

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COLORADO DEPARTMENT OF HUMAN SERVICES,
ACTING BY AND THROUGH
THE OFFICE OF CHILDREN, YOUTH AND FAMILIES
AND
COLORADO JUDICIAL BRANCH, ACTING BY AND THROUGH THE OFFICE OF
RESPONDENT PARENTS' COUNSEL FOR LEGAL REPRESENTATION
REIMBURSEMENT**

1. PARTIES

The Parties to this Memorandum of Understanding (“MOU”) are the Colorado Department of Human Services (“CDHS”), acting by and through the Office of Children, Youth and Families (“OCYF”), and the Colorado Judicial Branch, acting by and through the Office of Respondent Parents’ Counsel (“ORPC”), who may collectively be called the “Parties” and individually a “Party”.

2. PURPOSE

The Parties are entering into this MOU to establish the procedure for ORPC to report to CDHS the expenditures that qualify for Federal Financial Participation under Title IV-E. These expenditures shall include the administrative costs of independent legal representation by an attorney for a child who is a candidate for Title IV-E foster care or in foster care and their parent to prepare for and participate in all stages of foster care legal proceedings. This document is titled a Memorandum of Understanding to satisfy the requirements of C.R.S. § 26-2-102.5(3)(b)(V), but will otherwise function as an Interagency Agreement.

3. EFFECTIVE DATE, TERM, AND TERMINATION

- a. The terms of this MOU shall be effective upon approval and signature by the Colorado State Controller or designee.
- b. ORPC may submit retroactive claims for reimbursements beginning July 1, 2019; except that in no event may ORPC submit claims for reimbursements otherwise covered by this MOU which occurred prior to July 1, 2019.
- c. This MOU will terminate on the later of December 31, 2024 or five (5) years after the Effective Date.
 - i. Prior to termination the Parties will execute a replacement agreement.
- d. This MOU will otherwise remain effect until the occurrence of one (1) of the following events:
 - i. The administrative costs of independent legal representation is no longer an expenditure that qualifies for Federal Financial Participation under Title IV-E, or
 - ii. The Parties replace this MOU with a subsequent MOU or other Agreement.

4. PAYMENTS

- a. Claim Procedure
ORPC shall submit reimbursement claims to CHDS on a recurring basis in accordance with Exhibit A – Statement of Work for all eligible Title IV-E legal representation as

described herein and in Exhibit A. CDHS shall submit Title IV-E reimbursement requests to the US Department of Health and Human Services on behalf of ORPC.

b. **Maximum Amount**

Payment under this MOU to ORPC by CDHS shall be pursuant to § 26-2-102.5 and determined by the appropriate Title IV-E eligible reimbursement rate. CDHS shall make payment to ORPC for the approved Title IV-E claims upon receipt of claim reimbursement from the US Department of Health and Human Services. Payments shall be made by an interagency transfer in lieu of a State warrant whenever possible.

c. **Cash Fund Availability**

Federal reimbursements related to administrative costs of independent legal representation incurred by ORPC must be disbursed from the cash fund to ORPC as incurred and pursuant to this MOU.

d. **Disallowed Funds**

If the US Department of Health and Human Services provides guidance that certain expenses for administrative costs of independent legal representation are disallowed under the Child Welfare Policy Manual, those expenses will also be disallowed by CDHS and ORPC.

e. **Payment**

No funds will be paid from the cash fund through this MoU. Disbursement of any cash fund amounts will be addressed through a subsequent agreement between CDHS and ORPC.

5. **RECORDS**

ORPC shall maintain, and allow inspection of by CDHS, a file with all necessary information, whether anonymized or de-identified, as required to adequately process reimbursement claim to the US Department of Health and Human Services for the current year and for a period up to seven (7) years after.

6. **CONFIDENTIAL INFORMATION**

Each Party shall treat the confidential information of the other Party with the same degree of care and protection it affords to its own confidential information, unless a different standard is set forth in this MOU. Each Party shall notify the other Party immediately if it receives a request or demand from a third party for records or information of the other Party.

7. **DISPUTE RESOLUTION**

In the event of disputes related to this MOU, the Parties shall attempt to resolve them at the Divisional or Office level. If this fails, disputes shall be referred to senior departmental management staff designated by each Party. If this fails, the executive director of each Party shall meet and attempt resolution.

8. **CONTACT INFORMATION**

a. **Contact information for CDHS is as follows:**

Gretchen J. Russo, Judicial and Legislative Administrator
1575 Sherman St.
Denver, CO 80203
(303) 866-3197
gretchen.russo@state.co.us

b. Contact information for ORPC is as follows:

Primary

Melissa Thompson, Executive Director
1300 Broadway, Ste. 340
Denver, CO 80203
(303) 731-8744
mthompson@coloradoorpc.org

Secondary

Ashlee Arcilla, Deputy Director
1300 Broadway, Ste. 340
Denver, CO 80203
(303) 731-8746
aarcilla@coloradoorpc.org

9. SIGNATURES



<p>Colorado Department of Human Services Michelle Barnes, Executive Director</p>  <p>By: <u>Ann Marie Braga</u>, Deputy Executive Director- Community Partnerships</p> <p>Date: <u>1/15/2020</u></p>	<p>Office of the Respondent Parents' Counsel Melissa Thompson, Executive Director</p> <p>By: <u>Melissa Thompson</u>, Executive Director of Respondent Parents' Counsel</p> <p>Date: <u>Melissa M. Thompson</u></p>
<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By:  <u>Andrea Eurich / Janet Miks</u></p> <p>Agreement Effective Date: <u>3/6/2020</u></p>	

Exhibit A – Statement of Work

This Statement of Work (“SoW”) is attached to, and made part of, the Colorado Department of Human Services, acting by and through the Office of Children, Youth and Families, Memorandum of Understanding with the Colorado Judicial Branch, acting by and through the Office of the Respondent Parent’s Counsel, for reimbursement of legal representation costs under the State’s IV-E Plan.

1. Purpose

The purpose of this Agreement is to establish the basis of a relationship between CDHS and ORPC whereby ORPC may receive reimbursement for Title IV-E allowable legal representation costs incurred by ORPC pursuant to Section 474(a)(3) of the Social Security Act (the “Act”).

This Agreement is created to expand the scope and enhance the quality of legal representation provided to parents of a candidate for title IV-E or a title IV-E eligible child.

2. Background

Pursuant to CRS § 19-3-202 all indigent parents, guardians, or legal custodians who have children who are subjects of a dependency or neglect case are entitled to an attorney paid for by the ORPC. ORPC manages the program that provides and funds attorneys to represent indigent parents in dependency or neglect proceedings at both the trial and appellate levels. ORPC contracts with attorneys as independent contractors who represent indigent parents in dependency or neglect proceedings and state funds pay for this attorney representation and related litigation costs.

Section 474 provides that States with plans approved under Title IV-E shall be entitled to Federal matching funds for the proper and efficient administration of the State plan.

The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. This policy was revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings.

Title IV-E reimbursement of expenses for independent legal representation for parents in dependency or neglect cases shall be in accordance with the Children’s Bureau Child Welfare Policy Manual’s stated objectives of ensuring reasonable efforts are made to prevent removal and finalize children’s permanency plans, ensuring that parents and youth are engaged in and complying with case plans, and the Manual’s requirement that attorneys for parents’ representation be independent of and not overseen by the IV-E agency. As a matter of constitutional separation of powers, responsibility to regulate the practice of law is assigned to the judicial branch and operationalized through rules adopted by the Colorado Supreme Court. The duties owed by attorneys representing parents in dependency or neglect proceedings are governed by the Colorado Supreme Court’s Rules of Professional Conduct.

3. Identity/Role of CDHS

For the purpose of this Agreement, CDHS certifies pursuant to CRS §26-1-111(2)(d)(I), that it is the single State agency responsible for the administration of the State of Colorado’s Title IV-E plan.

4. Identity/Role of ORPC

For the purpose of this Agreement, ORPC certifies that it is the party responsible for the costs of independent legal representation by attorneys for parents of children who are candidates for title IV-E foster care or who are in foster care.

The ORPC shall work to provide high quality legal representation for parents in dependency and neglect cases. This may include, but is not limited to, engaging specialized attorneys, social workers, peer mentors, and others to work with parents. This may also include representation of parents on other legal issues which directly relate to preventing children from being removed from their parent's care or facilitating return to their parent's care after removal. This may also include agency staff time required to administer programs related to providing high quality legal representation for parents. Examples of other legal representation may include, but is not limited to, guardianship issues, orders of protection, parenting plans, and landlord-tenant issues. The ORPC understands and agrees that a multidisciplinary approach to parent representation in dependency and neglect cases provides for better outcomes for children and families.

The ORPC believes the above activities are consistent with the legal representation priorities of the Children's Bureau as described in the following US Department of Health and Human Services Administration on Children, Youth and Families memos: ACYF-CB-IM-17-02 High Quality Legal Representation for All Parties in Child Welfare Proceedings; ACYF-CB-IM-18-05 Reshaping child welfare in the United States to focus on strengthening families through primary prevention of child maltreatment and unnecessary parent-child separation; and ACYF-CB-IM-19-03 Engaging, empowering, and utilizing family and youth voice in all aspects of child welfare to drive case planning and system improvement. The ORPC may work to incorporate the additional activities described in the above memos to provide high quality legal representation, prevention services, and to enhance family voice.

5. Cost Reporting and Reimbursement Responsibilities of ORPC

Pursuant to the terms of this Agreement, ORPC shall identify the costs that it incurs to provide independent legal representation and submit a claim for those costs to the CDHS principal representative on a quarterly basis.

For the purpose of this Agreement, "independent legal representation" means that in claiming IV-E reimbursement funds, CDHS cannot limit or compromise the independence of the attorney and "all stages of foster care legal proceedings" mean that CDHS cannot limit the time or scope of legal representation.

For the purpose of this Agreement, a "cost" is considered to have been incurred when ORPC disburses non-federal government funds that are subject to its control in payment of a demand, invoice, or expense that is directly caused by independent legal representation. This may also include indirect costs.

ORPC agrees to maintain accounting records to support all costs claimed under this Agreement and to make them available, whether anonymized or de-identified, for the current year and for a period up to seven (7) years after.

CDHS and ORPC will develop and continually improve reporting documentation that will include standardized billing criteria and invoices to be attached to this SoW. The reporting documentation will be updated as needed dependent upon federal feedback by the US Department of Health and Human Services.

6. Cost Reporting and Reimbursement Responsibilities of CDHS

CDHS warrants to ORPC that all necessary approvals from the US Department of Health and Human Services have been secured to seek reimbursement for independent legal representation. CDHS further warrants to ORPC that it shall use its best efforts to take all actions necessary to maintain such approvals.

CDHS agrees to determine the statewide eligibility rate or penetration rate for IV-E funding for children involved in dependency or neglect proceedings and to provide that rate to the ORPC, who will apply the statewide penetration rate to the costs submitted by the ORPC. CDHS agrees to submit those claims for reimbursement by the US Department of Health and Human Services.

If such claims are reimbursed by the US Department of Health and Human Services, CDHS further agrees to disburse all such reimbursement to ORPC. CDHS shall use its best efforts to secure reimbursements for costs submitted, but ORPC acknowledges that it expressly understands that such efforts may not prove to be successful, and that no warranty, express or implied, is made by CDHS, or this Agreement, with regard to the ultimate success of those efforts.

It is expressly understood by CDHS and ORPC that reimbursements disbursed under this Agreement shall only represent the federal financial participation rate that is payable under Title IV-E. It is further expressly understood by ORPC that such reimbursement shall only represent a partial reimbursement of its total claim, and that some portion of the unreimbursed portion of the claim must constitute the non-federal share requirements for the Title IV-E payment. ORPC agrees that it shall not make any subsequent claim to any other federal or non-governmental source for any of the amount so stipulated by CDHS. Further, ORPC agrees it shall not make any subsequent claim to a non-governmental source for any of the unreimbursed portion of the claim that is net of the amount stipulated by CDHS.

ORPC legal representation cost claims that have been received by CDHS shall be submitted for reimbursement to the US Department of Health and Human Services on a recurring basis. CDHS will conduct sub-recipient monitoring through this process on a recurring basis.

7. Audit Responsibilities and Apportionment of Work

CDHS shall have the responsibility of responding to all 3rd party audit reports regarding this Agreement. ORPC agrees that it shall fully and unconditionally cooperate with CDHS in responding to audit reports regarding this Agreement.

ORPC shall be responsible for repayment of any Title IV-E funds received that are the result of Title IV-E funds disallowed as a direct result of a federal or state audit of ORPC's financial records.