 13.³⁵²

ATO2.2(i) – primary metric: The sum number of children in cohort who received either High Fidelity Wraparound services, Mobile Crisis Response (MCR), DBT, MST, Trauma Informed-CBT, FFT, or EMDR during the reporting year.

The State's data shows zero services were provided to children in 2023 using the billing codes and modifiers³⁵³ for DBT, TF-CBT, and EMDR. Throughout 2023, HCA and CYFD worked to establish modifiers for these services, including setting rates, defining clinical criteria and provider requirements, drafting amendments to the State Plan, and collaborating with CMS for approval as reimbursable Medicaid services.³⁵⁴ CMS approved the addition of the modifiers in late 2023, and eligible providers were able to bill for services using the modifiers for services provided after July 1, 2023.

ATO2.3(i) – primary metric: Of all children in state custody who received screenings or assessments that indicated a need for High Fidelity Wraparound services (HFW), Mobile Crisis Response (MCR), DBT, MST, Trauma-informed CBT, FFT, or EMDR during the reporting year, the percent that initiated or received all services for which they were indicated within 10 days of that screening or assessment.

The Co-Neutrals were unable to validate data for this metric because this metric relies on a data collection process that the State was not using consistently in 2023. In 2022, the State embedded a survey tool into FACTS to collect information on referrals for services, but the State reported that very few of these surveys had been completed in 2023. Data from this survey tool will be necessary to validate this metric for 2024.

Discussion

As discussed within App. A, TO 2 – *Expansion and Availability of Services* earlier in this report, the State's 2023 data shows the lowest service utilization for children in state custody among the last five years (see Table 12), and the State has yet to be able to provide information regarding

³⁵¹ Counts reflect analysis of data as submitted by the State; the Co-Neutral team has not validated each reported service.

³⁵² The expected service utilization for children in state custody was updated in 2024 as part of the State's work toward App. D, IT 1 – *Behavioral Health Workforce Development Review*, and is expected to be refreshed at least annually as new utilization data become available.

³⁵³ As part of the State's work to expand EBPs, HCA developed specific modifier billing codes for behavioral health providers to use when billing for clinical services provided to children in state custody. With the addition of the modifiers, HCA will be able to track specific trauma-responsive interventions that are provided to children in state custody.

³⁵⁴ The lack of provider billing for EBPs might seem surprising, but since those services require new certification and fidelity verification, and since the billing guidance only emerged midway through 2023, many providers were still navigating the State's new process at the end of the year.

timeliness for children to access services. Additionally, 50 percent of all children in state custody did not receive either a CAT or a CANS screening in 2023. For those who did receive the screenings, the Co-Neutrals’ qualitative reviews revealed continued concerns regarding the fidelity of the CANS screenings to the CANS Reference Guide, which impacts the accuracy of the CANS algorithm to identify potential service referrals as well as the State’s algorithm-based expected service utilization projections.

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

FSA Requirement	<i>By December 1, 2021, every Child in State Custody will receive a comprehensive well-child checkup within 30 Days of entering state custody. (December 1, 2021)</i>
Co-Neutrals’ Finding	Based upon the Co-Neutrals’ review and consideration of all available information, the State did not meet the Performance Standard for this TO in 2023.

The FSA requires all children in state custody to have a comprehensive well-child checkup within 30 days of entering care. The requirements for well-child checkups for children in state custody are outlined in Procedure 17 of CYFD’s *Permanency Planning Procedures* (8.10.8 NMAC).³⁵⁵ The procedure states that children in state custody are to have a comprehensive well-child check-up including a physical examination within 30 days of entering custody, as well as annual well-child checks, dental exams, and eye exams. For children who are Medicaid-eligible (which include most children in state custody), they should also have early and periodic screening, diagnostic, and treatment (EPSDT) services.³⁵⁶

Additionally, the parties’ June 2023 CAP³⁵⁷ outlines a plan to improve the State’s performance toward obtaining well-child visits for children in state custody. Pursuant to the CAP, HCA issued LOD #96 titled “*Comprehensive Well Child Checkups for Children in State Custody (CISC) Within 30 Days*” on June 30, 2023.³⁵⁸ LOD #96 outlines the responsibilities and reporting requirements of MCOs to ensure all children in state custody have a well-child checkup within 30 days of entering care.

³⁵⁵ CYFD’s *Permanency Planning Procedures* (8.10.8 NMAC) can be found [here](#).

³⁵⁶ Additional information on EPSDT services can be found [here](#).

³⁵⁷ CAP Section III.

³⁵⁸ LOD #96 was re-issued under Turquoise Care as LOD #21, which can be found [here](#).

HCA's Keeping Kids Healthy³⁵⁹ defines well-child check-ups utilizing the following criteria:

Well Child Checkups

Children may go to a doctor, a nurse practitioner or a physician's assistant for a well-child exam. Children do not need to have a specific complaint to be seen. New Mexico has adopted the examination and screening guidelines recommended by the American Academy of Pediatrics (AAP) and Bright Futures.

Federal regulations require that providers review a child's development at every well-child visit to include the following:

- Medical history;
- Measurements of height, weight, and BMI;
- Unclothed physical examination;
- Nutrition screening;
- Vision and hearing screenings;
- Developmental/behavioral assessment;
- Hematocrit/hemoglobin at 9 months and 13 years;
- Lead screening at 12 months and 24 months;
- Immunizations;
- Selective screenings necessary according to risk factors,³⁶⁰ and
- Anticipatory Guidance.³⁶¹

³⁵⁹ HCA's Keeping Kids Healthy webpage can be found [here](#).

³⁶⁰ During the course of their evaluation, providers may identify risk factors for children for which they are then expected to complete additional screenings. This may include a Tobacco, Alcohol, or Drug Use Assessment if the child demonstrates behavior that may put them at risk for drug use, or STI testing due to sexual behavior. Additional information on screening for risk factors can be found [here](#) and [here](#).

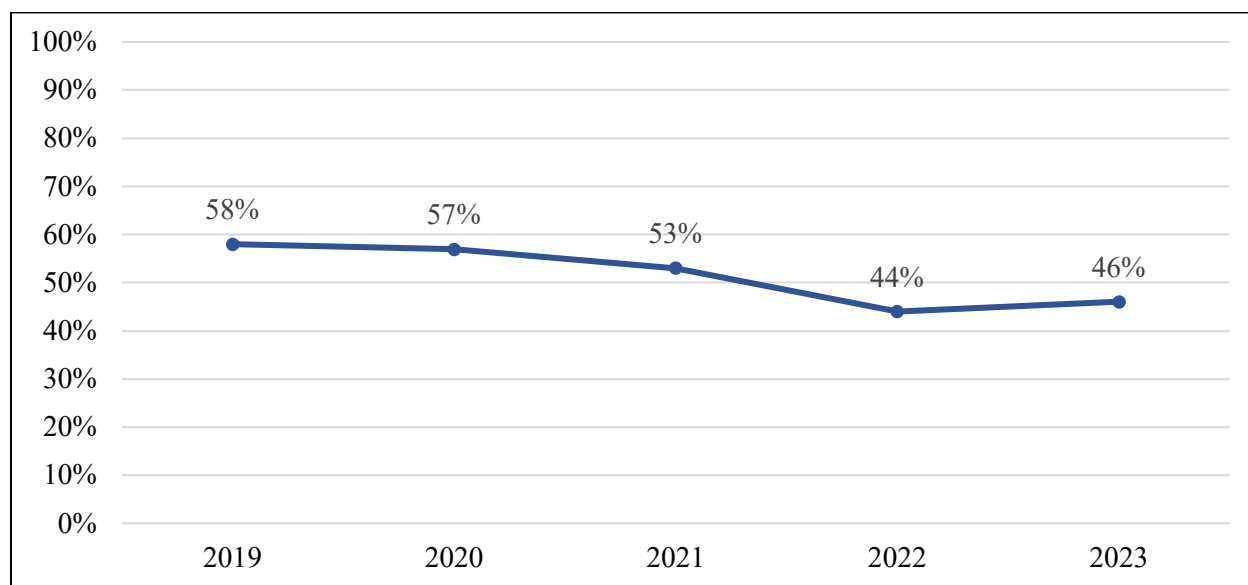
³⁶¹ Anticipatory guidance is given by the health care provider to assist parents, guardians, or caretakers in the understanding of the expected growth and development of children. Anticipatory guidance, specific to the age of the patient, includes information about the benefits of healthy lifestyles and practices that promote injury and disease prevention. This guidance may be given in the form of a handout or verbally. Additional information on anticipatory guidance can be found [here](#).

DVP Metrics and Validated Performance Data

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

The Co-Neutrals’ analysis of the State’s data shows that of the 889 children’s episodes of custody that began in 2023, 408 (46%) included a well-child checkup within 30 days of a child entering custody. This is a slightly better performance than in 2022 (44%) but lower than performance in 2019, 2020, and 2021 (see Figure 8) and well below the targets in the CAP and FSA.

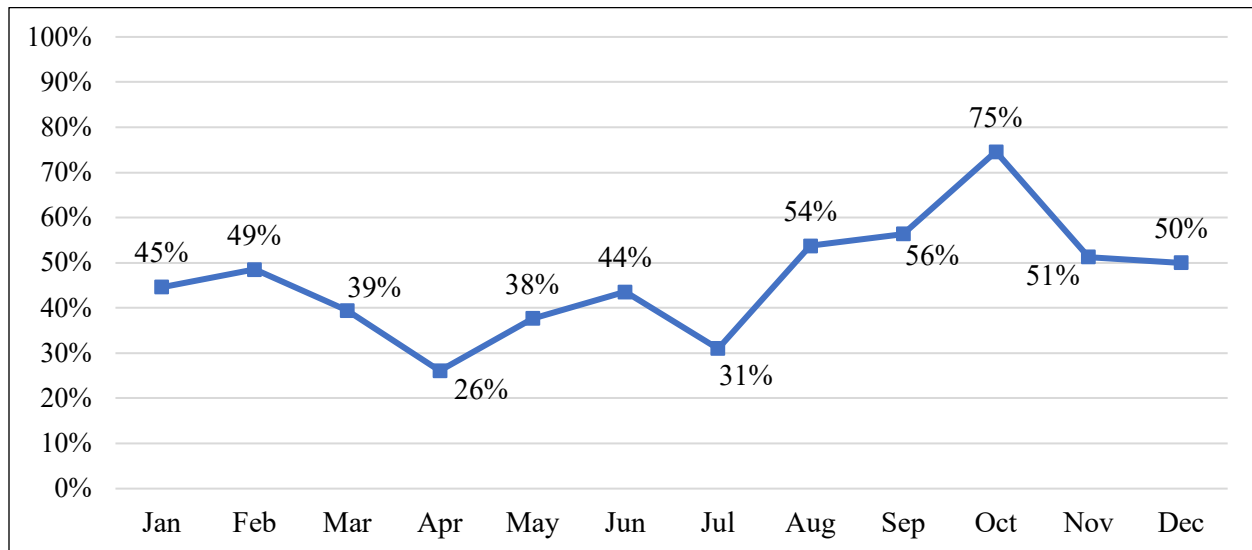
Figure 8: Percent of Children in State Custody Who Received a Well-Child Checkup Within 30 Days of Entry into Care, 2019 – 2023



Source: Analysis of Sandbox *Encounters* files submitted 3/31/22 (2019 and 2020), 7/19/22 (2021), 5/1/23 (2022), and 6/27/24 (2023) and Sandbox *Cohort Entries* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

As shown in Figure 9, the percentage of children who received timely well-child checkups began increasing in August, but declined in November and December 2023.

Figure 9: Percent of Children in State Custody Who Received a Well-Child Checkup Within 30 Days of Entry into Care in 2023, by Month

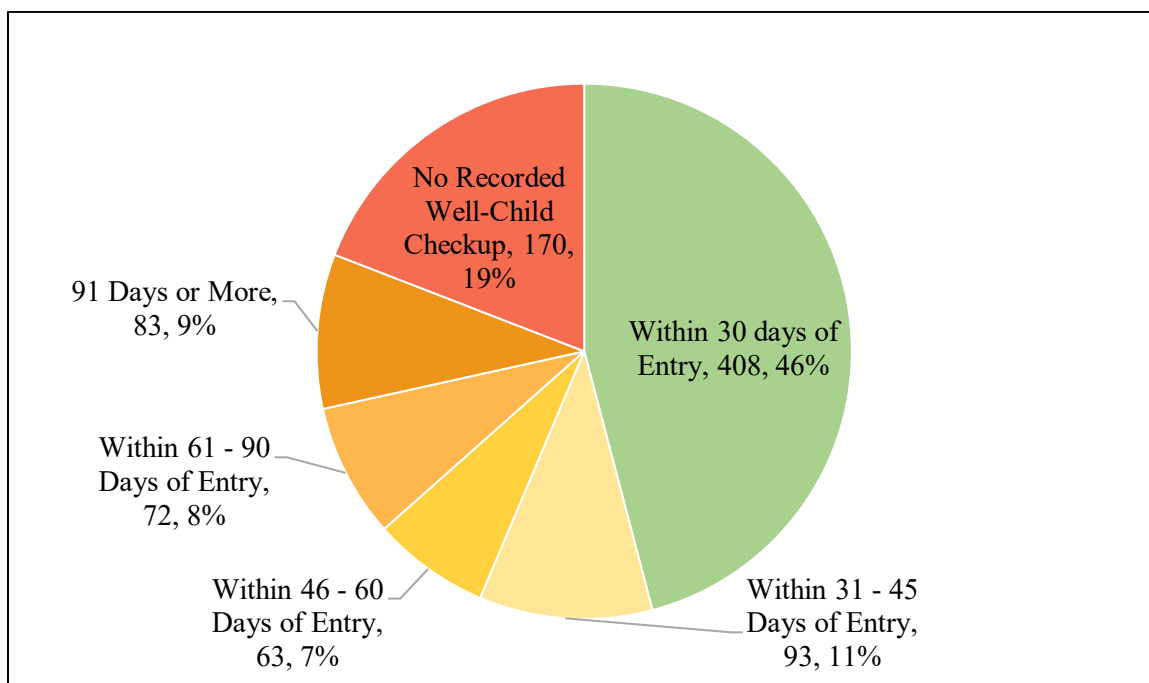


Source: Analysis of Sandbox *Encounters* files submitted 3/31/22 (2019 and 2020), 7/19/22 (2021), 5/1/23 (2022), and 6/27/24 (2023) and Sandbox *Cohort Entries* files submitted 3/31/22 (2019 and 2020), 5/2/22 (2021), 5/1/23 (2022), and 6/27/24 (2023).

The Co-Neutrals examined the 481 episodes of custody beginning in 2023 during which children did not receive a timely well-child checkup (see Figure 10). For 311 episodes, a checkup was completed but late (more than 30 days after the child entered custody): specifically, 93 were completed 31 to 45 days after entry, 63 were completed 46 to 60 days after entry, 72 were completed 61 to 90 days after entry, and 83 were completed more than 90 days after entry. For the remaining 170 (19%) episodes of children's custody, there was no recorded well-child checkup. For comparison, in 2022, 29 percent of episodes of children's custody recorded no well-child checkup.

**Figure 10: Number of Days Between Entry into Custody and Well-Child Checkup
for All Entries Longer than 30 Days in 2023**

N=889 entries



Source: Analysis of Sandbox *Encounters* and *Cohort Entries* files submitted 6/27/24.

As additional information, the Co-Neutrals examined rates of timely well-child checkups by race, ethnicity, and ICWA-eligibility. Non-Hispanic American Indian or Alaska Native children received a disproportionately low rate of timely well-child checkups (see Table 51); of the 64 required well-child checkups due for this group in 2023, 19 (30%) were timely. Well-child checkups for non-Hispanic White and non-Hispanic Black children occurred timely in for 48 percent of children in both groups, while well-child checkups for Hispanic children (of any race) occurred timely for 45 percent of children. Of the 97 children identified as ICWA-eligible, only 28 (29%) children received a timely well-child checkup.

**Table 52: Percent of Timely Well-Child Checkups in 2023,
by Race/Ethnicity and ICWA-Eligibility**

Race/ethnicity	Total	Not timely	Timely	Percent timely
White (non-Hispanic)	176	92	84	48%
Black (non-Hispanic)	40	21	19	48%
Hispanic (of any race)	472	260	212	45%
Multiracial (non-Hispanic)	25	16	9	36%
American Indian or Alaska Native (non-Hispanic)	64	45	19	30%
Native Hawaiian or Other Pacific Islander	1	1	0	0%
Unknown	111	46	65	59%
Total	889	481	408	46%
ICWA-eligible				
No	792	412	380	48%
Yes	97	69	28	29%
Total	889	481	408	46%

Source: Analysis of Sandbox *Cohort* files submitted 6/27/24 (2023).

DTO4.1 – validation strategies.

The Co-Neutral team completed a qualitative review of well-child checkups that occurred for children who entered custody in 2023 as outlined in the CAP.³⁶² In total, a sample of 82 records were reviewed for children who had a well-child checkup completed at any point after entering custody in 2023.³⁶³ The purpose of the review was to determine whether required and applicable³⁶⁴ elements of a well-child visit were documented using the criteria from HCA’s Keeping Kids Healthy website.

³⁶² In accordance with the CAP, the State provided the Co-Neutrals with a preliminary list of children who entered care each month from January through November 2023, as well as a list of children in care on September 15, 2023, who had entered care prior to 2023. Additionally, beginning in September 2023, the State provided preliminary monthly well-child checkup data consisting of scheduled and completed well-child appointment dates as well as a list of all children who entered care during the month. From these lists, the Co-Neutrals selected a random sample of children to review and requested documentation from the State to verify completion of a well-child checkup. In response to the Co-Neutrals’ requests, the State provided appointment documentation, and preliminary billing data that was then reviewed by the Co-Neutral team.

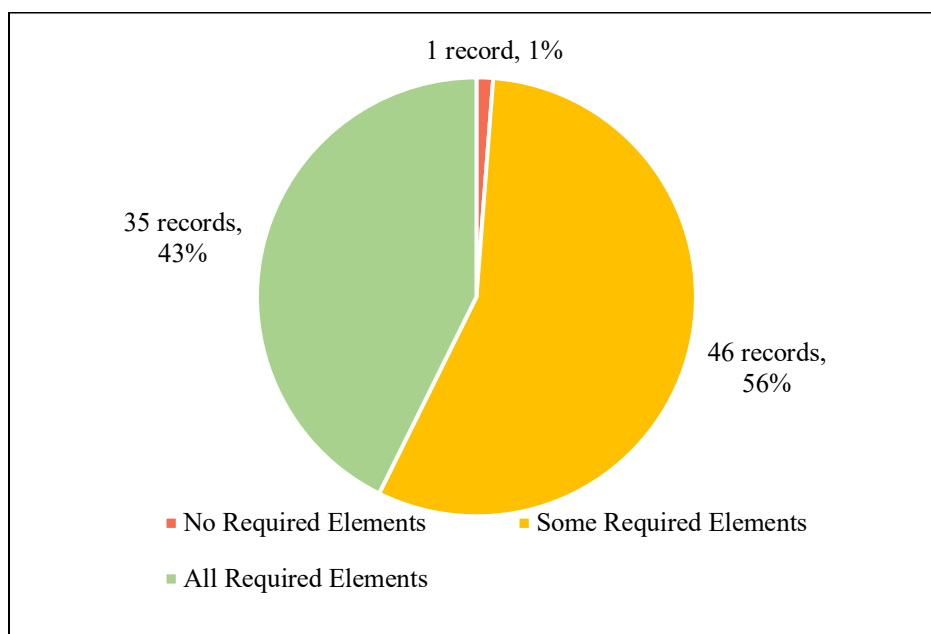
³⁶³ This is not a statistically significant sample; the data included in this report was collected pursuant to the parties’ CAP agreement which outlined sampling parameters. Only children’s records with a corresponding billing date from the data submitted by HCA on May 1, 2024 were included in the data described within this section.

³⁶⁴ Only certain elements listed within HCA’s Keeping Kids Health guidance for well-child visits are required during well-child checkups, depending on the child’s chronological age. To assess applicability of required elements, reviewers referred to the New Mexico Periodicity Schedule, which can be found [here](#), and New Mexico’s Medical Assistance Division’s Recommended Behavioral/Developmental Assessment poster, which can be found [here](#). Only those elements shown as required based on the child’s chronological age were assessed.

Of the 82 children’s records provided by the State, 35 (43%) records showed all applicable elements were documented, and 46 (56%) records documented two or more of the required elements occurred during the checkup.³⁶⁵ The documentation received by the Co-Neutrals varied across healthcare providers and CYFD regions, and in some cases, documentation was provided on a CYFD-specific well-child checkup form that providers presumably completed at the time of the child’s checkup.

Figure 11: Documentation of Required Well-Child Checkup Elements, 2023

N = 82 records



Source: Case record review of well-child documentation conducted by Co-Neutral staff.

Discussion

Well-child checkups are an important intervention that can help ensure children’s needs are assessed and that they have access to necessary supports and referrals as soon as possible after entry into care. The State’s data indicate well-child checkups occurred for 46 percent of all children who entered state custody in 2023 within 30 days of entry, a slight increase from 44 percent in 2022. This remains an overall decline from the State’s performance in 2019, 2020, and 2021, during which over 50 percent of children who entered custody received well-child checkups within 30 days of entry.

Although not within the required timeframes, in 2023, nearly two-thirds (64%) of children in state custody received a well-child checkup within 60 days of entering custody, and 72 percent of

³⁶⁵ One record reviewed did not contain any documentation of required well-child elements; this documentation was determined to be incomplete.

children received well-child checkups within 90 days of entry. Nineteen percent of children who entered custody in 2023 did not receive a well-child checkup completed during the calendar year. As shown in Figure 11 above, the percentage of children who received timely well-child checkups began increasing in August 2023, although performance declined in November and December 2023.

In June 2023, CYFD hired an EPSDT Coordinator to assist in monitoring data on timely well-child checkups. CYFD reports the Coordinator's responsibilities include working with PSD staff and resource families to confirm appointments, following-up to determine if appointments occurred as planned, and documenting any barriers to the child receiving the checkup timely. Additionally, CYFD collaborated with the New Mexico Department of Health (DOH) beginning in August 2023 to assist in overcoming some logistical barriers to timely appointments such as locating an available provider or securing transportation. This process was formalized into a Memorandum of Understanding (MOU) between the agencies in December 2023. CYFD reports additional education was provided to CYFD staff throughout 2023 to assist workers in understanding the importance of timely well-child checkups, as well as the resources and supports available to help them secure and facilitate appointments.

The Co-Neutrals' conducted site visits to eight CYFD county offices in September 2023 and January 2024 to speak with staff in part about their experience scheduling and obtaining well-child checkups for children on their caseload. While some workers reported receiving reminders to schedule well-child appointments from the EPSDT Coordinator, workers overall cited that the lack of available providers in certain parts of the state make scheduling an appointment in a timely manner challenging. Another barrier cited was role confusion over who is responsible to schedule and facilitate well-child visits, particularly for children whose appointments might be made by the Investigation worker prior to the child being assigned to a PC.

When children were able to receive a well-child checkup, the Co-Neutral team has found that documentation from children's records show that needs identified during the checkup may not be consistently communicated to the CYFD worker, the resource parent, the MCO care coordinator, or the child's parent. The Co-Neutrals recommend the State develop a secure, confidential process by which records can be shared among CYFD, HCA, the child's MCO, and the child's caregiver or parent that summarizes the results of the well-child check-up.

To increase the availability and accessibility of timely well-child checkups for children in state custody, the State should continue to pursue initiatives to expand their provider network and coordination of care.³⁶⁶ This may include contracting with nurses or other healthcare providers who

³⁶⁶ In 2023, the New Mexico Governor announced additional awardees for the Rural Healthcare Fund, which provides \$80 million in funding to expand healthcare services to rural areas of the state. This fund is not specific to children in state custody. Additional information on the State's Rural Healthcare Fund can be found [here](#).

are able to provide well-child checkups in the communities where children are placed, and leveraging the expertise and resources of PHP's care coordinators.³⁶⁷

³⁶⁷ In late 2024, PHP and CYFD developed a pilot program in Dona Ana County, where care coordinators are attending portions of case transfer meetings that occur for children transitioning from an Investigator to a PC. This allows the care coordinator to become familiar with relevant case information as early as possible as a way to reduce the time between a child entering care and their introduction to their care coordinator and MCO.

V. Appendix

A. List of Acronyms

- ADR – Alternative Dispute Resolution
- CYFD BHS – Behavioral Health Services
- CANS – Child and Adolescent Needs and Strengths
- CAP – Corrective Action Plan
- CAT – Crisis Assessment Tool
- CBHC – Community Behavioral Health Clinician
- CCA – Children’s Court Attorney
- CCP – Comprehensive Care Plan
- CDTRC – Cross-Departmental Training Review Committee
- CFT– Child and Family Team
- CIR – Critical Incident Reports
- CMS – Centers for Medicare and Medicaid Services
- CWG – Child Welfare Policy and Practice Group
- CWLA – Child Welfare League of America
- CYFD – Children, Youth, and Families Department
- DBT – Dialectical Behavior Therapy
- DFA – Department of Finance and Administration
- DRNM – Disability Rights New Mexico
- DVP – Data Validation Plan
- EBP – Evidence-Based Practice
- EMDR – Eye Movement Desensitization and Reprocessing
- EPSDT – Early and Periodic Screening, Diagnosis and Treatment
- FCM – Family-Centered Meeting
- FFT – Functional Family Therapy
- FSA – Final Settlement Agreement
- FTE – Full-Time Equivalent
- GAL – Guardian ad Litem
- HCA – Health Care Authority (previously the Human Services Department [HSD])
- HCA BHSD – Behavioral Health Services Division
- HFW – High-Fidelity Wraparound
- ICWA – Indian Child Welfare Act
- IFPA – Indian Family Protection Act

- IPP – Individualized Planning Process (previously IPM – Individualized Meeting Plan)
- IT – Implementation Target
- JCR – Joint Clinical Review
- JJS – Juvenile Justice Services
- JPA – Joint Power Agreement
- LFC – Legislative Finance Committee
- LOD – Letter of Direction
- MCO – Managed Care Organizations
- MCR – Mobile Crisis Response
- MFD – Memorandum for Decision
- MOU – Memorandum of Understanding
- MST – Multi-systemic Therapy
- NADLC – Native American Disability Law Center
- NATCAG – Native American Training Curriculum Advisory Group
- NET – New Employee Training
- NMBHPA – New Mexico Behavior Health Providers Association
- NM CANS – New Mexico Child and Adolescent Needs and Strengths
- NMCBBHP – New Mexico Credentialing Board for Behavioral Health Professionals
- NMSU COI – New Mexico State University Center of Innovation
- OCR – Office Children’s Rights
- OGC – Office of General Counsel
- OOPP – Out-of-Preferred Placements
- OTA – Office of Tribal Affairs
- OTS – Office of the Secretary
- PC – Permanency Coordinator
- PHP – Presbyterian Health Plan
- PIG – Program Instruction Guideline
- PSD – Protective Services Division
- QA – Quality Assurance
- QAIEP – Quality Assurance, Improvement, and Evaluation Plan
- RTC – Residential Treatment Center SCI – Statewide Central Intake
- SED – Serious Emotional Disturbance
- SPA – State Plan Amendment
- TA – Technical Assistance
- TAG – Tribal Advisory Group
- TCOM – Transformational Collaborative Outcomes Management

- TFC – Treatment Foster Care
- TF-CBT – Trauma-Focused Cognitive Behavioral Therapy
- TMB – Traditional Medicine Benefits
- TO – Target Outcome
- WDB – Workforce Development Bureau
- WDP – Workforce Development Plan
- YA – Youth Attorney