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

Paul Vincent

Michelle H., *et al.* v. McMaster

PROGRESS REPORT: SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

October 1, 2019-March 31, 2020

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EXECUTIVE SUMMARY

BACKGROUND & CONTEXT

What is the Michelle H. Final Settlement Agreement?

In January 2015, the advocacy groups Children's Rights and South Carolina Appleseed Legal Justice Center, along with the Wyche law firm, filed a lawsuit on behalf of the nearly 4,500 children in foster care in South Carolina. The lawsuit alleged that the Director of the Department of Social Services (DSS) and the Governor were harming children by failing to address long-standing problems in the operation of the foster care system. Following a long period of negotiation, the parties reached a settlement, which was approved by U.S. District Judge Richard M. Gergel on October 4, 2016 (referred to as the Final Settlement Agreement, or the FSA).

The FSA requires the state to reform key aspects of the DSS foster care system, and establishes performance benchmarks that it must meet and sustain before exiting the lawsuit. These areas of focus include: case manager and supervisor caseloads; visits between children in foster care and their case managers; family time with parents and siblings; investigations of allegations of abuse and neglect of children in foster care; appropriate foster care and therapeutic placements; and access to physical and behavioral health care for children in foster care. The FSA also made final a set of interim relief requirements agreed upon in 2015, including those that end the practice of allowing children in state custody to stay overnight in hotels and DSS offices; of placing children age 6 and under in group facilities; and of leaving children in juvenile detention facilities simply because there are not appropriate foster care placements.

The FSA appoints two independent Co-Monitors—Paul Vincent of the Child Welfare Policy and Practice Group and Judith Meltzer of the Center for the Study of Social Policy—to support the state in implementing the FSA requirements and report regularly on progress. The Co-Monitors issue reports to the Court and the public every six months. This document summarizes the findings included in the seventh monitoring report, covering the period October 1, 2019 through March 31, 2020.

What does DSS do?

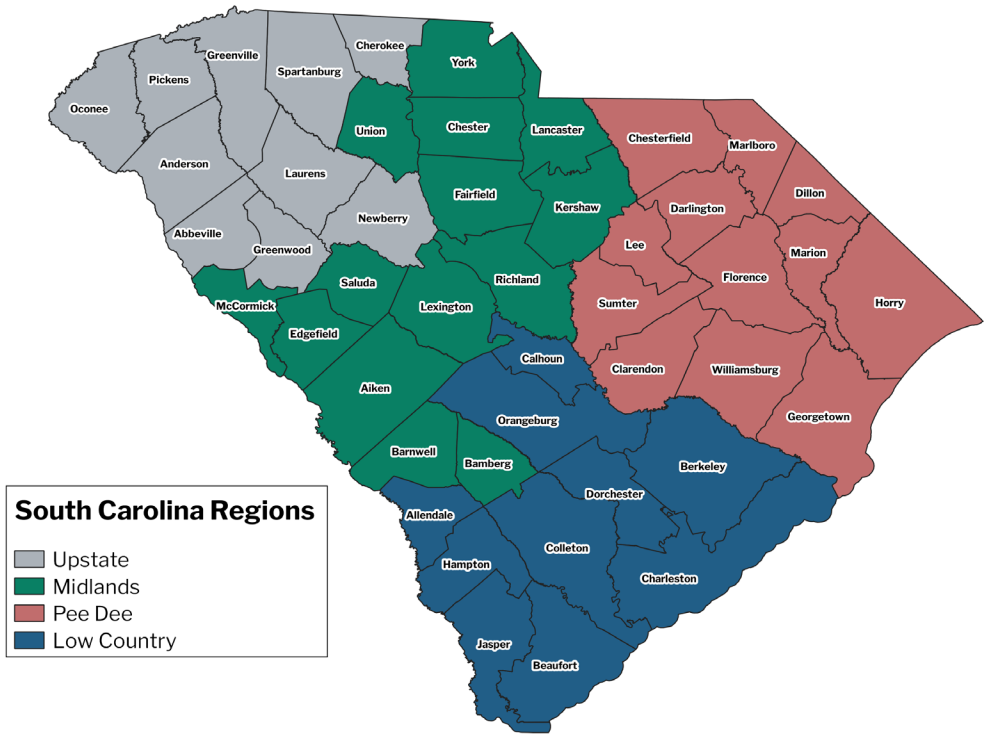
DSS is a cabinet level agency that oversees investigations of child abuse and neglect, preventative services for families, foster care, adoptions, child care, and child support. The agency also oversees Adult Protective Services (APS) and economic assistance programs such as TANF, which provides financial assistance to families experiencing poverty, and SNAP, which provides nutrition benefits to families earning low wages to purchase food. DSS is structured to deliver services through regional and county offices; the state's 46 counties are each part of one of four regions—Midlands, Upstate, Pee Dee, and Low Country (see Figure 1. South Carolina DSS Regions and Counties).

The FSA pertains specifically to children who have been involuntarily removed from their parents or guardians and taken into the custody of DSS. Referred to as "foster care" or "out-of-home care," DSS is responsible in these cases for caring for children on a temporary basis while engaging families and providing them with the services and supports needed for the children to safely return home. When reunification is not possible, DSS must work towards another permanent, long-term plan for the child, such as guardianship or adoption.

How is DSS funded?

Although states have primary responsibility for ensuring the welfare of children and their families, the federal government provides financial support through a number of significant sources.[1] Specifically, the federal Children's Bureau, within the Administration for Children and Families, distributes funds to states through mandatory spending programs authorized through the Social Security Act. The largest of these programs is authorized under Title IV-E of the Social Security Act, and operated on an "open-ended" basis, meaning states are entitled to receive reimbursement for a portion of every dollar spent on behalf of an "eligible" child.[2,3]

Figure 1. South Carolina DSS Regions and Counties[4]



Because nearly all children in foster care are eligible for Medicaid, this is another important source of revenue for state child welfare systems. Medicaid can be used to cover non-direct health care services, such as mental health services and therapeutic foster care.

State funding for foster care in South Carolina is typically allocated on an annual basis through the General Assembly agency appropriation process. The state fiscal year in South Carolina runs from July to June, spanning two calendar years. The process is shown in Figure 2.

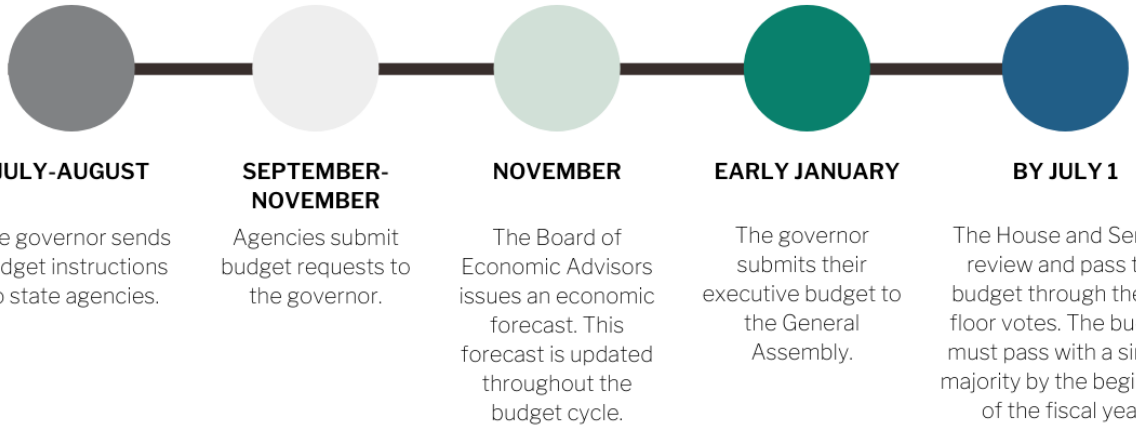
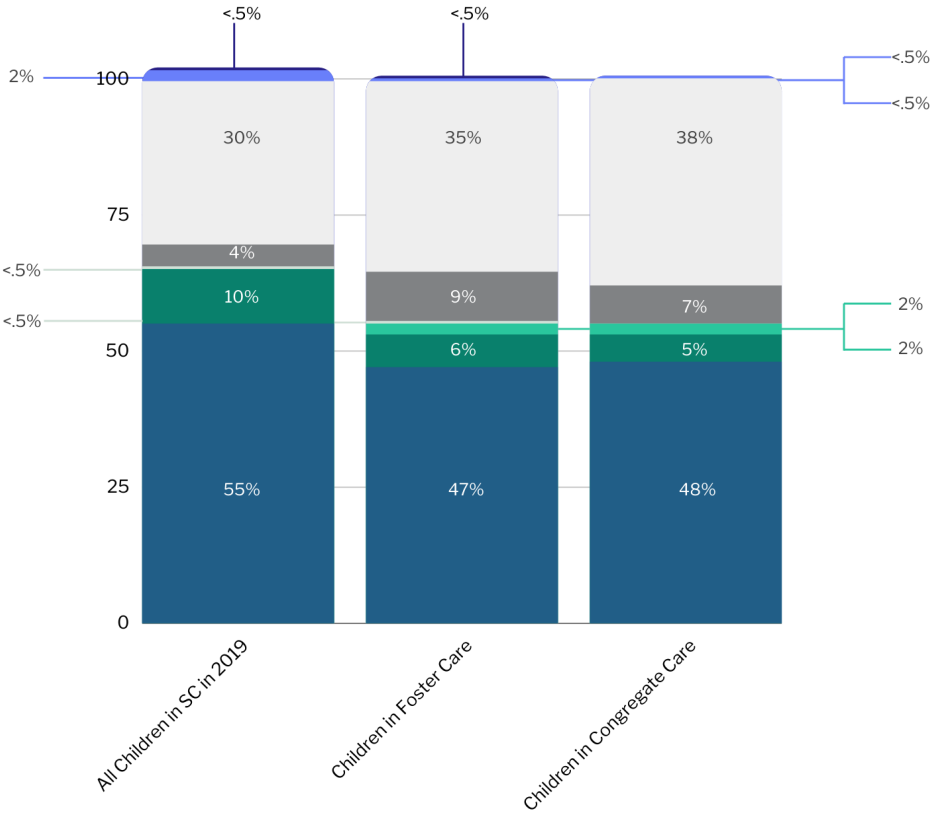


Figure 2. South Carolina Fiscal Year Process

Figure 3. Percentage of Children in Foster Care, by Race/Ethnicity [5]



Who Does DSS Serve?

In FY2018-2019, 1,111,183 children under the age of 18 resided in South Carolina; 8,225 of these children were placed in foster care at some point during the year.[6] In an effort to build accountability and transparency, DSS now regularly publishes real-time data about children in out-of-home care on its public website. Demographic data on age, race, and gender are available, as well as information about where children are placed and how long they have been in out-of-home care. Between October 2019 and March 2020, 6,437 children spent time in foster care.[7] As of the end of the monitoring period, there were 4,357 children in foster care in South Carolina.

Figure 4. Percentage of Children in Foster Care, by Age

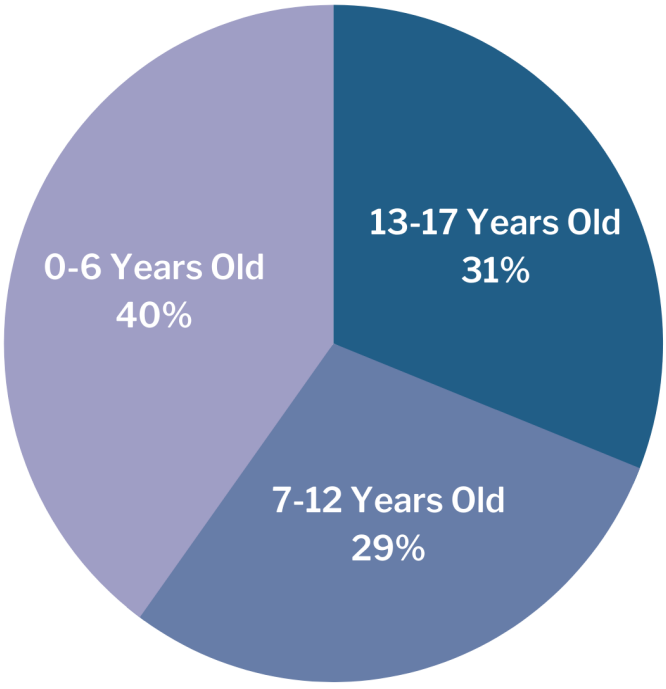
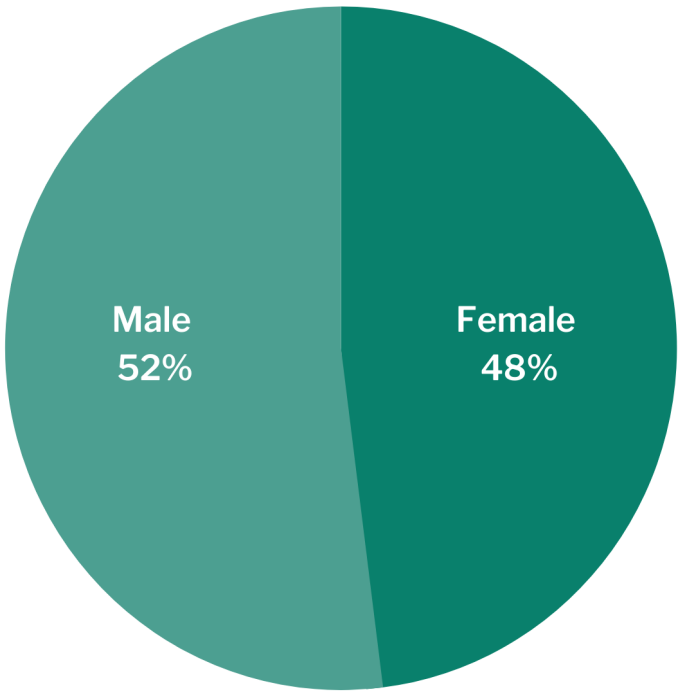


Figure 5. Percentage of Children in Foster Care, by Sex [8]



SYTEM REFORM PROGRESS UPDATES
OCTOBER 2019 -MARCH 2020

This monitoring period began with a sense of promise and possibility. Though performance had not yet significantly improved in many areas measured by the FSA, work was progressing in many areas to position the Department to proceed with broadscale reform when new funding became available. By March 2020—the end of the monitoring period and almost one year into Director Leach's tenure—DSS had made headway in laying the groundwork for reform. On March 13, 2020, with the new fiscal year in sight, Governor McMaster declared a state of emergency in South Carolina based on the imminent threat to public health posed by the COVID-19 pandemic. As in states across the nation, the pandemic has dealt a severe blow to South Carolina, and to an agency that was finally positioned to intensify its reform efforts. The pandemic has demanded even more of DSS leadership, staff, providers, partners, and community members, as children and families have depended more than ever on DSS supports.

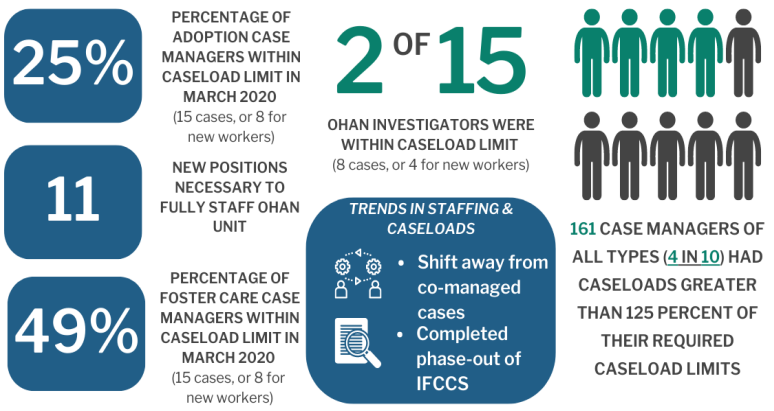
Through this all, DSS leadership has emphasized that they continue to be committed to the Department's long-term strategic priorities and are hopeful they can proceed with key aspects of the reform in the coming year. While this commitment is commendable, DSS's historical failure to meet the needs of children serves as a reminder that the hope of change can be just that in the absence of a strong foundation. The DSS child welfare system remains woefully under-resourced, lacking an adequate network of supports for children and families.

As summarized below and covered in detail in the full monitoring report, DSS performance and outcomes remain troubling. It is difficult to imagine that, in the absence of ample supports, a system that was performing at this level prior to the pandemic will be able to deliver on the promise of reform at a time when even the most well-resourced systems in the nation are struggling to meet the needs of children and families. This is a moment that demands a vision and framework for living out DSS's stated values—of being family- and community-centered, trauma-informed, strengths-based, and culturally responsive—and for defining DSS's role and purpose in the lives of South Carolina's children and families. More than ever, DSS needs to deepen its ability to oversee the safety of children in foster care placements, to support children in their home communities, to ensure ongoing connections with loved ones, and to engage and strengthen families in ways that allow them to thrive.

Staffing & Caseloads

Two important shifts occurred during this monitoring period. First, in recognition of the importance of access for all children to highly qualified and trained case managers focused on permanency planning, DSS shifted away from its historical reliance on the assignment of regionally based Intensive Foster Care and Clinical Services (IFCCS) case managers to children identified as needing a higher level of care, because upon review, it was determined that the IFCCS workers did not receive more

Figure 6. Key Developments: Staffing and Caseloads



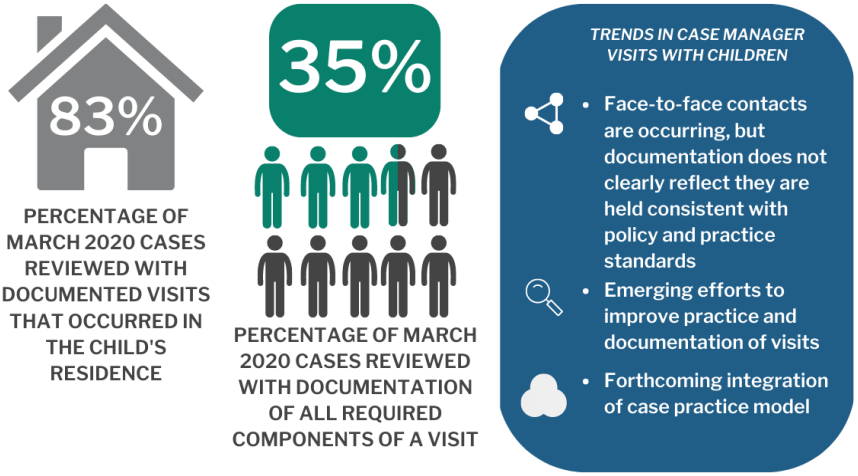
training or have more skills than regular county case managers. A second important shift is that DSS completed the transition from its practice of assigning children legally eligible for adoption to both foster care and adoption case managers, ensuring instead that children and families have only one point of contact for communication and case planning. Of the original cohort of children identified when this work began, nearly three-quarters had been transferred for full case management by an adoption worker by June 2020. Both strategies have had some impact on reducing caseloads.

Nevertheless, in many parts of the state, caseloads remain unmanageably high, and significantly above the FSA interim benchmarks. Fifty-one percent of foster care case managers; 75 percent of adoption case managers; and 87 percent of Out-of-Home Abuse and Neglect (OHAN) case managers had caseloads in excess of required limits during this monitoring period. Such persistently high caseloads and low salaries have continued to make the retention of staff a challenge—turnover reached 32 percent for all staff in CY2019. In addition to ongoing training and support, DSS continues to acknowledge that the retention of a well-qualified workforce will depend upon its ability to fund additional positions (it estimates a need for 213 case managers and 43 supervisors in FY2020-2021) and to offer increased salaries with opportunities for increases based on education, training, and longevity.

Visits Between DSS Case Managers and Children

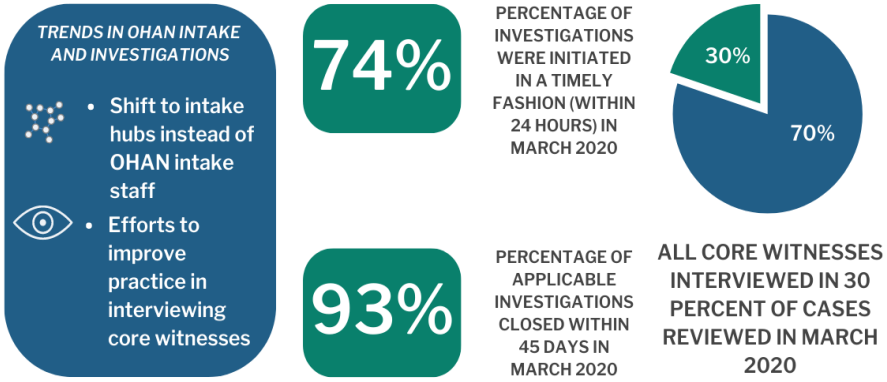
DSS case managers are expected to have face-to-face contact with children in foster care and their caregivers on a monthly basis and more often, depending on the needs of the child or foster family. These visits allow case managers to assess that the child is safe and well in areas such as physical and behavioral health, and to ensure that their needs are being met in the foster home. The visits also provide an opportunity for the case manager to gain updates on the status of any services being provided to the child and/or foster parents, to share updates on progress towards permanency, and to build relationships with children and their caregivers.

Figure 7. Key Developments: Case Manager Visits with Children



Although monthly contact between case managers and children are occurring in nearly all cases, documentation does not reflect that these contacts align with DSS's policy and practice expectations. There was documentation of all required elements of a case manager visit in only 35 percent of cases reviewed this period. DSS has continued its work to promote visits between children and case managers, focused on assessing the status of children and foster families and identifying progress and challenges. Improving performance in this critical area will depend upon DSS's ability to support practice expectations, implement its Guiding Practices and Standards (GPS) Case Practice Model, reduce caseloads to a manageable level, and place children closer to their home communities.

Figure 8. Key Developments: OHAN Intake and Investigations



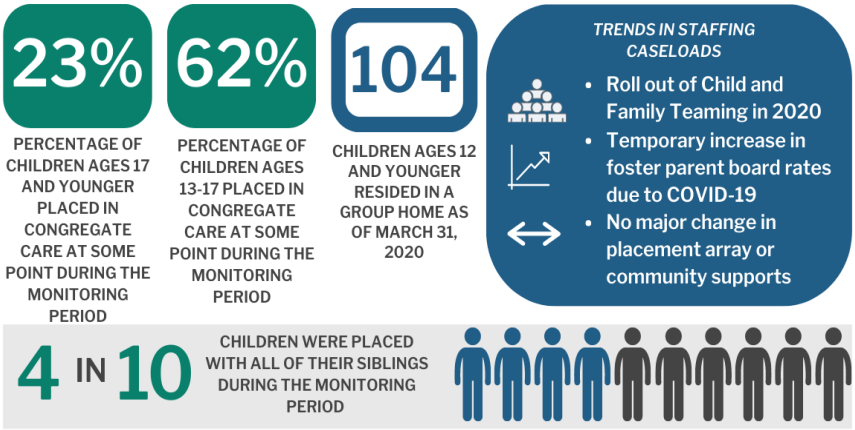
Out-of-Home Abuse and Neglect Investigations

The work of screening and investigating allegations of abuse and/or neglect of children in foster care—completed in South Carolina by DSS's Out-of-Home Abuse and Neglect (OHAN) unit—is a critical function of any child welfare system. This unit must be prepared to quickly respond to all allegations that meet the criteria for possible abuse or neglect; and have the tools, skills, and supervision necessary to complete investigative tasks with quality and determine if abuse or neglect occurred.

Performance data for the current monitoring period reflect improvement in timely initiation of investigations—which includes contacting all alleged victim children within 24 hours of the referral—and timely closure of investigations. Some progress has also been shown in contacting all necessary core witnesses during an investigation, but performance is still substantially below the interim benchmark. As previously reported, despite best efforts, progress in this area is likely to be limited until DSS has the resources available to add the significant additional staff positions needed to meet OHAN caseload requirements.

Placements

Figure 9. Key Developments: Placements



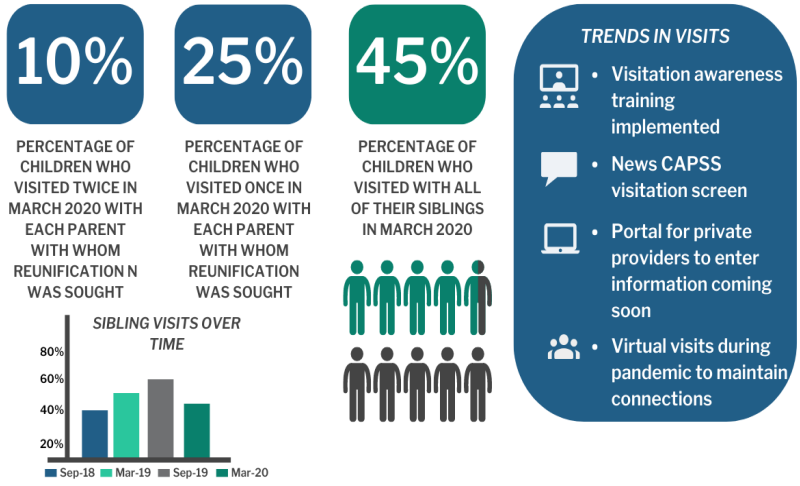
The availability of appropriate, stable placements for children throughout the state continues to be a significant challenge for DSS. As DSS acknowledges, placement decisions are often made based on availability, rather than on the unique needs of children and their families. Many children are still placed far from their home communities and schools, and separated from their siblings, family members, and other important people in their lives. Although there is a shared understanding that congregate placement should be minimized, the shortage of appropriate foster homes and quality, community-based supports has meant that children often experience multiple moves and are placed in less than ideal settings, at times on only a temporary or emergency basis until a more stable or long-term placement can be found. For children and families, this can mean fear, uncertainty, and isolation at a time when what is needed most are opportunities for healing, support, and connection.

DSS's Placement Implementation Plan presents a roadmap for addressing these structural issues, and for fundamentally shifting the way the needs of children in foster care are identified and met. Though DSS has endeavored to follow through with its commitments where possible—stretching its resources—a lack of funding has prevented the Department from moving forward in a timely manner with many Plan strategies that are critical for establishing the foundation for reform.

Family Visits

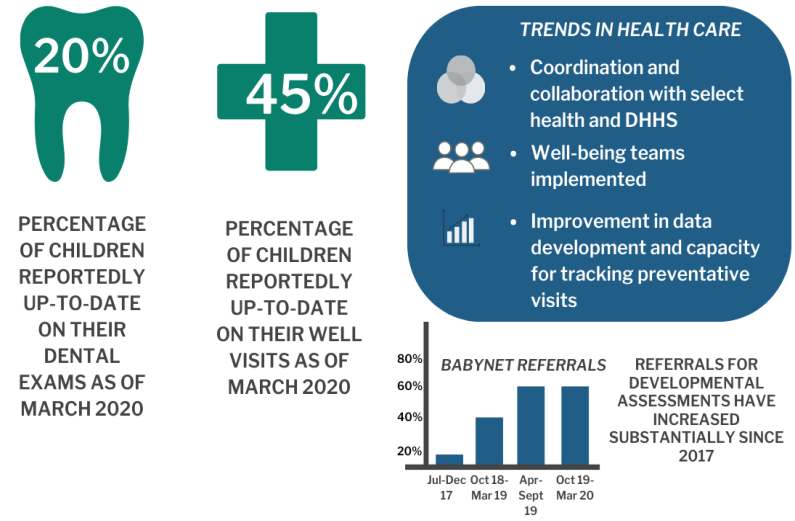
Children in foster care must maintain meaningful connections with siblings with whom they are not placed and with parents and other family members with whom they are to reunify. Although DSS continued its work this period to emphasize the importance of time with family, and communicate its goal of moving away from the historical practice of limiting time together to formal once-monthly visits among siblings and twice monthly visits with parents, this shift in expectations is not yet reflected in practice. Fewer than half of the children whose cases were recently reviewed had spent time with their sibling(s) with whom they do not reside. Similarly, most children with a permanency goal of reunification, or with a permanency goal which had not yet been established by the Court, had no contact at all with their parent(s).

Figure 10. Key Developments: Family Time



Given the additional challenges the COVID-19 pandemic has presented for ongoing contact between children and their families, DSS has begun to use of technology as a way of helping to maintain communication. Though not a substitute for in-person contact, these virtual contacts reflect possibilities and opportunities, in addition to time spent in-person, for children to maintain and build relationships which are central to their well-being.

Figure 11. Key Developments: Health Care



Health Care

There has been progress in developing infrastructure for collaboration and data collection in the area of health care, but insufficient DSS resources dedicated to managing children's well-being and a lack of quality community supports for meeting health and behavioral health needs has meant that far too many children remain without the care and stability they need. Nearly four years after entry into the FSA, data show that many children are not receiving required medical visits. The COVID-19 pandemic has put additional pressure on a nascent health care infrastructure.

DSS has made continued progress in building capacity for tracking health care delivery in recent months, and many of the key components of the health care infrastructure envisioned by leadership are now in place. Each of DSS's four regions now has a dedicated clinical nurse that is part of DSS's state-level Office of Child Health and Well-Being, as well as a Well-Being Team that serves as a clinical support and liaison to community resources. In partnership with the South Carolina Department of Health and Human Services (DHHS) and Select Health, the state's Managed Care Organization (MCO) for most children in foster care, DSS worked this period to refine its systems for collecting and analyzing health care data, and for collaborating on medically complex cases.

FUTURE DIRECTIONS

KEY RECOMMENDATIONS

As DSS moves forward with its reform in the months ahead, the Co-Monitors recommend that particular attention be paid to the following foundational action steps. These recommendations have been highlighted as key priorities since the inception of this lawsuit, and are based on years of experience with other systems that have been engaged in meaningful system transformation:

- **Expedite plan for thorough and intensive training of all staff in DSS's model of case practice:** System transformation requires a shared vision of what is expected in order to meet the safety, well-being, and permanency needs of the children and families served by DSS. Though DSS has worked to develop a model of case practice—referred to as its Guiding Principles and Standards ("GPS")—the implementation of a strategy for helping new and existing staff to build the skills needed to practice in accordance with this model is long overdue. Beyond the training that orients staff to the procedural changes required by GPS, additional training must include robust coaching, mentoring, and ongoing support to build the skills necessary to meaningfully engage families, assess underlying strengths and needs, craft individualized safety and permanency plans, and track and adjust as case plans proceed. GPS training needs to extend to supervisors, foster parents, and providers so that the entire system has the skills and confidence needed to realize the goals and expectations of the practice model. In addition, GPS principles need to be integrated into quality assurance processes so that they are aligned with and designed to measure fidelity to the model. DSS reports that its GPS implementation workgroups have been tasked with integrating the model into policy and practice. The quality and robustness of this work will be critical in the months ahead.

- **Leverage private agency partnerships through contractual relationships that foster meaningful collaboration:** Many private providers have expressed willingness to work with DSS to find new ways of supporting children and families. Funding currently devoted to more restrictive congregate care placements and other outsourced functions can be re-directed to a full array of community-based resources and other supports. Given the productive working relationship that has taken root over the past year, DSS and its private sector partners should work together to provide children and families with the supports they need to thrive. This will require mutual accountability, action-oriented planning, evaluation and adjustment of contracting models, and the availability of flexible funds that can be used when crafting individualized service and support plans for children and families.

- **Work with public agency partners to increase availability of and access to high-quality community-based services:** It is important that DSS work closely across agencies—now and on an ongoing basis—to develop more robust and accountable systems of care to serve children and families who come to the attention of DSS. This includes the Department of Health and Human Services (DHHS), the Department of Mental Health (DMH), and the Department of Juvenile Justice (DJJ) among others. A key part of this collaboration should be the assessment and enhancement of available community-based services throughout the state, and building a shared understanding of the types of underlying needs that can be met through partner agencies, without the need for DSS intervention. This area of work is also fundamental to the state's efforts to bolster its prevention continuum in accordance with the Family First Prevention Services Act (FFPSA).

- **Continue to focus on building a strong infrastructure:** As DSS works to best position itself for full implementation of its FSA commitments, and moves ahead with specific short-term action steps, leadership must continue to shore up the infrastructure necessary to support and sustain change. Despite significant improvements in systems for collecting and utilizing data, DSS's data capacity remains limited in some key areas, and additional data staff are still needed. Human resources and administrative capacity to recruit, hire, train, and retain new case

managers and supervisors continues to be sub-optimal, at times causing delays in filling much-needed positions. The Department continues to need to build a robust Continuous Quality Improvement (CQI) process that is closely tied to agency management and that can easily and routinely provide quantitative and qualitative information for managers, supervisors, and case managers on the effectiveness of their work. The CQI process should specifically gather information about DSS's fidelity to key practice principles and include face-to-face interviews with children, families, DSS staff, and external stakeholders about their experiences with DSS.

- **Consider piloting new strategies in particular areas of the state:** It is difficult, if not impossible, to predict exactly how even very well-conceived, carefully planned strategies will play out in practice. Implementation generally involves some amount of testing and refining in response to early results and community and stakeholder feedback. It has been, and continues to be, our recommendation that DSS consider a phased approach to implementing some of the more ambitious strategies to which it has committed. This will allow adaptations to be made, and necessary resources to be engaged, prior to full state implementation. Such an approach—which must entail support for local innovation and flexible access to a full range of resources—would be especially useful in implementing strategies such as Child and Family Teaming (CFT) that require a significant re-orientation of values, a considerable shift in practice, and the availability of an entirely new and much broader array of community resources.
- **Maximize the use of all available sources of funding:** DSS should act expeditiously and ardently to ensure it is making use of all state and federal revenue sources, especially now that the state as a whole is expected to have a revenue shortfall as a result of the COVID-19 pandemic. Though adequate funding is not a magic bullet for all necessary system improvements, securing and sustaining sufficient fiscal resources will increase DSS's ability to implement the critically necessary actions to which it is committed, and to deliver on the system reforms for which South Carolina children and families have long been waiting.

ENDNOTES

[1] Stoltzfus, Emilie (July 30, 2018). Child Welfare Funding in FY2018. Congressional Research Service. https://fas.org/sgp/crs/misc/R45270.pdf.

[2] The Title IV-E program was established by HR. 3434 Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272).

[3] Title IV-B of the Social Security Act addresses the provision of child welfare services that can be used for prevention of child abuse and neglect, prior to removal from the home. Funds can be used to support at-risk families through services to allow children to remain with their families, as well as providing training and professional development to support a well-qualified workforce. Additionally, the legislation sets aside funds for evaluation, research, training and technical assistance projects, and court improvement programs.

[4] To see children placed during FY 2018-2019 by county, go to: https://dss.sc.gov/media/2133/total-children-served-during-sfy-19.pdf.

[5] DSS collects data on Hispanic children as an ethnicity rather than a racial group, meaning that children of multiple racial groups may also identify as Hispanic. In this breakdown, Co-Monitor staff made adjustments so that those who identified as Hispanic and Black, Hispanic and Native, or Hispanic and Asian are included in the 'Multiracial' category.

[6] To see child population data from Kids Count Data Center, go to: https://datacenter.kidscount.org/data/tables/6132-children-under-18-years-of-age-by-race-ethnicity?loc=42&loct=2#detailed/2/any/false/1729,37,871,870,573,869,36,868,867,133/66,67,4262,3,4267/12804,15653.

[7] To see data from DSS website dashboard, go to: https://dss.sc.gov/about/data-and-resources/foster-care-dashboard/.

[8] DSS does not collect data on children who identify as gender neutral or non-binary.

NOTE: For access to any of the infographics contained within this Executive Summary, please email CSSP at communications@CSSP.org.