

AGREEMENT BETWEEN THE UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE, INDIGENT DEFENSE COMMISSION AND WEBER COUNTY

This agreement is entered into between the Utah Indigent Defense Commission (“IDC”) and Weber County (“County”). In consideration of the mutual covenants and promises contained hereafter, the Parties agree as follows:

1. Agreement Period: Effective July 1, 2021 through June 30, 2024.

2. Purpose: To provide Title IV-E federal funding for allowable administrative costs for attorneys to provide legal representation to parents of children who are candidates for Title IV-E foster care or Title IV-E eligible and in foster care. The intent of this Title IV-E funding is to expand the scope and enhance the quality of legal representation.

3. Background: IDC is part of the Utah Commission on Criminal and Juvenile Justice and provides technical assistance and grant funding to county-based indigent defense systems (“CBIDS”) to help ensure that indigent defense services, including legal representation for parents facing child welfare proceedings, are provided in an efficient and effective manner. CBIDS are tasked, by statute, to provide legal representation to parents facing proceedings in the child welfare system. Weber County contracts with private legal services providers for parent representation and thereby has created a CBIDS.

Title IV-E reimbursement is available for activities performed by CBIDS to provide parent representation when those activities qualify as allowable IV-E administrative costs.

4. Explanation of Allowable Costs: 45 CFR 1356.60 (c)(2) identifies examples of allowable Title IV-E administrative costs necessary for the administration of the foster care program, which include “preparation for and participation in judicial determinations.”

The Children’s Bureau has clarified in the Child Welfare Policy Manual 8.1.B.#30 that, in addition to attorney costs, the following types of costs are allowable to the extent they are necessary to support an attorney in providing independent legal representation for candidates qualifying for title IV-E foster care, children in foster care and their parents:

- Paralegals
- Investigators
- Peer partners or social workers
- Office support staff and overhead

The costs claimed must be consistent with federal cost principles per 45 CFR Part 75 Subpart E and must only pertain to DCFS clients.

5. Determining reimbursement: The federal government will reimburse the State of Utah for 50 percent of allowable Title IV-E administrative costs for activities that benefit Title IV-E clients.

Title IV-E eligible clients are foster children determined to be Title IV-E eligible, and foster care candidates who are likely to be Title IV-E eligible. Children receiving court-ordered in-home services meet the definition of a foster care candidate for federal claiming purposes when documented through court proceedings and through DHS case plans in SAFE.

The extent to which activities benefit Title IV-E are calculated by applying the applicable Title IV-E penetration rate to the allowable costs. The penetration rate applied to allowable costs for parent representation is the penetration rate for the most recent complete quarter for which eligibility information is available.

The amount of Title IV-E funds to be claimed based on allowable activities of IDC and local governments who fund parent representation is calculated as follows:

Total Allowable Costs – multiplied by:

Foster Care and Foster Care Candidate IV E penetration rates – multiplied by:

50% Administrative Reimbursement.

6. Responsibilities of IDC in Claiming IV-E reimbursement: IDC will gather from County, information conforming to a level of detail approved by DHS and will document costs for providing Title IV-E allowable administrative activities as required by DHS.

IDC will prepare and submit an invoice on behalf of County detailing allowable administrative costs organized by each entity for which reimbursement is requested on a quarterly basis and at year-end subject to timeframes specified by DHS. The invoice will show the calculation for the Title IV-E claim as indicated in section 5 above.

IDC will properly document the source of the local match portion of the costs in the invoice and IDC fiscal records and will confirm that the matching funds are not from federal sources and adhere to federal rules and regulations found in Child Welfare Manual 8.1F.2 (ACYF-CBPIQ-84-06) and 45 CFR Part 75.

IDC will maintain supporting documentation as indicated in section 8 below, and will make that information available for review by the DHS or state or federal auditors.

IDC will participate in the funds transfer process as identified in the IDC and DHS agreement, (ATTACHMENT A), and will comply with the timelines established by that agreement.

IDC will provide reimbursement to County within 30 days of receiving an invoice detailing County's allowable administrative costs.

7. Responsibilities of County in claiming IV-E reimbursement: County will prepare and submit to IDC an invoice detailing allowable administrative costs, organized by the entity providing reimbursable services, on a quarterly basis and at year-end, subject to timeframes specified by DHS. The invoice will show the calculation for the Title IV-E claim as indicated in section 5 above.

County will ensure that the invoice identifies the source of the local match portion of the costs in the invoice.

County will maintain supporting documentation as indicated in section 8 below, and will ensure such documentation is available for review by the IDC, DHS or state or federal auditors.

County will be responsible for ensuring the matching funds identified by County are not from federal sources and adhere to federal rules and regulations as found in Child Welfare Manual 8.1F.2 (ACYF-CBPIQ-84-06) and 45 CFR Part 75.

County will participate in the funds transfer process as identified in the IDC and DHS agreement, (ATTACHMENT A), and will comply with the timelines established by that agreement.

8. Responsibilities of IDC and County Regarding Record Keeping Requirements and Limitations on Records Use and Dissemination: All records supporting the claim for reimbursement will be maintained for a minimum of three years after completion of the fiscal year, or longer if subject to state and federal audits.

IDC will limit access to the records supporting the claim to only those employees who need the information to perform functions, activities, or responsibilities related to Title IV-E revenue and as provided under Utah law.

9. Annual Project Improvement Plan and Annual Progress Report: County acknowledges that Title IV-E funds paid to County by the IDC are to be used solely for the purpose of expanding the scope and enhancing the quality of legal representation to parents of children who are candidates for foster care or who are in foster care.

County agrees to collaborate with representatives of IDC to develop and implement system improvement projects that expand the scope and enhance the quality of legal representation to parents of children who are candidates for foster care or who are in foster care.

IDC will initiate the project planning and implementation and will collaborate with County representatives to prepare a proposal and action plan before November 30 of each state fiscal year describing the system improvement plan and goals for the next state fiscal year.

County will submit to IDC in June and December of each year, a written report summarizing the efforts made and status of system improvement projects and how funds were used to expand the scope and enhance the quality of legal representation to parents of children who are candidates for foster care or who are in foster care.

IDC will submit a written report to DHS each year summarizing the efforts made by County and the status of system improvement projects. The report will identify how funds were used and the status of project implementation.

10. Liability in the Event of a Disallowance: In the event the federal government asserts that a claim for reimbursement based upon certified costs by IDC does not comply with federal regulations, County will assist IDC in obtaining all information necessary to support the claim.

If the claim is disallowed and the federal funds returned, County will promptly reimburse IDC for all funds paid to County directly attributable to the disallowance.

11. Termination: The Parties reserve the right to terminate this Agreement, in whole, or in part, at any time during the Term or any Additional Terms whenever the terminating party determines, in its sole discretion that it is in the terminating party's interest to do so.

If a Party elects to exercise this right, the terminating party shall provide written notice to the other Party at least 30 days prior to the date of termination for convenience. The Parties agree that termination for convenience will not be deemed a termination for default nor will it entitle either Party to any rights or remedies provided by law or this Agreement for breach of contract or any other claim or cause of action.

IN WITNESS WHEREOF, the parties sign and cause the agreement to be executed:

By _____
Matt Barazza, Executive Director, Indigent Defense Commission

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
James "Jim" Harvey, Chair
Date _____

Commissioner Harvey voted _____
Commissioner Jenkins voted _____
Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

EXHIBIT A



DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

MARK L. BRASHER
Deputy Director

LANA STOHL
Deputy Director

JUSTIN NAYLOR
Director, Office of Quality and Design

Utah Department of Human Services

MEMORANDUM OF AGREEMENT

Subject: DHS / IDC Title IV-E

DHS Agreement #: 20MOU22

1. PARTIES:

THIS AGREEMENT IS BETWEEN THE:

AND THE:

**Utah Department of Human Services,
Division of Child and Family Services
("DHS")**

**Utah State Commission on Criminal and
Juvenile Justice – Utah Indigent Defense
Commission ("IDC")**

2. **Agreement Period:** Effective January 1, 2020, through June 30, 2024.

3. **Purpose:** To provide Title IV-E federal funding for allowable administrative costs for attorneys to provide legal representation to parents of children who are candidates for Title IV-E foster care or Title IV-E eligible in foster care. The intent of this Title IV-E funding is to expand the scope and enhance the quality of legal representation.

4. **Background:** IDC is part of the Utah Commission on Criminal and Juvenile Justice and provides technical assistance and grant funding to County-Based Indigent Defense Systems ("CBIDS") to help ensure that indigent defense services, including legal representation to parents facing child welfare proceedings, are provided in an efficient and effective manner. CBIDS are tasked, by statute, to fund legal representation to parents facing proceedings in the child welfare system. CBIDS fulfill that mandate by contracting with legal service providers to provide representation.

Title IV-E reimbursement is available for activities performed by IDC staff and attorneys contracting with CBIDS or IDC to provide parent representation when those activities qualify as allowable IV-E administrative costs. The process for the reimbursement of IDC's direct costs will be negotiated and agreed by both parties, as requested by IDC.

5. **Definitions:**

- A. Child and Family Plan: A plan developed by the child and the child's family team that addresses issues and sets goals and services to create and maintain safety for the child.
- B. Foster Care Candidate: A child is a candidate for foster care under the Title IV-E foster care program if: (1) the Child and Family Plan indicates the child is at imminent risk of removal, and, absent effective in-home services, foster care is the planned arrangement for the child; or (2) there is evidence of court proceedings in relation to removing the child from the child's home in the form of a petition to the court, a court order, or a transcript of the court's proceedings, or there is equivalent documentation in the case record demonstrating that the child is at imminent risk of removal, and, absent effective in-home services, foster care is the planned arrangement for the child.
- C. Foster Care Client: A child in the custody of Division of Child and Family Services
- D. Title IV-E Foster Care Penetration Rate: The percentage or ratio of out of home clients determined to be Title IV-E eligible as compared to all active out-of-home clients as of the last day of the month. This rate is calculated by DHS. (Also referred to in illustration under paragraph 7 as the FC Pen Rate)
- E. Title IV-E Foster Care Candidate Penetration Rate: The percentage or ratio of all Title IV-E eligible foster care candidates to total in-home child clients. This rate is calculated by DHS. (Also referred to in illustration under paragraph 7 as the FCC Pen Rate)
- F. In-Home Case: A case with Division of Child and Family Services oversight, where a child client lives with parents or kin while receiving services but is not in the custody of DHS.
- G. In-Home Child Client: A client under the age of 18 served in an In-Home case.
- H. Out-of-Home Case: A case maintained with Division of Child and Family Services oversight in which the Division has custody of the child.
- I. Federal Title IV-E Funds: Federally regulated funds authorized under Title IV-E of the Social Security Act as amended and implemented under the Code of Federal Regulations (CFR) at 45 CFR parts 1355, 1356, and 1357.
- J. SAFE: Management information system maintained by the DHS.

6. **Allowable Costs:** 45 CFR 1356.60 (c)(2) identifies examples of allowable Title IV-E administrative costs necessary for the administration of the foster care program, which include "preparation for and participation in judicial determinations."

The Children's Bureau has clarified in the Child Welfare Policy Manual 8.1.B.#30 that, in addition to attorney costs, the following types of costs are allowable to the extent they are necessary to support an attorney in providing independent legal representation for candidates qualifying for title IV-E foster care, children in foster care, and their parents:

- A. Paralegals
- B. Investigators
- C. Peer partners or social workers
- D. Direct administrative support costs

The costs must be consistent with federal cost principles per 45 CFR Part 75 Subpart E and must only pertain to DCFS clients.

7. Determining Reimbursement:

The federal government will reimburse the State of Utah for 50 percent of allowable Title IV-E administrative costs for activities that benefit Title IV-E clients.

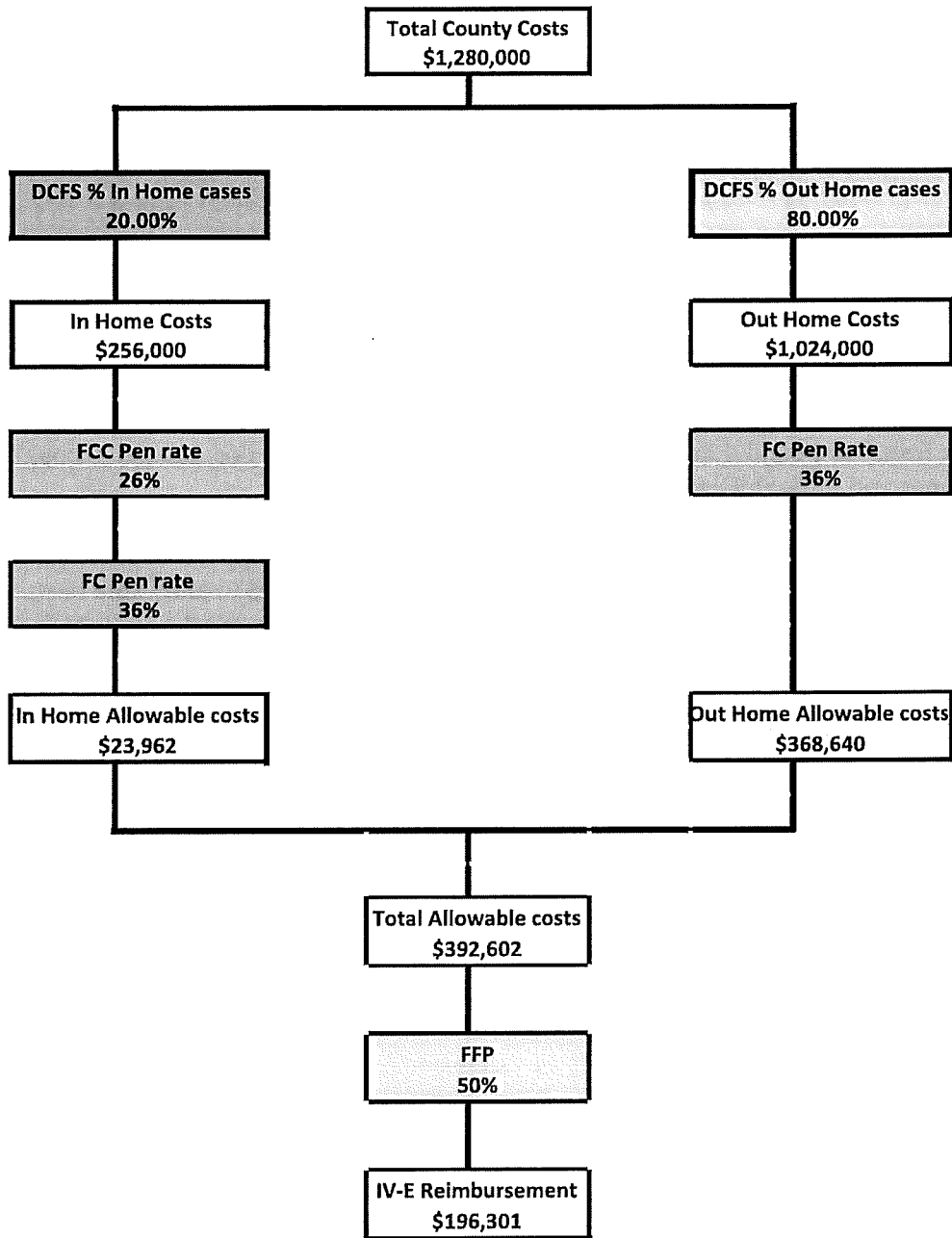
Title IV-E eligible clients are foster children determined to be Title IV-E eligible, and foster care candidates who are likely be Title IV-E eligible (determined by applying the applicable penetration rate, as described below). Children receiving court-ordered in-home services meet the definition of a foster care candidate for federal claiming purposes when documented through court proceedings and through DHS case plans in SAFE.

The extent to which activities benefit Title IV-E are calculated by applying the applicable Title IV-E penetration rate to the allowable costs. The penetration rate applied to allowable costs for parent representation is the penetration rate for the most recent complete quarter for which eligibility information is available.

The amount of Title IV-E funds to be claimed based on allowable activities of IDC and local governments who fund parent representation are calculated as follows:

$$\begin{array}{rcccl}
 \text{Total Allowable} & & \text{Foster Care and Candidate} & & \text{50\% Administrative} \\
 \text{Costs} & \times & \text{IV-E Penetration Rate} & \times & \text{Reimbursement} \\
 & & \text{(benefit to IV-E)} & &
 \end{array}$$

Billings Flow Example



8. Responsibilities of IDC in Claiming IV-E Reimbursement:

- A. IDC staff will gather time information conforming to a level of detail approved by DHS from participating CBIDS, documenting costs for providing Title IV-E allowable administrative activities.

- B. IDC staff will document time information conforming to a level of detail approved by DHS, documenting costs for providing Title IV-E allowable administrative activities.
- C. IDC will provide the billing form with applicable penetration rates to the CIBDS within two business days of receiving it from DHS.
- D. IDC will prepare and submit an invoice detailing allowable administrative costs organized by entity seeking reimbursement (CBIDS, IDC) on a quarterly basis or at year-end subject to timeframes specified by DHS. The invoice will show the calculation for the Title IV-E claim as indicated in section #7 above.
- E. IDC will ensure that CBIDS document the source of the state or local match portion of the costs in the invoice and agency's fiscal records. IDC will document the source of the state or local match portion of the costs in the agency's invoice and agency's fiscal records. In addition, supporting documentation will be maintained by IDC as indicated below, and will be available for review by the DHS or state or federal auditors. IDC is responsible for ensuring the matching funds are not from federal sources and adhere to federal rules and regulations as found in Child Welfare Manual 8.1F.2 (ACYF-CBPIQ-84-06) and 45 CFR Part 75.
- F. IDC shall enter into an agreement with the CIBDS to effectuate the terms and requirements of this agreement.

9. Responsibilities of DHS in Claiming IV-E Reimbursement:

- A. DHS will calculate the Title IV-E foster care and foster care candidate penetration rate and provide the rate to IDC by the 10th day of the month following the end of the quarter. DHS will supply the form that IDC will use to calculate the reimbursement amount, using the penetration rate provided by DHS.
- B. DHS will review the certification of costs and invoice, verify accuracy of the Title IV-E calculation, and approve for payment.
- C. DHS will approve the quarterly transfer of allowable costs and state matching funds from IDC to DHS. The transfer will be processed through FINET and may occur quarterly or at year-end subject to timeframes specified by DHS.
- D. DHS will prepare and submit the Title IV-E claim quarterly to the federal government using the cost information in FINET
- E. DHS will receive reimbursement for the IV-E portion of the costs from the federal government.

10. Responsibilities Regarding Record Keeping Requirements and Limitations on Records Use and Dissemination:

- A. All records supporting the claim will be maintained for a minimum of three years after completion of the fiscal year, or longer if subject to state and federal audits.

- B. Records supporting the claim may contain information protected by attorney client privilege and attorney confidentiality.
- C. DHS shall limit access to the records supporting the claim to only those employees who need the information to perform functions, activities, or responsibilities related to Title IV-E revenue.

11. Annual Progress Report:

IDC will submit to DHS an annual written report by June 30 summarizing the efforts made and how funds were used to expand the scope and enhance the quality of legal representation to parents of children who are candidates for foster care or who are in foster care.

12. Liability in the Event of a Disallowance:

In the event the federal government asserts that a claim for reimbursement based upon certified costs by IDC does not comply with federal regulations, IDC will assist DHS in obtaining all information necessary to support the claim. If the claim is disallowed and the federal funds returned, IDC will promptly reimburse DHS all funds paid to IDC directly attributable to the disallowance.

13. Funding/Cost Transfers:

- A. IDC shall initiate the transfer with DHS using a cost transfer code for the total allowable costs (for the billing time period) and a revenue transfer code for the match.
- B. The CBIDS will calculate reimbursable costs by applying the penetration rates to allowable parental defense costs. The invoice to IDC must show the calculations supporting the reimbursable costs. IDC may reimburse a CBIDS through a properly submitted invoice determined through calculations involving the appropriate penetration rates and allowable costs. The IDC reimbursement is subject to the counties transferring allowable 50 percent matching funds for the cost reimbursement (the matching funds percentage is based on the 50 percent federal participation rate).
- C. **To Pay the CBIDS:** IDC and the counties may accomplish payment and transfer of match funds through net IDC payment to counties. The net payment (50 percent of reimbursable costs) is accomplished through IDC processing a payment through the state general ledger system (FINET), recording the total allowed reimbursable costs to object code 7501 and recording the proper supported match portion (50 percent) to revenue code 2264.
- D. IDC will record the full allowable costs (both the federal participation portion and the required state matching portion of costs) as an expenditure using the following Finet coding string:

Fund: 1000 Dept: 060 Appropriation: CFD Unit: 7910 Object: 7501

IDC will record the state match portion to the following Finet coding string:

Fund: 1000 Dept: 060 Appropriation: CFD Unit: 7910 Revenue: 2264

Illustrative Example: Total allowable costs on CBIDS invoice equal \$300,000. \$300,000 will be recorded by IDC as an expenditure, and since the local match is 50%, then revenue will be recorded at \$150,000. This nets out on the check to the CBIDS of \$150,000.

E. To record the costs on IDC and DHS books: IDC will record the CBIDS transfer of certified matching funds as an expendable receipt. IDC will transfer to DHS the allowable costs (through an ITI/ITA cost transfer) and the matching funds (through an ITI/ITA revenue transfer).

F. IDC shall enter into an agreement with the CIBDS before transferring any funds to the CBIDS.

14. Pre-Approval for CBIDS Participation:

IDC must receive written approval from DHS before initiating Title IV-E reimbursement for parent representation with any CBIDS entity.

15. Indemnification: Both parties are governmental entities under the "Utah Governmental Immunity Act," Title 63, Chapter 30, Utah Code Annotated 1953, as amended. Consistent with the terms of this Act, each party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act.

16. Modifications: This agreement may be amended, modified, or supplemented only by written amendment to the agreement, executed by the parties hereto, and attached to the original signed copy of this agreement.

17. Termination: This agreement may be terminated by either party, with or without cause, in advance of the specified expiration date, upon 30 days prior written notice being given to the other party.

IN WITNESS WHEREOF, the parties sign and cause the agreement to be executed:

**The Utah State Commission on Criminal
and Juvenile Justice – Utah Indigent
Defense Commission (IDC)**

The Department of Human Services

By: Joanna Landau 07/06/2020

By: Diane Moore 07/06/2020
Diane Moore (Jul 6, 2020 14:08 MDT)

Joanna Landau, Director Date
Office of Indigent Defense

Diane Moore, Director Date
Division of Child and Family Services