



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-13

For the meeting of: April 5, 2016

Date: February 3, 2016

To: Board of Supervisors

From: Connie Beck, Director
Department of Health and Human Services- Social Services

Subject: Memorandum of Understanding (MOU) with Del Norte County for Child Welfare Services (CWS) Case Transfer of Jurisdiction for Conflicts

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approves the Memorandum of Understanding (MOU) with Del Norte County for transferring jurisdiction of Child Welfare Services cases to avoid conflicts of interest;
2. Authorizes the Chairperson to execute four (4) originals of the MOU; and
3. Directs the Clerk of the Board to route three (3) fully executed originals of the MOU to the Department of Health and Human Services (DHHS)-Contract Unit for forwarding to DHHS- Social Services Administration.

SOURCE OF FUNDING:

Social Services Fund 1160

DISCUSSION:

The counties of Humboldt and Del Norte have encountered situations in which a suspected child abuse report has been investigated and a case has been opened for on-going service provision that has involved a

Prepared by Lisa Rix, Staff Services Analyst II

CAO Approval

Cushman

REVIEW:

Auditor *MBM*

County Counsel *H2*

Personnel

Risk Manager *KDV*

Other

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Bass*

Ayes *Sundberg, Fennell, Lovelace, Bohn, Bass*

Nays

Abstain

Absent

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *April 5, 2016*

By: *[Signature]*
Kathy Hayes, Clerk of the Board

county employee. This MOU between the County of Humboldt DHHS–Children and Family Services (CFS) and the County of Del Norte – Child Welfare Services (CWS) specifies the counties will transfer jurisdiction of their respective CWS cases to the other county for the duration of the cases’ jurisdiction to avoid actual or potential conflicts of interest that may arise when county staff functions as a county-approved placement for the care of dependent children or where county staff is directly or peripherally related to an open child welfare case.

Pursuant to the terms of the MOU, CWS cases involving Humboldt County employees will be transferred to Del Norte County, and CWS cases involving Del Norte County employees will be transferred to Humboldt County to maintain the confidentiality of either county’s employees as clients and to ensure that such cases will receive unbiased case management of a neutral case worker. Both counties will work collaboratively and closely with each other to maintain and provide services to these cases that are transferred. The transferred CWS cases will remain with the other county agency for the duration of the jurisdiction of the case in the following circumstances:

- when a county staff person has been identified and approved as a relative caregiver or as a non-related extended family member caregiver for the placement of foster children,
- when a case is opened for on-going service provision that involves a county employee,
- if a conflict of interest may arise where county staff functions as a county-approved placement for the care of foster children, or
- if a county staff member is directly or peripherally related to an open child welfare case.

There is no cost associated with this MOU to either Humboldt County or Del Norte County. When either county’s CWS cases are transferred to the other county, any monthly foster care payments will continue to be sent to the caretakers by the originating county. The receiving county will not make foster care payments for the originating county.

DHHS recommends that the Board approve the MOU with Del Norte County. The term of this MOU will begin upon execution by both counties and shall remain in full force until terminated as provided therein.

FINANCIAL IMPACT:

There is no financial impact to the county General Fund.

This MOU supports the Board’s Strategic Framework by protecting vulnerable populations and creating opportunities for improved health and safety.

OTHER AGENCY INVOLVEMENT:

Del Norte County

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board can choose not to approve the MOU with Del Norte County but this is not recommended; this MOU will avoid actual or potential conflicts of interest and protect employees’ confidentiality.

ATTACHMENTS:

Attachment 1: MOU with Del Norte County (3 originals)

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
COUNTY OF DEL NORTE**

This Memorandum of Understanding (MOU), entered into this 5th day of April, 2016, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "HUMBOLDT," and the County of Del Norte, a political subdivision of the State of California, hereinafter referred to as "DEL NORTE," is made upon the following considerations:

WHEREAS, HUMBOLDT, through its Children and Family Services department (C&FS), and DEL NORTE, through its Child Welfare Services department (CWS), are responsible for child welfare cases in which county staff persons have been identified and approved as relative caregivers or as non-relative extended family member caregivers (NFEFMs) for the placement of children; and

WHEREAS, HUMBOLDT and DEL NORTE have encountered situations in which a suspected abuse report is investigated and a case is opened for on-going service provision that involves a county employee; and

WHEREAS, conflicts of interest may arise where county staff functions as a county-approved placement for the care of dependent children or where county staff is directly or peripherally related to an open child welfare case; and

WHEREAS, best practices dictate that cases in which there is an actual or potential conflict of interest should be transferred to another county for the duration of the jurisdiction; and

WHEREAS, the counties wish to enter into an agreement by which C&FS and CWS may transfer case jurisdiction to the other county and work collaboratively to provide services to the children and families.

NOW THEREFORE, the counties mutually agree as follows:

1. DESCRIPTION OF RESPONSIBILITIES:

A. The Transferring County (defined as the county that seeks to transfer jurisdiction) will:

- i. Identify cases involving a potential or actual conflict of interest.
- ii. Contact the designee of the receiving county by phone or e-mail, provide the identifying case information and request transfer of jurisdiction.
- iii. Maintain fiscal responsibility for the funding of the foster care placement and any services or incidentals provided to the client as required by the child welfare case plan.
- iv. Provide referral and resource information to the receiving county in order to facilitate service provision to the client.
- v. Provide transportation assistance to the client in order to facilitate his or her attendance at court in the receiving county.
- vi. Cooperate with staff in the receiving county to provide services to the client(s).

B. The Receiving County (defined as the county accepting transfer of jurisdiction) will:

- i. Respond timely to the request for transfer from the transferring County.
- ii. Comply with all state and federal mandates.
- iii. Cooperate with the staff of the transferring county.

2. TERM:

This MOU shall begin upon execution by both counties and shall remain in full force and effect until jurisdiction is terminated by the Court unless sooner terminated as provided herein.

3. TERMINATION:

- A. Breach of Contract. If, in the opinion of either county, the other fails to adequately perform the services required hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this MOU, or violates any ordinance, regulation or other law applicable to its performance herein, the non-breaching county may terminate this MOU immediately, upon notice.
- B. Without Cause. Either county may terminate this MOU without cause upon thirty (30) days advance written notice to the other. Such notice shall state the effective date of the termination.
- C. Insufficient Funding. Obligations under this MOU are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, the de-funded county shall, at its sole discretion, determine whether this MOU shall be terminated. The de-funded county shall provide the other with seven (7) days advance written notice of its intent to terminate this MOU due to insufficient funding.

4. PAYMENT OF PLACEMENT AND SERVICES:

The transferring county will pay for placement and all services rendered, and costs and expenses incurred that are required by the child welfare case plan through the existing C-IV Foster Care Eligibility payment system and other internal department structures. This may require the transferring county to retain primary assignment in the statewide CWS/CMS data system while the county taking jurisdiction retains secondary assignment.

5. TRANSFER INQUIRIES AND NOTICES:

Any and all transfer inquires or notices required by the terms of this MOU shall be in writing and shall be mailed or e-mailed to the respective addresses set forth below:

HUMBOLDT: Humboldt County DHHS – Social Services
Attention: Michelle Stephens, Deputy Director, Children & Family Services
929 Koster Street
Eureka, CA 95501
Phone: (707) 476-4705
E-mail: mstephens@co.humboldt.ca.us

DEL NORTE: Del Norte County - Health and Human Services
Attention: Crystal Markytan, Program Manager
880 Northcrest Drive
Crescent City, CA 95531
Phone: (707) 464-3191
E-mail: cmarkytan@co.del-norte.ca.us

6. REPORTS:

The counties shall provide any and all reports that may be required by local, state and/or federal agencies for compliance with this MOU. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

7. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. HUMBOLDT and DEL NOTRE will prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the performance of their duties and obligations hereunder, and to maintain and preserve said records for at least three (3) years from the expiration or termination of this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the services provided hereunder.

B. Inspection of Records. All records, documents, conditions and activities of both counties, and its subcontractors, related to the performance of their duties and obligations hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. The counties hereby agree to make all such records available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies. The counties further agree to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this MOU.

C. Audit Costs. In the event of an audit exception or exceptions, the county responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be borne by the county responsible for the deficiency.

8. MONITORING:

The counties agree that each has the right to monitor all activities related to this MOU, including, without limitation, the right to review and monitor records, programs or procedures, at any time, as well as the overall operation of the other's programs, in order to ensure compliance with the terms and conditions of this MOU. The counties will cooperate with a corrective action plan, if

deficiencies in records, programs or procedures are identified by the other. However, neither county is responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the other county's performance of the duties and obligations contained herein.

9. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this MOU, HUMBOLDT and DEL NORTE may receive information that is confidential under local, state or federal law. Each county hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, but not limited to: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Laws. The counties acknowledge that federal and state confidentiality laws are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each county agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws or regulations.

10. NON-DISCRIMINATION COMPLIANCE:

- A. Nondiscriminatory Delivery of Social Services. In connection with the execution of this MOU, the counties, and their subcontractors, shall not unlawfully discriminate in the administration of public assistance and social services programs. The counties hereby assure that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service or any other classifications protected by local, state or federal laws or regulations.
- B. Professional Services and Employment. In connection with the execution of this MOU, the counties, and their subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin,

ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

- C. Compliance with Anti-Discrimination Laws. Each county further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this MOU by reference and made a part hereof as if set forth in full.

11. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

DEL NORTE certifies by its signature below that it is not a Nuclear Weapons Contractor, in that DEL NORTE is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. DEL NORTE agrees to notify HUMBOLDT immediately if it becomes a Nuclear Weapons Contractor as defined above. HUMBOLDT may immediately terminate this MOU if it determines that the foregoing certification is false or if DEL NORTE subsequently becomes a Nuclear Weapons Contractor.

12. INDEMNIFICATION:

- A. Mutual Indemnity. Each county shall hold harmless, defend and indemnify the other county and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other county.
- B. Comparative Liability. Notwithstanding paragraph A above, in the event that both counties are held to be negligently or willfully responsible, each county will bear their proportionate share of liability as determined in any such proceeding. In such cases, each county will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of insurance, if required by this MOU, does not relieve either county from liability under this provision. This provision shall apply to all claims for damages related to the services performed pursuant to the terms and conditions of this MOU regardless if any insurance is applicable or not. The insurance policy limits set forth herein shall not act

as a limitation upon the amount of indemnification or defense to be provided by either county hereunder.

13. INSURANCE REQUIREMENTS:

Each county will maintain in full force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance.

14. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) government entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association.

15. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

Each County will comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services covered by this MOU. Both counties further agree to comply with any and all applicable local, state and federal licensure and certification requirements.

16. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the counties agree to amend the pertinent section to make such insertion or correction.

17. REFERENCE TO LAWS AND RULES:

In the event any law, regulation, policy or procedure referred to in this MOU is amended during the term hereof, the counties agree to comply with the amended provision as of the effective date of such amendment.

18. PROTOCOLS:

Both counties recognize that the inclusion of additional protocols may be required to make this MOU specific. All such protocols shall be negotiated, determined and agreed upon by the appropriate representatives of each county.

19. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

20. ASSIGNMENT:

Neither county shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other county's prior written consent. Any assignment by either county in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other usual or customary arrangements to obtain supplies, technical support or professional services.

21. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the counties and to each of their heirs, executors, administrators, successors and permitted assigns.

22. WAIVER OF DEFAULT:

The waiver by either county of any breach or violation of any requirement of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU. In no event shall any payment constitute a waiver of any breach of this MOU or any default which may then exist on the part of the other. Nor shall such payment impair or prejudice any remedy available to either county with respect to any breach or default. Each county shall have the right to demand repayment of, and the other shall promptly refund, any funds disbursed which were not expended in accordance with the terms of this MOU.

23. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of HUMBOLDT or DEL NORTE shall be personally liable for any default or liability under this MOU.

24. AMENDMENT:

This MOU may be amended at any time during the term of this MOU upon the mutual consent of both counties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by both counties.

25. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

26. ADVERTISING AND MEDIA RELEASE:

All informational material related to this MOU shall receive approval from both counties prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. Each county shall inform the other of all requests for interviews by the media related to this MOU before such interviews take place; and each county shall be entitled to have a representative present at such interviews.

27. SUBCONTRACTS:

The counties shall obtain prior written approval from the other before subcontracting any of the services to be provided hereunder. Any and all subcontracts will be subject to all applicable terms and conditions of this MOU, including, without limitation, the licensing, certification, privacy, security and confidentiality requirements provided herein.

28. ATTORNEYS' FEES:

If either county shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this MOU to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

29. SURVIVAL:

The duties and obligations of the counties set forth in Section 7– Record Retention and Inspection, Section 9 – Confidential Information and Section 12 – Indemnification shall survive the expiration or termination of this MOU.

30. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the counties and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

31. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both counties, and shall not be construed or interpreted more favorably for one county on the basis that the other county prepared it.

32. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this MOU are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this MOU.

33. FORCE MAJEURE:

Neither county hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such county and without fault or negligence of such county. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of

war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

34. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the counties and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the counties. In addition, this MOU shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

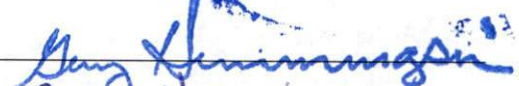
35. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is, or will be, duly authorized and has, or will have, legal authority to execute and deliver this MOU. Each county represents and warrants to the other that the execution and delivery of this MOU and the performance of such county's obligations hereunder have been, or will be, duly authorized.

[Signatures on Following Page]


IN WITNESS WHEREOF, the counties have entered into this MOU as of the date first written above.

COUNTY OF DEL NORTE

By: 
Name: Gerry Hemmingsen
Title: Chair, Board of Supervisors

Date: 02/23/16

COUNTY OF HUMBOLDT

By: 
Name: Mark Lovelace
Title: Chair, Board of Supervisors

Date: 4-5-16

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Humboldt County Risk Analyst

Date: 3/17/16

Approved As To Form

Del Norte County Counsel

Date: 02/23/16

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

Clerk of the Board
By: 