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

April - September 2020: *Executive Summary*

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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 and Judith Meltzer—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 ev-ery six months. This document summarizes the findings included in the eighth monitoring report, covering the period April to September 2020.

What does DSS do?

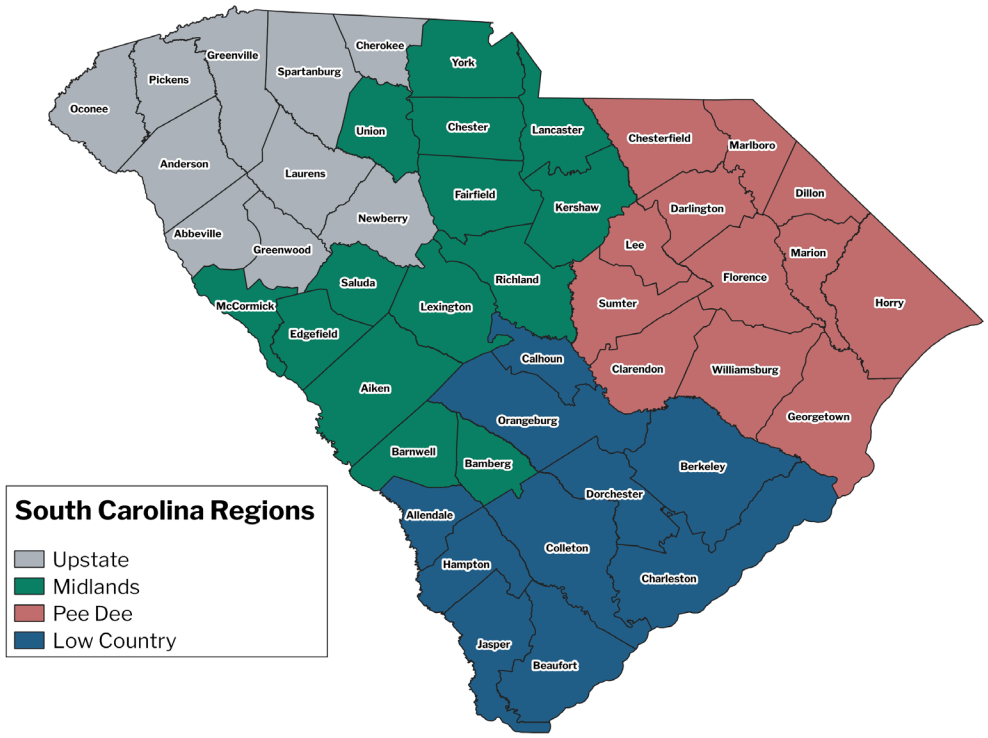
DSS is a cabinet level agency that oversees investigations of child abuse and neglect, preventative services for families, foster care, adoptions, child care, and child support, as well as Adult Protective Services (APS) and economic assistance programs such as Temporary Assistance for Needy Families (TANF), which provides financial assistance to families experiencing poverty and programs to support employment, and Supplemental Nutritional Assistance Program (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.

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, preferably while the children remain with their siblings and reside with a family member or someone known to their family, while working to return them home to their parents or guardians. 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. 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] Eligibility depends

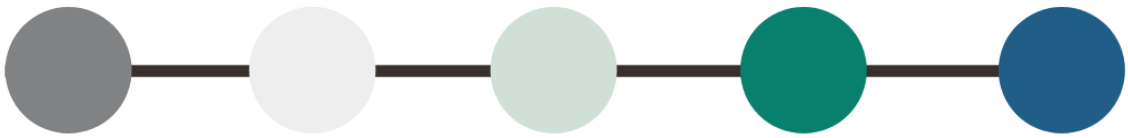
Figure 1. South Carolina DSS Regions and Counties



on the income level of the parent(s) from whose custody the child was removed. Even if a child's case is found to be Title IV-E eligible, reimbursement is allowed only for specific portions of certain eligible expenses.[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 rehabilitative services, and therapeutic foster care.

State funding for foster care in South Carolina is 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 the figure below:



JULY-AUGUST

The governor sends budget instructions to state agencies.

SEPTEMBER-NOVEMBER

Agencies submit budget requests to the governor.

NOVEMBER

The Board of Economic Advisors issues an economic forecast. This forecast is updated throughout the budget cycle.

EARLY JANUARY

The governor submits their executive budget to the General Assembly.

BY JULY 1

The House and Senate review and pass the budget through the full floor votes. The budget must pass with a simple majority by the beginning of the fiscal year.

Figure 2. South Carolina Fiscal Year Process

The regular budget cycle was disrupted in FY2020-2021 due to the COVID-19 pandemic. Because the General Assembly was unable to convene to agree upon a final appropriation, it passed a continuing resolution as a temporary measure. The resolution, passed on May 12, 2020, directed continued funding of the "ordinary" expenses of state government at the levels authorized for FY2019-2020, beginning July 1, 2020.[5] This has been problematic for DSS, as it was hoping for an infusion of funds in the current budget year to meet court-ordered requirements as part of the reform effort. The General Assembly is currently in the process of considering appropriations for FY2021-2022.

Who Does DSS Serve?

Over 1.1 million children under the age of 18 reside in South Carolina; during the monitoring period, 5,360 were placed in foster care at some point.[6,7] 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.[8] 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.

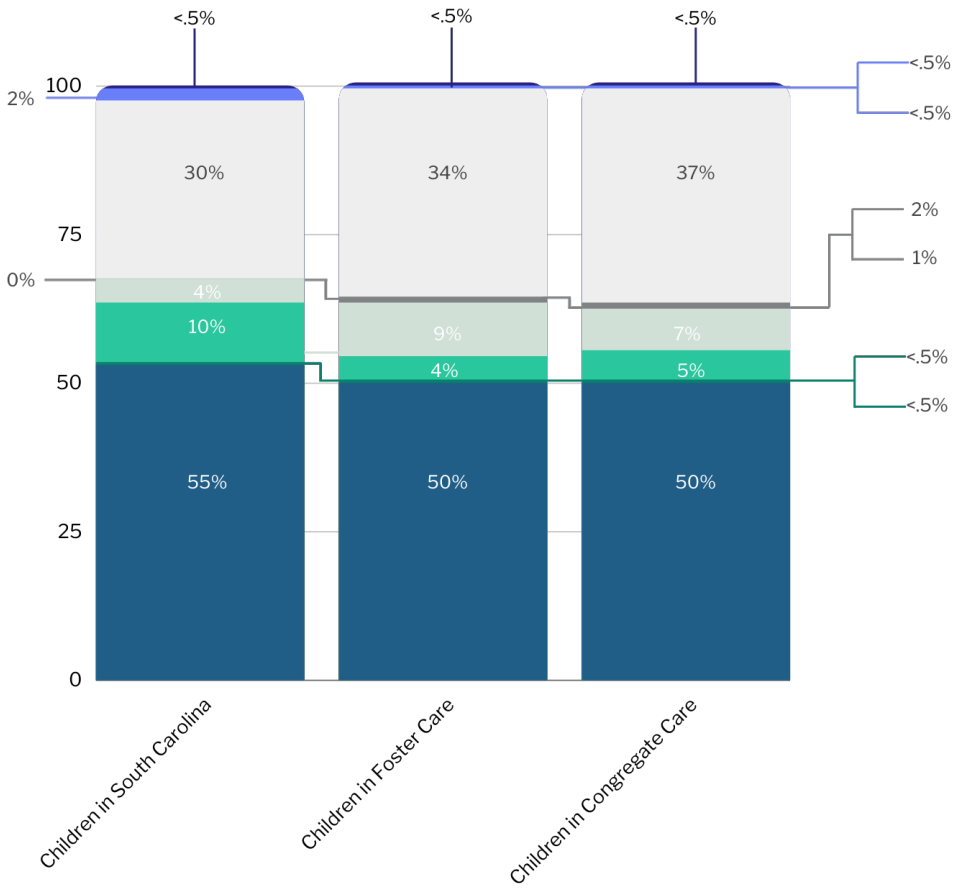
The legacy of disproportionate removal of Black children from their families persists in South Carolina, as it does throughout the United States. When comparing race and ethnicity of children in DSS custody, as shown in Figure 3, to that of the total child population in the state, representation appears slightly disproportionate: 55 percent of children in foster care are identified as White compared to 57 percent of all children in the state; 33 percent of children in foster care are identified as Black compared to 31 percent of all children in the state.[9] As reported in the prior monitoring report, these racial disparities grow when looking at particular counties.[10]

In terms of age and gender, Figures 4 and 5 show that about one-third of the foster care population are adolescents (ages 13 to 17), and 40 percent are ages six and under. Slightly less than half of children in foster care are reported to be female.[11]

There has been a sharp decline in the foster care population since March 2020. This is consistent with a national trend, attributed in part to declines in abuse and neglect reporting during the COVID-19 pandemic. For example, on March 31, 2020 there were 4,357 children in foster care, but on January 4, 2021, there were 3,939. Of those, 1,363 (35%) had been in foster care for 24 months or longer.

See page five for Figures 3, 4, and 5.

Figure 3. Racial Disproportionality and Disparity in Foster Care and Congregate Care Placement, April - September 2020



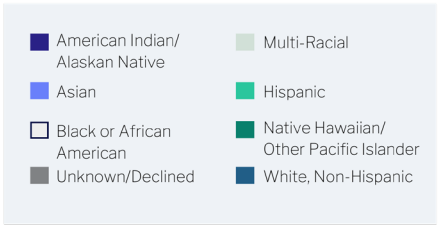


Figure 4. Percentage of Children in Foster Care, by Age

as of January 4, 2021

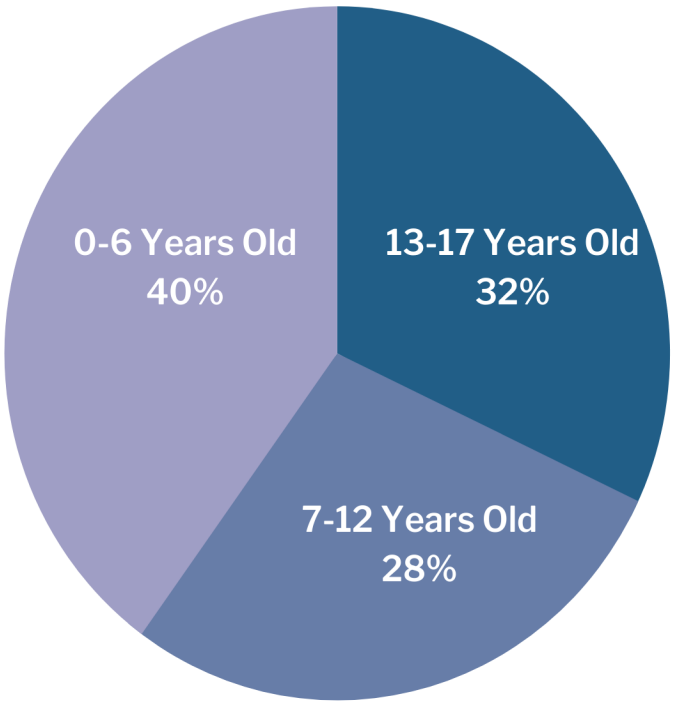
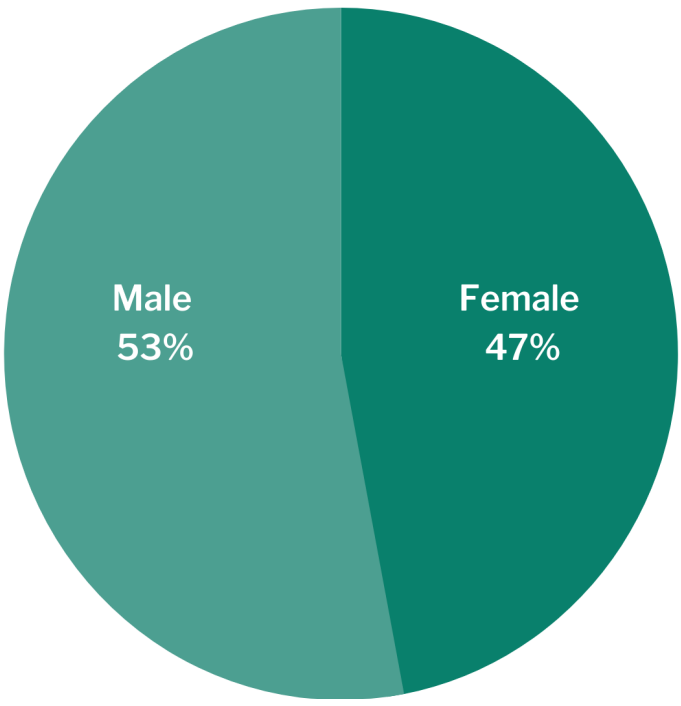


Figure 5. Percentage of Children in Foster Care, by Reported Gender

as of January 4, 2021



SYTEMS REFORM PROGRESS UPDATES

APRIL - SEPTEMBER 2020

This monitoring period was a time of unprecedented challenge for South Carolina and DSS. It began in April 2020, weeks after Governor McMaster declared a state of emergency in South Carolina based on the imminent threat to public health posed by the COVID-19 pandemic.[12] In the months that followed and continuing to today, the pandemic has negatively impacted South Carolina families in countless ways. For families of children in the custody of DSS, the COVID-19 pandemic has meant barriers to in-person time with loved ones, less face-to-face contact with case managers, and limited access to educational supports and other needed services.

The capable and committed DSS leadership team has attempted to maintain a focus on its child welfare reform efforts despite a lack of resources. As detailed in the full monitoring report, these efforts—combined with a declining number of children in foster care during the COVID-19 pandemic—have translated into modest progress in some areas of practice. However, the stark reality remains that far too little has changed for families in the four and a half years since the Department committed to comprehensive reform pursuant to a federal consent decree.

South Carolina's child welfare system remains woefully under-resourced. DSS will not be able to adhere to either its specific FSA obligations or its broader commitments to families in the absence of an adequate allocation of funds. While the impact of the COVID-19 pandemic on the number of children entering foster care has made caseloads and the identification of placements slightly more manageable, the possibility that this trend will shift as the pandemic eases and children return to school and resume contact with other mandated reporters, raises the specter that this will be but a temporary reprieve. Already operating without sufficient capacity, this system is likely poorly positioned to manage an influx in child abuse and neglect reports post-pandemic.

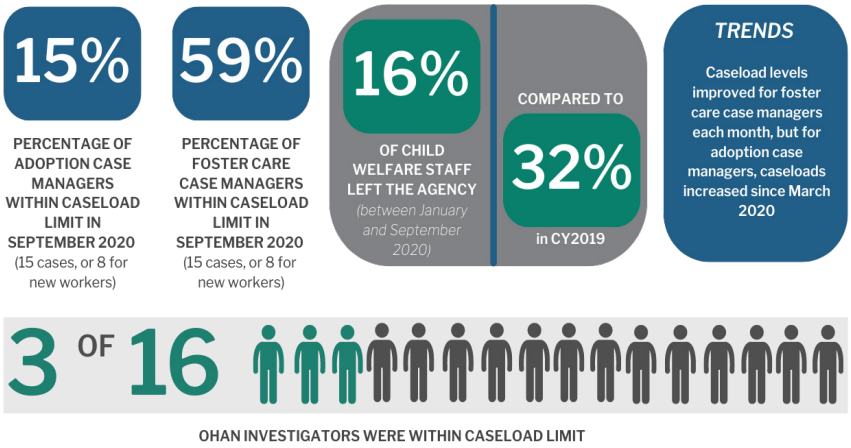
Though budget shortfalls due to the COVID-19 pandemic and its impact on the state's economy have made the prospect of accessing needed resources more difficult, it is imperative that DSS be afforded what it needs to do its work. During a time of much hardship, South Carolina's families are continuing to bear the impact of a system that is overburdened and utterly hamstrung. Families and children cannot wait.

Resources alone will not transform a system. DSS's slow progress is rooted not only in the persistent lack of funding for supports and infrastructure, but also in a long history of working in ways that do not align with DSS's stated goals of being family focused, culturally affirming, and trauma informed. DSS leadership has been messaging throughout the state and with multiple stakeholders the change in practice and cultural values it would like to achieve. Real change in the ways children and families experience the DSS system will require that this messaging translate into a widespread shift in skills and values at the ground level and become embedded in how the system functions. This will necessitate the integration of guiding principles that genuinely prioritize the voices and experiences of families, the purposeful alignment of direct practice with these principles, and the development of a rich array of supports and services available at the community level that meet families where they are in their lives and are truly responsive to their needs. The Department recognizes that many of these supports and services will need to be provided through other state human services agencies such as the Department of Health and Human Services (DHHS), the Department of Mental Health (DMH), the Department of Disabilities and Special Needs (DDSN), and the Department of Juvenile Justice (DJJ).

Staffing and Caseloads

A sufficient, qualified, and trained workforce with manageable caseloads is foundational to a well-functioning child welfare system and has been a focus of DSS's reform. Although DSS was unable to obtain new positions or raise salaries for staff as required by the Workload Implementation Plan, due to delays in the state's budget, an improvement in worker retention and the reduced number of children in foster care led to lower foster care caseloads during this period. Each month during the pandemic, as fewer children entered care, a greater number of caseloads for county foster care case managers came into compliance with caseload standards. As of September 2020, 59 percent of foster care case managers had caseloads within the required limit of 15 cases (eight cases for new case managers), compared to 49 percent six months prior. Additionally, DSS experienced a lower rate of staff leaving the agency than in calendar year (CY) 2019, but continued to have challenges filling vacancies.

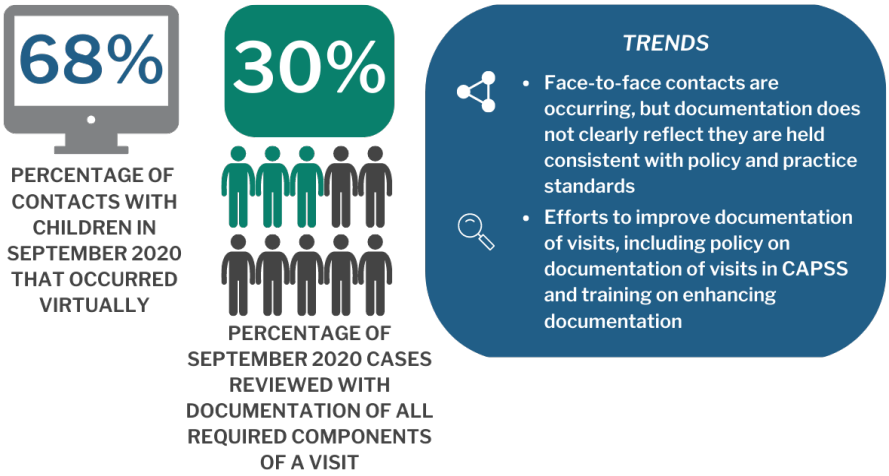
Figure 6. Key Developments: Staffing and Caseloads



Visits Between DSS Case Managers and Children

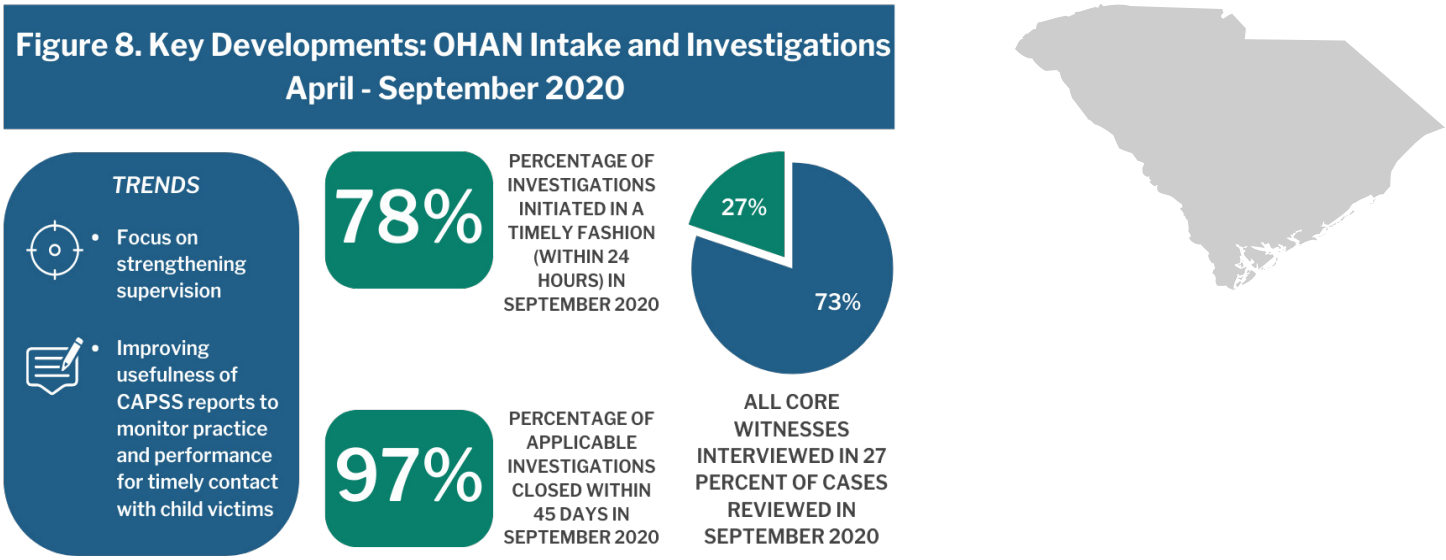
DSS case managers are expected to have face-to-face contact with children in foster care and their caregivers at least once a month, and at least half of those contacts must be in the child's residence. The purposes of these contacts are to assess the child's status in multiple areas including safety, physical and emotional health, and to ensure that the child's needs are being met. The findings from a case record review once again support the reliability of CAPSS data as an indication of whether a contact between a case manager and a child occurred, but documentation of practices during these contacts shows that the interactions do not routinely meet the agreed upon standards for a visit. Even accounting for video calls, which made up the vast majority of contacts case managers had with children during this period, reviewers only found practices consistent with each required component of a visit in 30 percent of cases.

Figure 7. Key Developments: Case Manager Contacts and Visits with Children



Out-of-Home Abuse and Neglect Investigations

The work of screening and investigating allegations of abuse and neglect of children in foster care—completed by DSS's Intake Hubs[13] and Out-of-Home Abuse and Neglect (OHAN) unit—is a critical function of any child welfare system. OHAN caseloads continue to be unacceptably high. As of September 30, 2020, only three (19%) of 16 OHAN investigators had caseloads within the required limit of eight investigations, and nine (56%) investigators had caseloads over 125 percent of the required limit (meaning more than 10 investigations). Even while acknowledging that more investigators were needed, the cadre of staff carrying out the investigations of alleged abuse

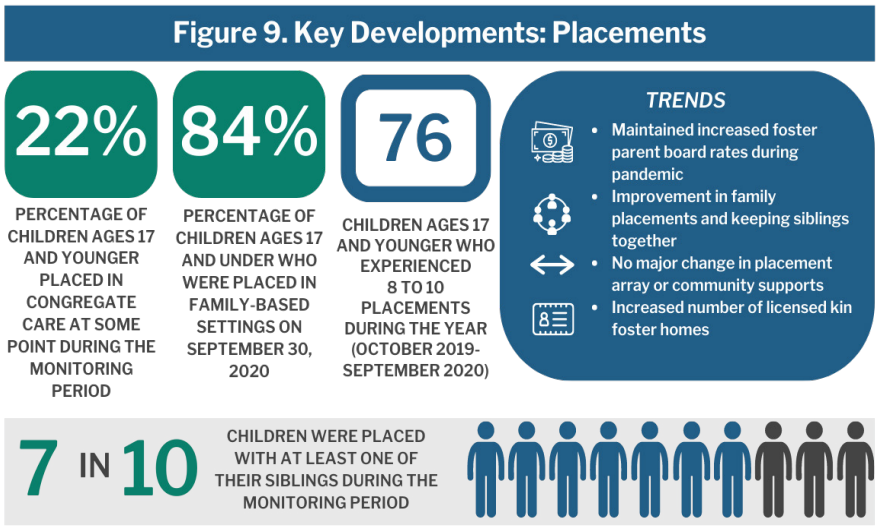


and neglect in out-of-home settings has become even smaller, with three new vacancies reported by December 2020. This is particularly problematic given that right now, OHAN workers are the only staff that consistently attempt to visit in person with children residing in facilities. In September 2020, 27 percent of investigations included contact with all necessary core witnesses, reflecting that practice improvements that the Department has committed to and wants to achieve are unattainable when staff workloads are not manageable.

Placements

When children are removed from their homes, it is imperative that they be placed in settings in which they are safe and supported. This means ensuring that children are in family-like environments, with kin and siblings, and in or close to their home communities whenever possible. The lower number of children in foster care and emphasis on placing children with kin has enabled a greater percentage of children to be placed in family settings, and with their siblings. In some cases, DSS has also been able to accelerate transitions from congregate care by beginning to use an intensive staffing process implemented in limited areas of the state over recent months. As of September 2020, 16 percent (654 of 4,053) of children resided in congregate care placements, compared to 18 percent (778 of 4,357) six months prior. Seventy-three percent (349 of 481) of children were placed with at least one of their siblings during the monitoring period, compared to 65 percent (530 of 813) in the prior period.

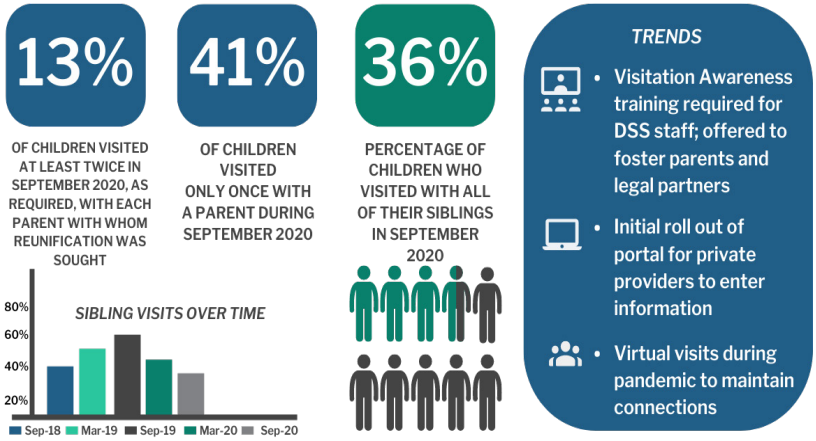
Despite an increased emphasis on kin placement and a reduction in the use of congregate care, many children continue to be moved through numerous placements during their time in foster care. Between October 1, 2019 and September 30, 2020, of all the children who experienced at least one placement move, more than 10 percent experienced five or more placements within the 12-month period. The lack of appropriate and stable placements has continued to mean that children are sometimes moved through a series of "emergency" placements—at times sent only to sleep for a few hours at a foster parent's home before returning to a DSS office early in the morning to await longer-term, stable placement. It has also meant that DSS has had to continue to rely on some placements, particularly some congregate placements, that it knows to be inadequate, unsupportive, or unnecessarily punitive. Combined with a safety oversight process that is very much still developing and without clear authority to act decisively to address issues when they arise, this too often leaves children in situations that are not necessarily safer or more appropriate than the ones from which they have been removed.



Family Visits

Even allowing for virtual visits during the COVID-19 pandemic, the vast majority of children in foster care were not afforded the required contacts with family members again during this period. In a review of cases of children with a permanency goal of reunification, or without a permanency goal yet established by the Family Court, in the month of September 2020, there was documentation of the at least twice-monthly required visits with their parent—either in-person, by video, or by telephone—for only 13 percent of children. Over half (60%) of children had no documented contact of any kind with any parent during the month. Similarly, during September 2020, there was documentation of contact—either in-person or virtual—between siblings in foster care who are not residing together for only 36 percent of siblings.

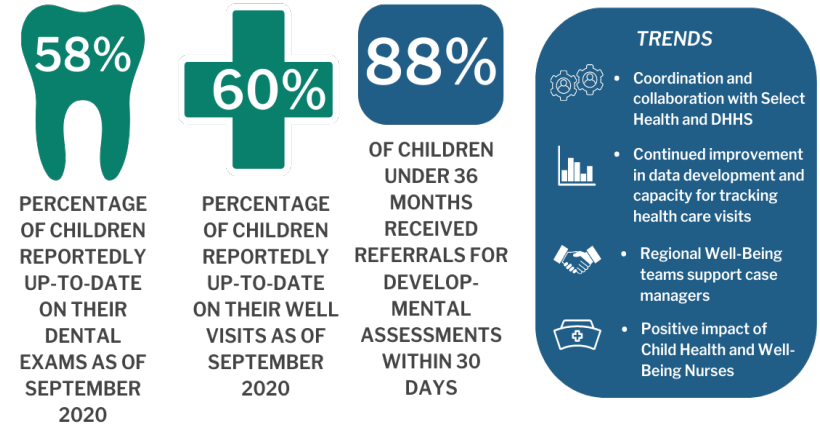
Figure 10. Key Developments: Family Time



Health Care

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 further refine its systems for collecting and analyzing health care data, and for collaborating on medically complex cases. The important work of engaging community providers and agency partners in informing policy and implementation decisions has also continued. Though many more resources are still needed, the work of a small but strong team of nurses has allowed for the continued development of DSS's Child Health and Well-Being infrastructure. DSS staff are now able to access additional, timely data on the health status of children in foster care, and there is greater recognition of and focus by case managers on the importance of understanding and meeting children's health care needs. The next phase of DSS's care work will require continued innovation, ongoing collaboration, and an intensified focus on the development of quality community-based services and supports for children.

Figure 11. Key Developments: Health Care



FUTURE DIRECTIONS

KEY RECOMMENDATIONS

It continues to be the Co-Monitors' strong belief that there are foundational action steps that DSS can and should undertake right away to establish the conditions for such change, and to be positioned to effectively capitalize on an infusion of budgetary resources when it comes. These include:

- **Thorough and intensive training of all staff in DSS's model of case practice:** System transformation requires a shared vision across multiple systems—public, private, and family—of what is expected in practice to meet the safety, well-being, and permanency needs of the children and families. 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 build the skills needed to practice in accordance with this model and for building structures and supports for family-centered engagement is too superficial. Staff have been provided with introductory training on GPS, and plans are in place to implement further supervisor and case manager training. Integration into practice across the agency will require 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. Though this work was identified as a priority in the Co-Monitors' very first report, and consistently since, and DSS has reported that development and rollout has been underway for the past two years, the Co-Monitors have yet to see the type of robust training needed to translate the model into practice across the agency and have seen limited evidence of a shift in the way families experience the child welfare system. The GPS Case Practice Model is a framework that organizes the values and skills necessary to help change this. Its impact is dependent upon the quality of training and coaching, manageable caseloads, quality supervision, and a diverse array of accessible services.

- **Leveraging private agency partnerships through contractual relationships that foster meaningful collaboration:** Given the constructive relationship between the current leadership team and its private sector partners, there is significant opportunity for work between DSS and private providers that re-directs funding currently devoted to restrictive congregate care placements to a full array of community-based resources and other supports. The Co-Monitors believe DSS needs to expedite work in this area and capitalize on the interest of providers in fully participating in the reform so that children and families can be provided with the supports they need.

- **Work with public agency partners to increase availability of and access to high-quality community-based services:** The success of the GPS Case Practice Model will also depend upon DSS's ability to work closely across agencies to develop more robust and accountable responses to children and families who come to the attention of DSS. This includes DHHS, DMH, DDSN, and DJJ, among others. While DSS is the legal custodian of children in foster care, it is not the whole of the state's child welfare system or intended response to children and families. A key part of this collaboration must be the assessment and enhancement of available community-based services throughout the state, and the building of a shared understanding of the types of underlying needs that can be met through partner agencies, without the need for the involvement of the child protection system. There is wide agreement among stakeholders throughout the state that accessibility and

availability of services to families must be improved. DSS has reported that it has begun this work as part of its efforts to prevent children from being removed from their parents' custody, in accordance with the federal Family First Prevention Services Act (FFPSA), and we encourage the Department to continue these efforts, with a focus on access to services for children in foster care custody. [14]

- **Continuing to focus on building a strong infrastructure:** DSS must continue to shore up and strengthen the infrastructure necessary to support and sustain change. Despite significant improvements since the beginning of this reform in systems for collecting and utilizing data, DSS's data capacity remains limited in some key areas, and additional staff are still needed. There remain areas of the FSA for which reporting capacity is still being developed.[15] As previously reported, the Department continues to need to build robust Continuous Quality Improvement (CQI) processes that are 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. These CQI processes 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.

- **Piloting new strategies in particular areas of the state:** The Co-Monitors continue to recommend that DSS consider a phased approach to implementing some of its reform strategies. Such an approach is often most effective because it allows for local innovation, adaptation, and engagement prior to full rollout, and could be particularly effective at a time when the COVID-19 pandemic has created significant barriers to statewide implementation. Intensive work in specific areas of the state—to integrate practice and culture change, and implement ambitious strategies like Child and Family Teaming (CFT) and re-designed partnerships with private providers that allow for more tailored services—can foster examples of what effective change can look like, and allow for the development of local champions. These can be important assets in full implementation.

- **Maximizing the use of all available sources of funding:** We continue to urge DSS to ensure it is making use of all state and federal revenue sources, especially in light of the state revenue shortfalls that will likely result from the COVID-19 pandemic. Though, as previously discussed, adequate funding is not a magic solution for all needed system improvements, securing and sustaining sufficient fiscal resources are key to DSS's ability to implement the critically important actions to which it is committed on behalf of South Carolina's children and families. Given the economic impact the COVID-19 pandemic has had on South Carolina's economy, DSS must work aggressively with the Medicaid agency to identify any possible way to maximize Medicaid resources and ensure that no possible federal money or support is left on the table. Budget realities also demand that DSS scrutinize the contracts it has in place to examine performance and ensure funds are deployed effectively and in support of the reform goals and improved outcomes for children, youth, and families.

- **Continuing to build a kin-first culture:** The Department has begun the important work of shifting emphasis toward kin caregivers. In the past two years, DSS has updated its placement policies, developed a provisional kin licensure process, expedited a permanent kin licensure process, and increased the number of children placed with kin. DSS staff at all levels are increasingly aware of the preference for placement with kin. We support DSS's work in this area and encourage continued attention on the value of kin placement for children and youth in DSS custody.

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] For example, states receive 50% reimbursement for eligible administrative costs; 75% for eligible training costs; and reimbursement at the Medicaid matching rate (FMAP rate, see below) for board payments. (Section 474(a)(3)(A),(B),(C),(D), and (E) of the Social Security Act.)

[5] To see the bill, go to: https://www.scstatehouse.gov/sess123_2019-2020/bills/3411.htm.

[6] To see child population data from Kids Count Data Center, go to: https://datacenter.kidscount.org/data#SC/2/0/char/0.

[7] Data provided by DSS.

[8] To see DSS's data dashboard, go to: https://dss.sc.gov/about/data-and-resources/foster-care-dashboard/.

[9] Categories included herein reflect data provided by DSS.

[10] See Background section from the prior monitoring report, available at: https://cssp.org/wp-content/uploads/2020/10/Michelle-H.-v.-McMaster-October-2019-March-2020-Report.pdf.

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

[12] To see the Executive Order, go to: https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-03-13%20FILED%20Executive%20Order%20No.%202020-08%20-%20State%20of%20Emergency%20Due%20to%20Coronavirus%20(COVID-19).pdf.

[13] Intake Hubs are regionally based call centers responsible for receiving reports of alleged abuse and neglect of children and vulnerable adults, conducting phone interviews, assessing the risk of harm, and collecting relevant information from callers in order to create an intake and make screening decisions as to whether or not the information provided meets South Carolina's criteria per state law and DSS Policy for what is defined as abuse and neglect of a child or vulnerable adult.

[14] South Carolina has been identified as one of four jurisdictions that will be participating in Thriving Families, Safer 1Children: A National Commitment to Well-Being, a national program being developed by the federal Children's Bureau, Casey Family Programs, the Annie E. Casey Foundation, and Prevent Child Abuse America to "create more just and equitable systems to break harmful multigenerational cycles of trauma and poverty to benefit all children and families." For more information, see: https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=219&sectionid=2&articleid=5652.

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