



Michelle H., et al. v. McMaster

**PROGRESS REPORT:
SOUTH CAROLINA
DEPARTMENT OF SOCIAL
SERVICES**

**April - September 2022:
*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 4,000 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 must be met and sustained before exiting the lawsuit. The 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 finalized some of the requirements that were agreed upon in a 2015 Interim Relief Order, including ending the practice of allowing children in state custody to stay overnight in hotels and DSS offices; placing children age 6 and under in group facilities; and leaving children in juvenile detention facilities simply because there are not appropriate foster care placements. The FSA appointed two independent Co-Monitors—Paul Vincent and Judith Meltzer—to support the state in implementing the 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 monitoring report covering the period April to September 2022.

What does DSS do?

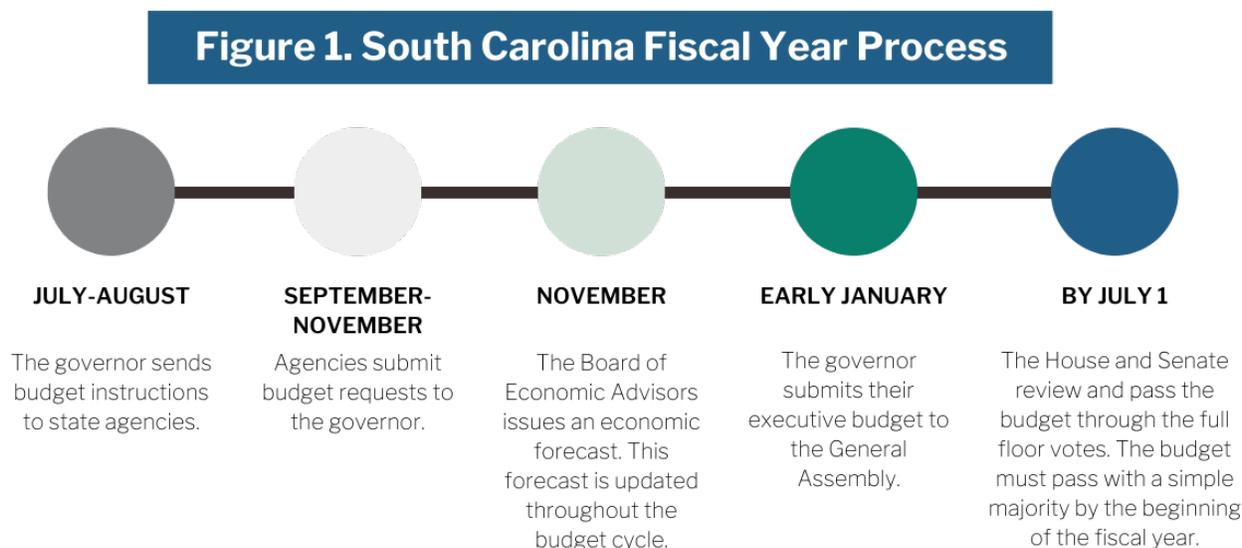
DSS is a cabinet level agency that oversees investigations of child abuse and neglect, preventative services for families, foster care, adoptions, child care, and child support, as well as Adult Protective Services (APS) and economic assistance programs such as Temporary Assistance for Needy Families (TANF), which provides financial assistance to families experiencing poverty and programs to support employment, and the 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 Lowcountry. The FSA pertains to children who have been involuntarily removed from the custody of their parents or guardians due to abuse or neglect, and taken into the custody of DSS, known as “Class Members.” These children reside in foster care or “out-of-home” care. DSS, along with its private agency partners, is responsible for caring for them on a temporary basis, preferably while the children remain with their siblings and reside with family members or someone else known to their family, while working to ensure children can return home to their parents or guardians (referred to as reunification). When reunification is not possible, DSS must pursue another permanent, long-term plan, 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 operates as an “open-ended” matching fund source, meaning states are entitled to receive reimbursement for a portion of every dollar spent on behalf of an “eligible” child.¹ The child’s eligibility depends 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 eligible for reimbursement pursuant to Title IV-E, reimbursement is allowed only for specific portions of certain eligible expenses. Because nearly all children in foster care are eligible for medical insurance through 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 services as part of therapeutic foster care. State funding for foster care in South Carolina is allocated annually 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.



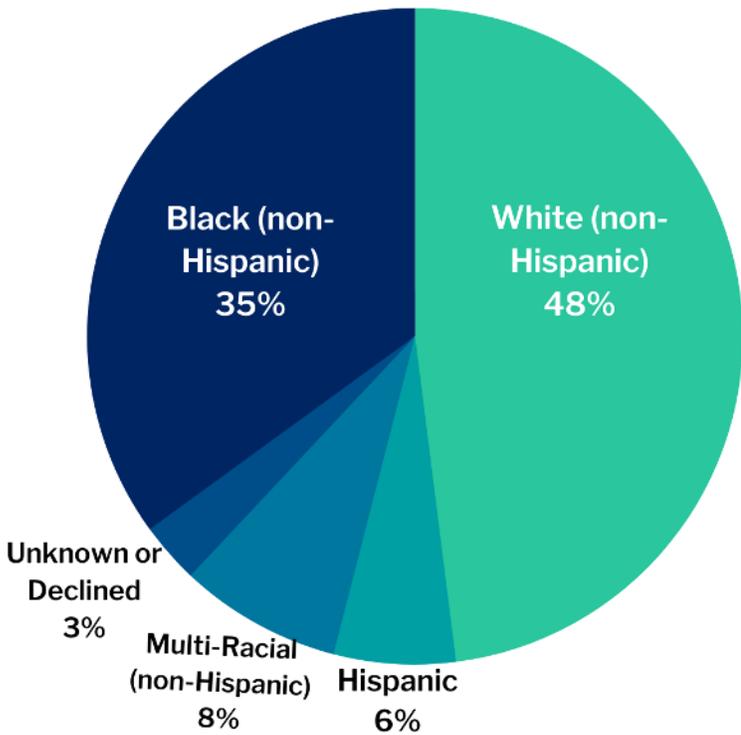
Who Does DSS Serve?

Between April and September 2022, 5,412 children were in foster care at some point. DSS regularly publishes data about children in out-of-home care on its public website.² 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.

On September 30, 2022, the last day of the monitoring period, there were 3,794 Class Members in foster care. The foster care population declined from the end of the prior monitoring period (on March 31, 2022, there were 3,973 Class Members in foster care). This decline highlights the overall trend of a decreasing foster census, which DSS leadership reports is a result of its ongoing strategy to reduce family separations and expedite reunification when it is determined that children need to be removed from their families and brought into foster care.

Included on the following pages are some demographics of the foster care population broken down by geography, race, age, and gender.

Figure 3. Population of Children in DSS Custody, by Reported Race
as of September 30, 2022



NOTE: With regard to Figure 3, following federal guidelines, DSS does not record Hispanic or Latinx as a category in race data published on its public dashboard but does capture Hispanic ethnicity as a category in placement data. To be inclusive of this population in analysis of race data, the Co-Monitors calculated the Hispanic category as those children who were marked as a “Yes” for Hispanic ethnicity, including 13 children who were indicated as both Black and Hispanic, 14 children who were indicated as both Multiracial and Hispanic, and 131 children who were indicated as both White and Hispanic.

Figure 4. Population of Children in DSS Custody, by Reported Age
as of September 30, 2022

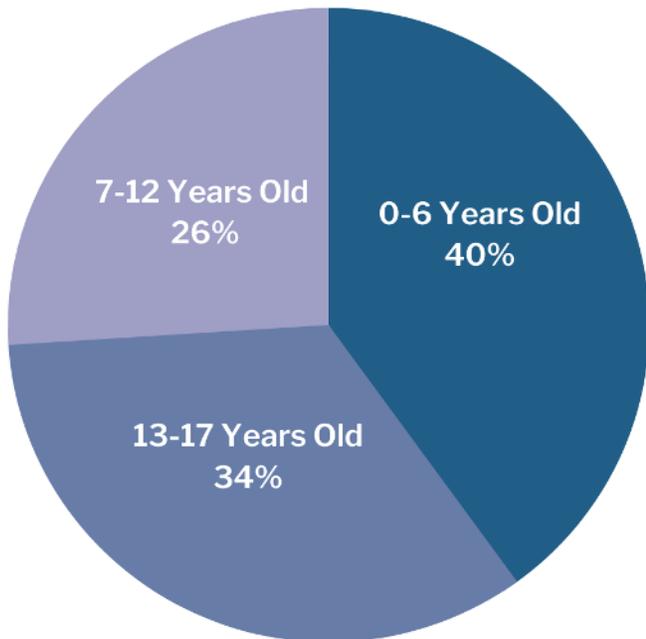
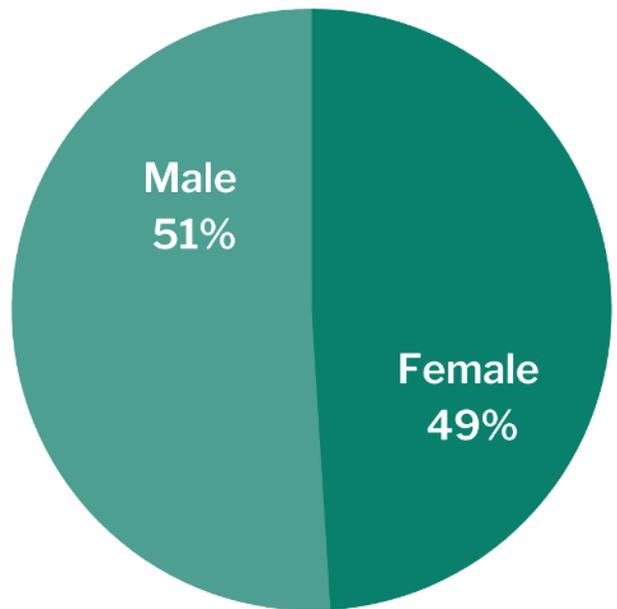


Figure 5. Children in DSS Custody, by Reported Gender
as of September 30, 2022



NOTE: With regard to Figure 5, CAPSS data provided by DSS indicate that on September 30, 2022, the gender identity of 4 children (<.01%) in foster care was unknown. DSS reports that on September 26, 2022, the Department introduced additional categories to CAPSS to more accurately capture information regarding gender identity and sexual orientation.



SYSTEMS REFORM PROGRESS UPDATES APRIL - SEPTEMBER 2022

The monitoring report covers DSS's performance between April 1 and September 30, 2022, a period of transition for DSS. In July 2022, after years of being woefully under-resourced and grappling with the challenges caused by the COVID-19 pandemic, DSS received an influx of additional funding from the South Carolina General Assembly, signaling new confidence in the leadership provided by DSS Director Michael Leach. Two months later, Director Leach appointed Emily Medere Deputy Director for Child Welfare. Together, these changes have translated into a renewed energy for the Department.

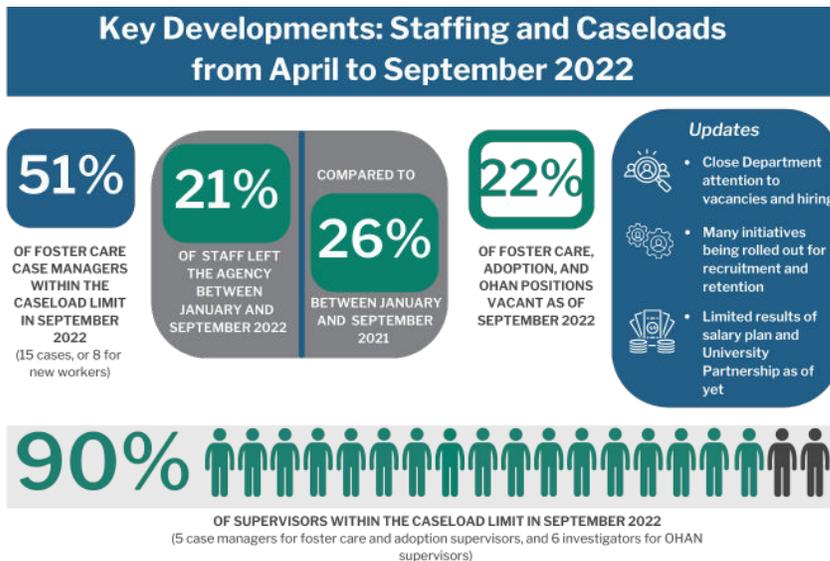
DSS has continued to make slow but steady progress in some key areas including a reduction in the number of children brought into foster care; lower staff turnover; continued placement of children with kin and outside of congregate care; and improved compliance with supervisor and Foster Care case manager caseload limits (toward the end of the monitoring period). There were also improvements in Out-of-Home Abuse and Neglect (OHAN) investigative practices with respect to contact with core witnesses and appropriate decisions to unfound investigations. DSS has also made significant progress over the last few months in building its internal capacity to measure performance. This capacity has been strengthened both by the regular use of a data dashboard to track progress on seven high-priority measures, and by the transition of quality assurance staff from an outsourced function at the University of South Carolina to a team within DSS.

Much work remains. An inadequate array of placements and community supports; a need for more robust agency partnerships, including with the Medicaid agency and the private Managed Care Organization (MCO) Select Health; and a lack of full integration of the Guiding Principles and Standards (GPS) practice model into the culture of the agency continue to pose barriers for DSS in meeting the requirements of this lawsuit.³ DSS agrees that the time is ripe to refine its assessment and teaming process, and orient it, as designed, to be family-driven and focused on meaningful case planning and assessment in collaboration with families' informal and formal supports. Assessment of child and family needs must go beyond focusing on behavioral symptoms that make it challenging to find a placement to learning what underlies children's behavior. Once identified, those underlying needs must be met with highly individualized services. As described below, there are many areas in which DSS is focusing its efforts, but, as of yet, changed outcomes and better experiences for the thousands of children and families that have been involuntarily brought into its custody remain to be seen.



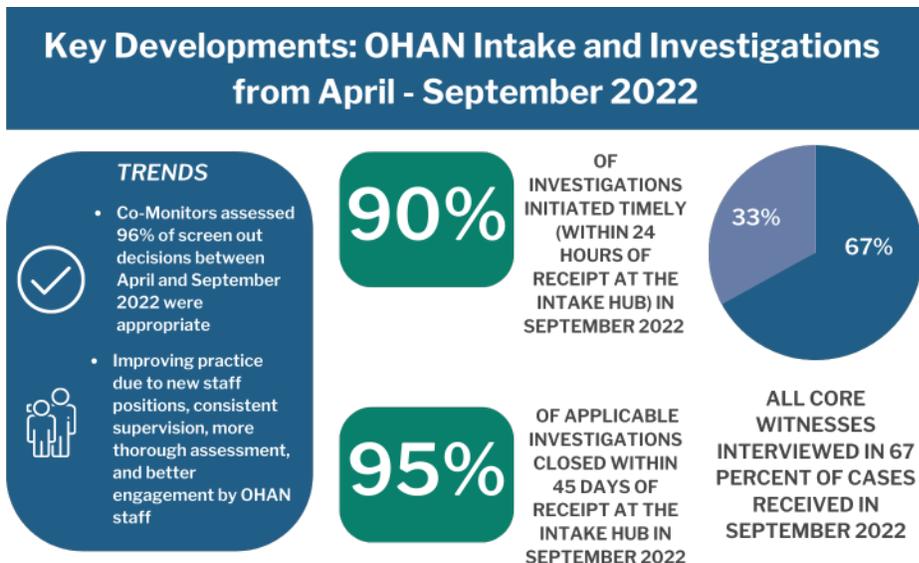
Staffing and Caseloads

A sufficient, qualified, and trained workforce is vital to ensuring case managers have the capacity to serve families well. High caseloads for case managers continued to challenge DSS during this monitoring period. However, the infusion of resources for hiring that went into effect in July 2022 resulted in some important accomplishments. For the first time this period, workloads for 90 percent of all supervisors across all program areas—Foster Care, Adoptions, and OHAN—were within caseload limits, the result of a purposeful strategy to fill all supervisory vacancies. In the months since receiving the budget allocation, DSS has increased recruitment and retention efforts, including hiring blitzes, university partnerships, and hiring “regional support teams” that can be deployed to counties experiencing spikes in caseloads. As of September 2022, there was a vacancy rate of 22 percent. There has been continued improvement since and as of the end of January 2023, DSS reports that the vacancy rate had fallen to 16 percent, with 106 out of 625 positions vacant.⁴



Out-of-Home Abused and Neglect Investigations

Children are separated from their families by the State based upon a determination that they are not safe with their families. Ensuring children’s physical and emotional safety while in DSS custody is a primary obligation of the State. Though challenges remain in the DSS unit which investigates allegations of abuse and/or neglect of children in DSS custody by a foster parent or staff of a facility, there has been significant improvement with respect to the requirement that investigators interview all core witnesses during an investigation. There were also improvements in OHAN investigative practices with appropriate decisions to unfound investigations. Increased staff positions, more consistent supervision, improved information gathering and assessments, and improved engagement by OHAN staff with children during investigations are important contributors. As of January 20, 2023, the OHAN unit was allocated a total of 33 investigator positions, five supervisor positions, and two program assistant positions.

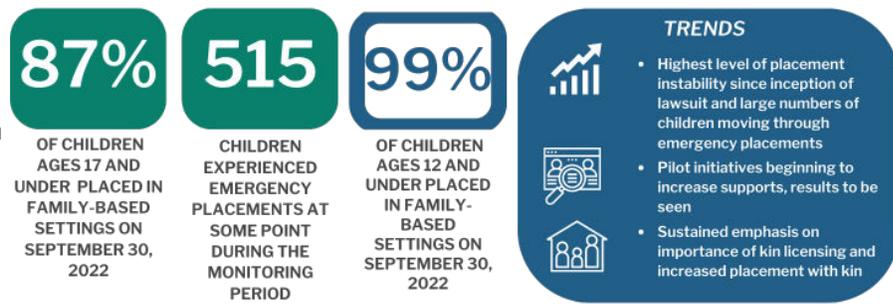




Placements

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 lack of adequate resources in South Carolina has made the maintenance of an appropriate number and array of placements and supports for children in foster care throughout the state a challenge for DSS since the inception of this lawsuit. Towards the end of the monitoring period, DSS began collaborating with private providers to implement an initiative that will enable kin to become Therapeutic Foster Care providers, providing them increased access to services to support the children in their homes.

Key Developments: Placements from April - September 2022



For now, though, children in foster care are experiencing the highest degree of placement instability since the inception of the lawsuit. Children are frequently placed in short-term placements that are not equipped to meet their needs, leading, only, to the need for further moves. Children without long-term placements sometimes spend daytime hours in DSS offices or other holding places and nights moving between foster homes or congregate care facilities that are unfamiliar to them. This makes it difficult or impossible for children to maintain long-term relationships, visit with family, consistently attend school, engage in supportive services, or experience stability of any kind.⁵ DSS recognizes this as an urgent problem to be solved.



Family Time

Since the start of the lawsuit, DSS has woefully underperformed with respect to the maintenance and support of connections between children in foster care and their family members. A team of quality assurance staff, including DSS and the Co-Monitors, have historically conducted twice-yearly reviews of a statistically valid sample of children’s records to determine performance on DSS’s minimum twice-monthly standard for children’s contacts with their parents and minimum once-monthly standard for contact between siblings in foster care and living apart. Results from these reviews showed performance far below policy and practice expectations. Upon agreement of all Parties, the twice-yearly reviews have been suspended for at least four monitoring periods, or until DSS reports that its corrective strategies have begun to produce a substantial increase in performance. DSS reports it is focusing on this area of practice as a key priority and expects improvements to take hold as case manager vacancies are filled, caseloads are reduced, placements are made closer to children’s home communities, and data tracking capacity increases. Full implementation of the GPS practice model and strengthened engagement with children and their families will be vital.



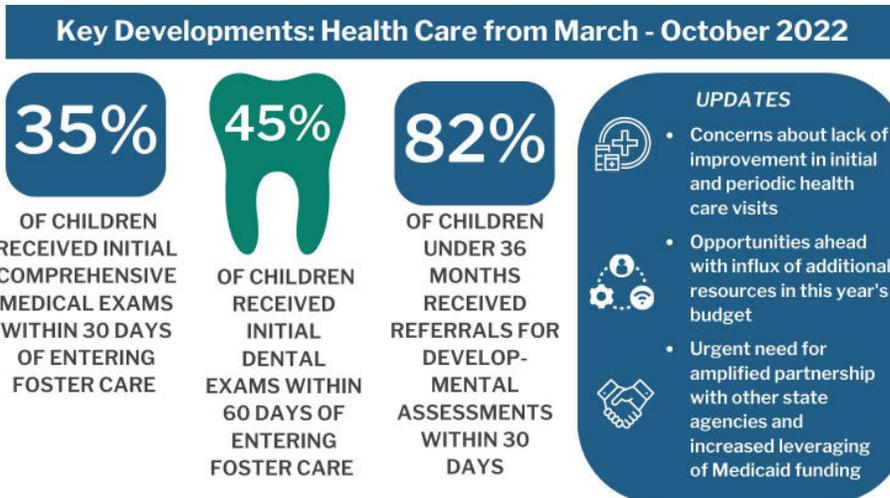
Health Care

Child welfare systems must be able to quickly identify children’s physical, mental, and behavioral health needs, provide high quality preventative and acute care, track care delivery, and communicate health care information to families, caregivers, and partner agencies.

DSS’s small team of nurses and data coordinators continued to work to the limits of their capacity to manage and document the health care needs of children in foster care this monitoring period.

Despite much attention to meeting children’s health care needs over the past several years, the percentage of children receiving their medical and dental visits according to prescribed timelines have not improved. DSS’s health care infrastructure has been further strained by vacancies in its already limited nursing staff and nationwide nurse shortages, which have made it difficult for the team

to fill open positions as quickly as hoped. It is critical that DSS work with its state agency partners like DHHS and the South Carolina Department of Mental Health (DMH), community partners, and its private MCO partner (Select Health) to implement the Health Care Improvement Plan entered by the Court more than four years ago to improve performance in this area.



OPPORTUNITIES AHEAD

The coming months will be crucial for DSS, as it continues to fill newly allocated positions and more fully implement important strategies and obligations that have long been sidelined. Perhaps most importantly, DSS will need to continue the work it has begun to translate the values and principles embodied by state leadership into real practice change at all levels, and with all system partners—changing the way children and families are treated; how they experience the DSS child welfare system; and the safety, permanency, and well-being outcomes that result. In addition, though the General Assembly has provided badly needed additional resources, leadership, including from the Governor’s office, DSS, the South Carolina Department of Health and Human Services (DHHS), and other state agencies will need to work together to secure additional support for community-based services that remain in short supply. These include wraparound, crisis intervention, and other community-based services particularly for kin caregivers; maximizing the use of Medicaid-funded mental health services to fill gaps in the current service array;⁶ and recruiting and retaining more foster parents, particularly kin caregivers to better address placement needs of Class Members.

Both the Co-Monitors and DSS will be closely tracking progress over the next monitoring period—the first full period to be assessed after the deployment of Fiscal Year (FY) 2022-2023 funding. With new leadership, energy, focus, and additional resources now in place, it is a shared expectation that these changes will begin to take hold over and be reflected in performance data and outcomes.



ENDNOTES

¹ The Title IV-E program was established by HR. 3434 Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272).

² To see DSS's data dashboard, go to: <https://dss.sc.gov/about/data-and-resources/foster-care-dashboard/>.

³ DSS's GPS practice model was designed in recognition of the need for a culture that 'engage[s], encourage[s], honor[s], and support[s] families.' To see the GPS practice model, go to: <https://dss.sc.gov/media/2746/gps-practice-model-final.pdf>.

⁴ This number includes staff who were hired but had not started yet; DSS reports that many of the open positions are in the final stage of interviewing and conducting background checks.

⁵ For more information, see Joint Review of Children Concurrently Involved with South Carolina Department of Juvenile Justice and Department of Social Services at <https://cssp.org/wp-content/uploads/2022/10/FINAL-Children-Concurrently-Involved-with-SC-DJJ-and-DSS-Joint-Review-Findings-002.pdf>.

⁶ As discussed in prior reports, many jurisdictions throughout the country have been successful in leveraging Medicaid funding to support children, youth, and families involved with the child welfare system. This can involve the use of the Medicaid benefits plan and/or Waivers to provide or increase the provision of key home- and community-based services including intensive care coordination and high-fidelity Wraparound, Mobile Crisis Response and Stabilization, different types of Therapeutic Foster Care, mentoring, and family peer support, among other services. For more information see <https://www.casey.org/medicaid-funded-services/>; <https://www.casey.org/media/20.07-KM-LFOF-Medicaid-waiver-authorities.pdf>. In addition, on January 4, 2023 the Centers for Medicare and Medicaid Services (CMS) issued guidance offering states the option of utilizing Medicaid managed care programs to reduce health disparities and address unmet health-related social needs (HRSNs), such as housing instability and nutrition insecurity, using supports offered "in lieu" of a service or setting (ILOS) covered under the Medicaid state plan. South Carolina has begun exercising this option. For more information go to: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd23001.pdf>.

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