

Santa Ana #98-690-0382

**TRIBAL-STATE JOINT POWERS AGREEMENT FOR
FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS
UNDER TITLE IV(E) OF THE
SOCIAL SECURITY ACT**

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**TRIBAL-STATE JOINT POWERS AGREEMENT FOR
FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS UNDER TITLE IV(E)
OF THE SOCIAL SECURITY ACT**

THIS AGREEMENT is entered into this 12th day of Dec, 1997, by and between the CHILDREN, YOUTH AND FAMILIES DEPARTMENT ("CYFD") of the State of New Mexico (the "Department") and the SANTA ANA Pueblo (the "Pueblo").

WITNESSETH:

I. RECITALS

WHEREAS, the State of New Mexico (the "State") receives federal funds through Title IV(E) of the Social Security Act, 42 U.S.C. §§ 670-679 ("Title IV(E)") and provides state matching funds to make foster care maintenance and adoption assistance payments on behalf of eligible children within the State; and

WHEREAS, the Department is authorized to administer Title IV(E) funds and enter into agreements under the Title IV(E) State Plan (attached hereto as Exhibit A) filed with the United States Health and Human Services Department and NMSA 1978 §§ 9-2A-7 and 9-2A-8 to assist the Department in administering and enforcing the laws with which it is charged; and

WHEREAS, there are children residing within the Santa Ana Pueblo who are or may become eligible for such foster care and adoption assistance payments; and

WHEREAS, the Pueblo maintains jurisdiction, custody, and supervision over certain children within the Pueblo; and

WHEREAS, the Department and the Pueblo recognize that Pueblo children are citizens of the State and further recognize the need to coordinate their efforts with respect to these children

to ensure that the Title IV(E) payments and care these children receive is in accordance with the federal standards set forth in Title IV(E); and

WHEREAS, the Department is empowered to enter into cooperative agreements with Indian Pueblos pursuant to the Joint Powers Agreement Act, NMSA 1978, §§ 11-1-1 to 11-1-7; and

WHEREAS, the Pueblo, as a sovereign government, has the inherent authority to enter into this agreement with the Department; and

WHEREAS, consistent with the Government-to-Government Policy Agreement entered into by the State and the Indian Pueblos of New Mexico, dated July 8, 1996, the interactions between the State and the Pueblo are predicated on a government-to-government relationship and carried forward in a spirit of cooperation, coordination, communication, and good will;

NOW, THEREFORE, the parties agree as follows:

II. PURPOSE

The purpose of this agreement is to establish a protocol for accessing federal and state matching funds and for meeting federal requirements associated with those funds under Title IV(E) for eligible children in Pueblo custody.

III. ADMINISTERING AGENCY

The administering agency is Children, Youth and Families Department of the State of New Mexico.

IV. CONTACT PERSONS

Unless otherwise stated, the appropriate contact person for the State of New Mexico for any matter pertaining to this agreement shall be:

Jeff Thompson, Title IV(E) Specialist
Children, Youth and Families Department
P.O. Drawer 5160
Santa Fe, NM 87504
(505) 827-8427
FAX: (505) 827-8480

For other matters regarding child welfare questions, the Pueblo may contact the local County office of the Protective Services Division.

The appropriate contact person for the Pueblo shall be:

Director,
Youth & Family Services Department
Pueblo of Santa Ana
02 Dove Rd.
Bernalillo, NM 87004
(505) 867-3301

The Pueblo shall contact the above designated individual for the State, and the State Title IV(E) staff shall contact the above designated individual for the Pueblo when either party has any program questions related to this agreement. Unless otherwise specified, all notices required under this agreement shall be sent to the above contact persons.

V. DEFINITIONS

A. "COM" as used in Exhibit D § 1105.4 means County Office Manager of the CYFD Department.

B. "Disallowance" means a decision by the federal Department of Health and Human Services that funds expended under this agreement do not comply with federal law, regulations, or policy.

C. "Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services" means preventive health care services that are required for Medicaid eligible children and adolescents under 21 years of age. Through EPSDT, screening and diagnostic services are provided to identify physical or mental conditions which require further treatment. This program is also known as Tots to Teens.

D. "Good Cause" means, for termination of this agreement, a substantial reason that cannot be corrected by amendment to this agreement. For example, the following constitute good cause to terminate this agreement: termination of the Title IV(E) program by the federal government, blatant and repeated non-compliance with the terms of this agreement or with the Title IV(E) requirements, or a substantive change in federal law or policy which the parties to this agreement cannot accommodate by amendment of this agreement.

E. "Health Maintenance Organization (HMO)" means a company that hires hospitals, doctors, and other medical personnel to take care of an individual who may be sick or in need of medical care that will help the individual stay well. When enrolled in a Managed Care program, the enrolled individual must go to the hospital, doctor, and other medical providers as directed by the HMO. Prior approval must be obtained from the HMO before scheduling a medical appointment.

F. "Informal Process for Recoupment" means that in the event of an overpayment by the Department to the foster parent(s), the Pueblo agrees to assist the Department in recovering the

monies as follows: Initially, the Pueblo, after notice from the Department, will notify the foster parent(s) who received the overpayment, verbally and in writing, that the overpayment must be returned to the Department within thirty (30) days. If the foster parent(s) fails to return the overpayment, appropriate action shall be taken in accordance with § VI. A(8).

G. "Managed Care" means the method developed to manage medical care cost by reimbursement for medical services through capitation rather than fee for service to an at risk Managed Care entity (HMO). Medicaid eligible children must be enrolled in the Managed Care program by selection of a HMO provider unless they have requested and are eligible to opt out of the program.

H. "Overpayment" means that amount of a Title IV(E) foster care payment that was provided to a foster care provider for which they were not entitled. For example, a foster care payment that was provided to a foster parent for a child that no longer lived in the foster home.

I. "Primary Care Network Restrictions" means those restrictions that are imposed by the Medicaid program, which limit the choice of health care providers to those that have been approved by the Medicaid program.

J. "Reasonable Technical Assistance" means that assistance that will be provided by CYFD Title IV(E) Specialist staff concerning compliance with Title IV(E) requirements. It will include training Pueblo staff on documentation, submission of required documentation for reimbursement, review of case records to ensure Title IV(E) documentation and follow-up on any Title IV(E) foster care payment problems.

K. "Service Date" means the date of initial placement in foster care.

L. "Surplus Funds" means those foster care overpayments that are returned to the Pueblo and which shall be forwarded to CYFD.

M. "Pueblo Custody" means the care, control and maintenance of a child which is granted by the Pueblo court to a parent, foster parent, guardian, or extended family member according to the placement criteria and preference of the Pueblo.

N. "Underpayment" means that amount of a Title IV(E) foster care payment that was not provided to a foster care provider for which they were entitled. For example, a foster care payment that did not cover the full time period that a foster child was in the foster home.

O. "Utilization Review Procedures" means the required pre-review procedure that must be followed to determine a child's level of care needed to ensure appropriate placement of a child in a medical care facility such as a certified residential treatment facility or group home (when they are exempt from Managed Care). This utilization review is provided by CYFD Prevention and Intervention Division for all residential treatment and group home facilities. Utilization reviews for hospitalization is provided through the Medicaid provider.

VI. CONDITIONS CONCERNING PAYMENTS

A. Foster Care Payments

1. The Department agrees to make payments to the foster parent(s) as established by the Department's policies and procedures and rates (attached hereto as Exhibit "B" and incorporated herein by reference). The Department will pay the entire foster care payment for the Title IV(E) eligible children only, which payments shall include the State's matching

portion. If the child loses Title IV(E) eligibility, then the Title IV(E) foster care payments shall cease.

2. On the last working day of each month the Pueblo shall submit by FAX to the State Contact Person an alphabetical listing by child's name of those children who are then eligible for Title IV(E) payments to the Department for approval using the billing form attached hereto as Exhibit C. The billing form shall include information on where the child is currently placed.

3. The Pueblo agrees to certify on the billing form to the accuracy of all documentation in support of the Title IV(E) eligible children in Pueblo custody.

4. Payments shall be made to the foster parent(s) c/o the Pueblo via the Department's computer system.

5. Upon receipt of payment checks, the Pueblo shall verify that the individual to whom payment is issued is entitled to such payment and shall distribute all payments after such verification.

6. The Pueblo, on behalf of the child in Pueblo custody, agrees to apply for any monetary benefits to which the child may be entitled; for example: third party insurance payments, survivors benefits, child support, Veterans Administration benefits, and Supplemental Security Income, etc. If the child is determined eligible for any such benefits, the Pueblo shall immediately notify the Department and redetermine whether the child is eligible for continued Title IV(E) payments.

7. In the event of an underpayment by the Department to the foster parent(s), the correction shall be made on the next billing.

8. In the event of an overpayment by the Department to the foster parent(s), the Pueblo agrees to reimburse the Department for the overpayment and the Department agrees to assign its claim for recoupment of the overpayment to the Pueblo.

B. Adoption Assistance Payments. Any child who is eligible for Title IV(E) foster care payments and who has a permanency plan of adoption is eligible for Adoption Assistance Subsidy payments upon signing of the adoption assistance agreement (as defined in 42 U.S.C. § 675(3)). Procedures and the necessary forms for obtaining such payments are attached hereto as Exhibits D, and E. The required documents shall be sent to the Title IV(E) Central Adoption Unit (CAU) subsidy specialist (Ms. Emily Garcia, CAU Adoption Specialist, Children Youth & Families Department, P.O. Drawer 5160, Santa Fe, NM 87504, Phone: (505) 827-8413) for processing, certification, and approval.

C. Contingency: Availability of Funds. Payments pursuant to this agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of federal funds. In the event that said funds become unavailable, the Department may terminate this agreement according to § XX or amend it according to § XXI of this agreement.

D. Conflict Resolution

1. The Pueblo will make repayment of any Title IV(E) funds expended by the Department on behalf of any child subject to the jurisdiction and authority of the Pueblo to which the federal agency (Health and Human Services) takes exception and requests reimbursement through a disallowance, provided that, and only to the extent that, such disallowance is based upon the acts or omissions of the Pueblo which violate applicable federal statutes and/or regulations.

the acts or omissions of the Pueblo which violate applicable federal statutes and/or regulations.

2. If the Department becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by the Pueblo and State Title IV(E) staff on a case-by-case basis. If the matter cannot be reconciled it shall be presented to a mutually agreed upon panel of Pueblo and Department officials on a case-by-case basis. If reconciliation is not possible, both parties shall present their views in writing to: Mr. Leon R. McCowan, Regional Administrator, Administration for Children & Families, U.S. Department of Health and Human Services, 1301 Young Street, Dallas, TX 75202, (Attention: Mr. Joe Woodard, Office of State and Tribal Programs), who shall determine whether continued payment shall be made on behalf of the case(s) affected.

3. Any disputed issues that remain unresolved at the end of the process described in ¶ 2 above shall be submitted to arbitration as outlined in the November 26, 1991 Memorandum on Dispute Resolution from the Office of the Attorney General of New Mexico (attached hereto as Exhibit F). Arbitration shall not be invoked until the administrative procedures described in ¶ 2 above have been exhausted.

VII. DAY TO DAY OPERATIONS

A. Referrals For Payments

1. When the Pueblo Court awards custody of a child to the Pueblo due to abuse or neglect and foster care placement is made in a Pueblo approved foster home (or, if no Pueblo foster home is available, a Department approved foster home), the Pueblo shall make a referral

for payments to the Title IV(E) Specialist if the Pueblo believes that the child is eligible for Title IV(E) payments.

2. The referral shall include the completed forms attached as Exhibits G, H, I, J, and K, which forms are attached hereto (note that if the child has special needs, as set out in Exhibit L, the referral should include the completed Request For Special Needs Certification, which is attached as part of Exhibit M); a copy of the court order; the case plan as defined in 42 U.S.C. § 675(1) see Exhibit N; a copy of the child's birth certificate and Social Security card; and the name and address of the child's placement with a copy of the foster home license.

B. Status of Referrals

1. The Department shall determine Title IV(E) eligibility based upon the information received with the referral.

2. The Title IV(E) Specialist shall notify the Pueblo, within 15 days of receipt of the referral, of the status of the referral by sending a copy of the Title IV(E) determination form with one of the following notations:

The information is complete, the child is eligible and the Pueblo can expect Medicaid eligibility and foster care payments to commence pursuant to the Title IV(E) Joint Powers Agreement.

-OR-

The following additional information is required to determine the child's Title IV(E) eligibility: (Note: The Title IV-E Specialist shall list the additional information needed).

-OR-

The information is complete but the child is not eligible for Title IV(E) payments for the following reasons: (Note: the Title IV-E Specialist will list the reason why the child is ineligible).

C. Effective Date of Payments. If the child was receiving AFDC (TANF) payments at the time of removal from the home, the effective date of payment shall be on the first day of the month following the adjudication of abuse or neglect or the closure of the AFDC (TANF) grant, whichever is earlier. If the child was not receiving AFDC (TANF) payments at the time of removal from the home, the effective date of payments shall be the date of placement in foster care.

D. Notice of Changes. The Pueblo shall provide verbal notification to the Department within 48 hours and written notification to the Department within 5 working days after becoming aware of any changes in the child's circumstances which might affect continued eligibility for Title IV(E) benefits.

E. Redeterminations. The Pueblo shall redetermine the child's eligibility for Title IV(E) benefits at six-month intervals. At the time of such redetermination, the Pueblo shall complete the Title IV(E) Eligibility and Redetermination Checklist (attached as Exhibit G), send a copy of the completed form to the Department, and file the original completed form in the child's case record.

F. Medicaid Coverage

1. New Mexico Medicaid cards for children in Pueblo custody who have been certified as eligible for Title IV(E) benefits shall be sent to the foster parent(s) c/o the Pueblo. If

the child's placement is changed, the Pueblo Social Worker shall give the current Medicaid card to the child's new foster parent(s).

2. The Pueblo shall immediately notify the Department of changes in placement so that computer updates can be made. The Medicaid card will be sent by the Department to the new foster parent(s) c/o the Pueblo the following month.

3. All Medicaid eligible clients are subject to Medicaid procedures: primary care network restrictions, HMO and Managed Care requirements, utilization review procedures, and EPSDT screen requirements.

G. Technical Assistance

1. The Department shall provide reasonable technical assistance to the Pueblo to comply with federal law, policy and regulations for fiscal accountability, program operations, reporting procedures and to comply with the terms and conditions of this agreement.

2. The Department's Title IV(E) staff shall monitor the Pueblo's cases in accordance with Title IV(B) and Title IV(E) of the Social Security Act.

3. The Department agrees to assist the Pueblo in the training of personnel for the preparation of referrals and the appropriate forms for payments provided under the terms of this agreement.

VIII. PROVISION OF SERVICES

1. The Pueblo shall be primarily responsible for case management of foster care services (**NOTE: excluding Title IV(E) foster care payment**), for children placed by the

Pueblo in a foster care home licensed and approved by the Pueblo pursuant to the standards and procedures adopted by the Pueblo, when the Pueblo has custody of the child.

NOTE: In most situations in which the Pueblo has custody, the action will be in Pueblo Court or in the process of being transferred to Pueblo Court. In any case in which the Pueblo has custody, but the action is being maintained in State court, or the child is placed in a foster home outside of the Pueblo, a staffing between the appropriate Pueblo representatives and Department representatives, including the Children's Court Attorney, will be necessary to coordinate responsibilities relative to the State court proceedings.

2. The Pueblo shall make reasonable efforts to eliminate the need for removing the child from his home and to make timely reunification possible.

3. After reasonable efforts have been made and reunification is determined not possible, the Pueblo Court shall conduct a Dispositional Hearing and create a permanency plan within twelve (12) months of the child entering care in order to determine which of the following options best meets the needs and interests of the child:

The child should be returned to the parents.

-OR-

The child should be continued in foster care for a specified period.

-OR-

The child should be placed for adoption.

-OR-

The child should be continued in foster care on permanent or long-term basis.

-OR-

The child should be placed with a legal guardian.

3. The Pueblo Court shall conduct judicial case reviews of Title IV(E) eligible children at least once every six (6) months. The Court must address the assurances listed under the judicial determination safeguards (see Foster Care Compliance Requirements in Exhibit N, Item II C, Nos. 16-18).

IX. ASSURANCES

1. The Pueblo and the Department, through their joint efforts, as specified herein, agree to meet the provisions of Title IV(B) and Title IV(E) of the Social Security Act, the State Title IV(E) Plan filed with the Administration for Children and Families, Department of Health and Human Services.

2. The Pueblo agrees to meet all federal requirements for children receiving Title IV(E) payments as outlined in the Federal Foster Care Compliance Requirements (P.L. 96-272): "A Desk Guide for Service Workers" (Exhibit N, incorporated herein by reference); Requirements for Court Order Findings (Exhibit O, incorporated herein by reference); and the Title IV(E) Foster Care Eligibility Check List (Exhibit G, incorporated herein by reference).

3. The Pueblo shall provide the Department with sufficient information regarding a child in Pueblo custody in order for the Department to assess compliance with federal requirements necessary for federal financial participation and to determine the child's eligibility for other benefit programs administered by the Department (e.g., Social Security).

circumstances that might jeopardize continued federal funding, the situation shall be handled as provided in § VI D above.

X. RECORDS

1. The Pueblo agrees to develop and maintain client case records and foster parent records, including placement agreements, consistent with the requirements of Title IV(B) and IV(E) of the Social Security Act, for a period of three (3) years. The Department has designated the Uniform Case Record forms (attached as Exhibit J), which contain all of the federal requirements and may be used by the Pueblo. If the Pueblo wishes to develop their own forms, then they must be approved by the Department Title IV(E) Specialist prior to receiving Title IV(E) payments. All of these records shall be submitted to the Title IV(E) Specialist prior to the initiation of the foster care payments.

2. The Pueblo agrees to make all records pertaining to Title IV(E) payments (including the eligible child's foster care/adoption case record, placement and foster home records, including studies and licensure information), available for on-site inspection at the Pueblo's Social Services Office with reasonable notice.

3. The Pueblo shall maintain fiscal and program records pertaining to this agreement for a minimum of three (3) years.

XI. ACCOUNTABILITY OF FUNDS

The Pueblo shall provide for strict accountability of all money paid to the Pueblo subject to this agreement and shall follow generally accepted accounting principles and account for all receipts and disbursements of funds made to the Pueblo pursuant to this agreement.

XII. RETURN OF FUNDS

If there are any surplus funds, those funds shall be returned to the Department.

XIII. LIABILITY

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this agreement. Each party shall be liable for its actions in accordance with this agreement.

XIV. ACQUISITION OF PROPERTY

No property will be purchased under the terms of this agreement by the Pueblo.

XV. ASSIGNMENT

The parties shall not assign any interest in this agreement or assign any claims for money due or to become due under this agreement, unless otherwise noted in this agreement.

XVI. LOBBYING

1. To the extent required by 31 U.S.C. § 1352 or other applicable federal law, the Pueblo agrees that if the Pueblo receives federal funds through the Department, for full or partial payment under this agreement, then no federally appropriated funds will be paid, by or on behalf of the Pueblo, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the Pueblo or (a) the awarding of any federal contract; (b) the making of any federal grant; (c) entering into any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement. The parties hereby acknowledge the exemption for Indian Pueblos, tribal organizations and other Indian organizations provided in 31 U.S.C. § 1352.

2. To the extent required by 31 U.S.C. § 1352 or other applicable federal law, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress or Legislature, the Pueblo shall complete and submit Federal Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with the form's instructions. The parties hereby acknowledge the exemption for Indian Pueblos, tribal organizations and other Indian organizations provided in 31 U.S.C. § 1352.

XVII. NON-DISCRIMINATION

1. The Pueblo will comply fully with applicable law prohibiting discrimination in employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. To the extent required by applicable law, no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Pueblo that is conducted pursuant to this agreement.

3. Notwithstanding the above provisions, nothing in this agreement shall prohibit the Pueblo from adhering to a policy of Indian preference in employment to the fullest extent permitted by law.

4. The Pueblo agrees to insert similar provisions in all subcontracts for services allowed under this agreement.

XVIII. DRUG-FREE WORKPLACE

The Pueblo hereby assures the Department that it has implemented and will operate a drug-free workplace as required by and in accordance with applicable law.

XIX. PERIOD OF AGREEMENT

This agreement shall become effective on Dec 12, 1997 or upon approval by the Department of Finance and Administration, whichever is later, and shall not terminate unless terminated pursuant to § XX, "Termination of Agreement."

XX. TERMINATION OF AGREEMENT

This agreement may be terminated by either of the parties for good cause by giving sixty (60) days prior written notice, which includes an explanation of the reason for termination, to the other.

XXI. AMENDMENTS

This agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto. All amendments are subject to the approval of the Department of Finance and Administration. The Pueblo's President or his designee shall be the contact person for the Pueblo when negotiating any amendment to this agreement. The Director of the Protective Services Division (PSD) or his/her designee shall be the contact person for the State when negotiating any amendment to this agreement.

XXII. EXECUTION OF DOCUMENTS

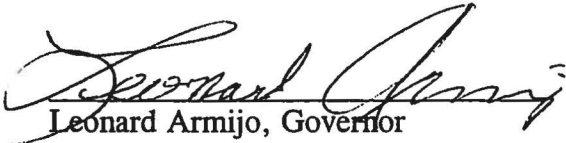
The Parties agree to execute any documents necessary to implement the terms of this agreement.

XXIII. ENTIRE DOCUMENT

This agreement incorporates all the agreements and understandings between the parties hereto, and all such agreements have been merged into this written agreement. No prior agreement, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

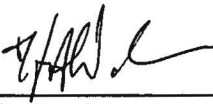
WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT OF THE STATE OF NEW MEXICO AND THE PUEBLO OF SANTA ANA.

Pueblo of Santa Ana



Leonard Armijo, Governor

Date: 12-12-97

STATE OF NEW MEXICO:


Heather Wilson, Secretary
Children, Youth & Families Department

Date: 12/12/97

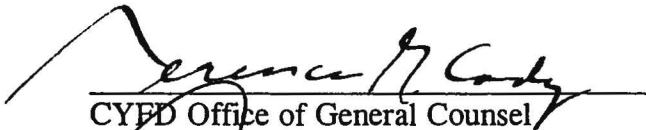

Department of Finance and Administration ^{DA}_{12/10/97}

Date: 12/12/97



Gary Johnson, Governor

Date: 12-12-97

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


Cynthia K. Cady
CYFD Office of General Counsel

Date: December 12, 1997


Tom Udall, Attorney General

Date: 12-12-97