



Mar 2, 2022

Submitted via email to Governor Abbott, Commissioner Masters, Commissioner Young, and legislative leaders

Re: Leveraging key recommendations of the Expert Panel authorized by the parties to *M.D. v. Abbott* to support children in foster care and address children's mental health earlier to avoid CPS involvement

Dear Governor Abbott, Commissioner Masters, Commissioner Young, and legislative leaders:

On [January 11, 2022](#), an independent panel of experts selected by the state and the plaintiffs in the *M.D. v. Abbott* foster care lawsuit released "[Recommendations for Improving Texas' Safe Placement and Services for Children, Youth, and Families](#)," which were aimed at reducing and ultimately eliminating the number of children without placement in Texas foster care. Children may be without a foster care placement for many reasons, but most are older youth with significant mental health challenges. The Expert Panel recommended action steps over the short and longer-term, noting that "addressing the immediate needs of these children will only be a band-aid unless solutions address the roots of the problem." On February 14, 2022, the Department of Family and Protective Services (DFPS) and the Health and Human Services Commission (HHSC) filed [their response](#) to the Panel's recommendations, outlining steps they will commit to taking and a timeline.

The Expert Panel recommendations should serve as the state's roadmap for reducing the number of children without placement. Overall, we are pleased to see the agencies embrace the recommendations. We encourage the Governor and legislative leaders to provide the agencies with any needed funding and guidance to implement the recommendations now, rather than requiring Texas children to wait for the next legislative session. Additionally, we urge the state to implement a few recommendations differently than currently envisioned to reduce duplication and prevent children from entering foster care because they cannot access needed mental health services. Finally, during the next legislative session, the Legislature should appropriate funding or pass new legislation to support the long-term goal of ending the children without placement crisis. We have appended a [chart](#) summarizing the Expert Panel recommendations, the joint response by HHSC and DFPS, and our perspective on the agencies' response.

We look forward to working with you to ensure the safety and well-being of Texas kids. We will follow up with a more in-depth analysis of some of these recommendations in the coming weeks and months. Success will require

strong cross-system action and the full support of legislative and executive leadership as well as foster care providers, judges, legal advocates, and policy advocates.

With strong leadership and collaboration, we can keep more families safely together; give more children in foster care the healing, stabilizing experience of living with a well-prepared foster family or at least a safe, supportive, and licensed facility; and ensure that more Texas youth are on a path to grow up healthy, succeed in school, and eventually live as independent, thriving young adults in our communities.

We applaud DFPS and HHSC for their thoughtful response and their commitment to act now on many recommendations.

DFPS and HHSC committed to acting on most Panel recommendations, including developing guiding principles, continuing to improve the children’s mental health system of care, expanding treatment foster care and other targeted placements, and more.

The Panel emphasized the need to stop blaming, traumatizing, and dehumanizing kids in foster care and start helping them heal. We are glad the agencies have already begun to **develop guiding principles** based on values that ensure children in foster care are treated with grace and dignity. We hope Texas leaders will commit to ensuring that policies, practices, and future reforms reduce disproportionality and disparities for children of color and LGBTQ+ youth.

We commend the agencies’ intention to improve the **children’s mental health system of care** using the [Texas System of Care Framework](#). This framework is designed to improve access to and the quality of existing children’s mental health services and expand the array of community-based services and support available to children and youth with serious mental health challenges and their families. We are grateful for the state agencies’ commitment to the Texas System of Care’s interagency efforts because this step is key to supporting children’s mental health in foster care *and* preventing children from entering care due to unmet mental health needs.

We also appreciate DFPS’ ongoing efforts to expand placement options for children in foster care. For example, we strongly support the Panel’s recommendation to develop a plan to increase the availability of **Treatment Foster Care**. In response, DFPS promised a meeting with foster care providers to create that plan. DFPS has been working to increase the availability of Treatment Foster Care since the agency expanded age eligibility in January 2020. This change was codified through [SB 1896 \(87R\)](#) by Senator Lois Kolkhorst, which we strongly supported during the 2021 legislative session. Further, a portion of the \$35 million appropriated to DFPS during the 2021 second special session to address the children without placement crisis has already been allocated to develop treatment foster care capacity around the state. Additionally, through SB 1896 implementation, DFPS is working to develop foster care placements for special populations, like pregnant and parenting youth and sex trafficking survivors, and—over the last several years—has been gathering [good data](#) to inform its **targeted foster care recruitment** strategy.

The Governor and Legislature should authorize the agencies to act now on several recommendations.

For any recommendations that require either new funding or a stamp of approval from the Governor or legislative leaders, it will be crucial for them to act now rather than making kids wait until next year's legislative session and continue to suffer.

In response to the Expert Panel recommendations, DFPS and HHSC said they needed a legislative initiative to **pool funding to pay for non-traditional, trauma-informed services** that support families, kinship caregivers, and foster parents. The Governor and Legislative Budget Board should authorize DFPS and HHSC to use Texas-specific [guidance](#) and [recommendations](#) to pool otherwise siloed funding streams to support a broader range of children's mental health services. These funding models would increase access to individualized services that better address the needs of children and families.

The Governor and legislative leaders should provide emergency funding to immediately advance the recommendation to **place more kids with grandparents, aunts and uncles, and other kinship care providers** – similar to when state leaders took action outside of the legislative session to increase caseworker salaries during the [CPS emergency in 2016](#). We strongly support the Panel recommendation to raise reimbursement rates for [kinship caregivers](#). However, a kinship rate increase requires a Texas statutory change. In 2017, when foster care was an emergency item for Governor Abbott, the Legislature passed [HB 4](#) to allow “unverified kin”¹ under 300 percent of the federal poverty level to receive up to half the [daily basic foster care rate](#)² for one year or, at the department's discretion, for up to 18 months. The Legislature adopted this change, recognizing that children placed with members of their extended family or close family friends tend to have [better outcomes](#) than children in foster care despite kin receiving less financial support.³ For example, children placed with kin are more likely to reunify with their families and experience less trauma than children placed with foster parents who are strangers. The very real costs associated with caring for a child should not be a barrier to family members caring for children in CPS custody. Further, with [foster care rate modernization](#), we anticipate that the level system that the state's current kinship rate is tied to will be eliminated in favor of more individualized service packages based on children's needs. Given the future changes to foster care rate methodology, the Legislature should revisit the best strategy to continue financially supporting kinship caregivers next session. In the meantime, supplemental funding could boost support for kinship caregivers and connect more children to family members, thereby reducing strain on the foster care system.

¹ There are two types of kinship caregivers for children in DFPS conservatorship - verified and unverified. Verified kinship caregivers are kin who have become licensed foster parents. These caregivers receive the same support as other foster families. Unverified kin receive less support than foster families. Before 2017, unverified kinship caregivers received no financial support from DFPS, although they may have been eligible for [other benefits](#) like TANF, SNAP, and Medicaid.

² Although kinship caregivers only receive half the foster care rate, it is important to note that foster families do not receive the total foster care rate. Some of that foster care rate goes to the foster family, while CPAs keep some as ["retainage"](#) for training and recruitment.

³ Unverified kin receive some support from CPS caseworkers but do not have the robust support Child Placing Agencies (CPAs) offer the foster families they license.

State leaders should re-envision some recommendations to reduce duplication and keep children safely in their own homes and out of foster care.

The Panel recommendations seek to ensure that children without placement receive the mental health services they need. However, we urge state leaders to implement the recommendations in a manner that supports all children in foster care *and* strengthens the mental health service array for all Texas children. Developing needed children's mental health services across Texas will ensure more children grow up healthy and fewer enter foster care in the first place.

Mental health services should be available to *all* children experiencing mental health crises, [especially if the services will keep children out of foster care altogether](#). Although only five to seven percent of children enter foster care because of unaddressed mental health challenges, [35 percent of children without placement entered foster care because they could not access needed mental health services](#). Therefore, to fully address the challenges facing children without placement, Texas should first ensure that children are not entering foster care because they lack access to the services they need.

Additionally, as the agencies work together to implement recommendations, they should be careful not to duplicate work but build on existing resources, as explained further below.

Considerations for HHSC

The Panel recommended giving children without placement greater access to the [Residential Treatment Center \(RTC\) Project](#) and the [YES Waiver](#). However, we recommend an alternative approach. Although the availability of mental health services may vary across the state, children in foster care should already have access to RTCs and other mental health services because they are enrolled in Medicaid STAR Health. State leaders developed the RTC Project and the YES Waiver so that children with serious mental health concerns can access treatment and services that are not available in their community. These programs should be protected and adequately funded, and they should continue to focus on the population they were both created to support: children *at risk of entering foster care* because they cannot access needed mental health services. As a strategy to promote the mental health of children in foster care and those without a placement, state leaders could seek additional Medicaid waiver opportunities, such as a 1915(i) waiver,⁴ or amend the Medicaid State Plan to cover intensive mental health services.

⁴ Texas has used [1915\(j\) Home and Community Based Service \(HCBS\) Waivers](#) to serve people with intellectual and developmental disabilities. However, some states, like [Illinois](#), have used HCBS Waivers to serve youth with significant mental health challenges. Unlike the 1915(c) YES Waiver in which eligibility is based on the child's need rather than their family's income, 1915(i) Waivers are only available for children eligible for Medicaid, making this a good option for children in foster care who are categorically eligible for Medicaid STAR Health. Further, unlike 1915(c) waivers, 1915(i) waivers do not have to be cost-neutral. Gaining a federal funding match through a 1915(i) waiver might be a more efficient and attractive option given that Texas is using state funds to pay providers to place some children in unlicensed foster care. For example, currently, at least one child without placement in Texas is under a court-ordered contract to receive services at a rate of \$2000 per day.

The Panel recommended identifying ways to expand **partial hospitalization programs** and negotiating priority access for children without placement. Children enrolled in Medicaid, both within and outside foster care, should soon have access to partial hospitalization services through their Medicaid health plan as a result of SB 1177 (see below). In partial hospitalization programs, children receive mental health treatment throughout the day and return home at night, providing a more intensive level of community-based treatment without taking children away from their biological, foster, or adoptive families. We agree that HHSC should take steps to identify and expand partial hospitalization programs and other intensive community-based services. However, we believe the state's goal should be to ensure that *all* children who need these services have access to them, not just children without placement. This approach will prevent children from entering foster care, help those in foster care remain stable in their current placement with a relative or foster family, and avoid children being without placement in the first place.

We agree with HHSC that **accelerating the implementation of [SB 1177 \(86R\)](#)** is an effective strategy to increase access to partial hospitalization programs for Texas children. SB 1177, passed in 2019, allows Medicaid health plans to offer evidence-based, medically appropriate mental health services “in lieu of” – or as a cost-effective substitute to – inpatient hospitalization.⁵ For instance, in many cases, partial hospitalization or intensive outpatient programs achieve better results and are more tailored to a child's needs than costly inpatient hospitalization. This new law is intended to give children and families that choice. Implementation of SB 1177 has been delayed from its intended rollout. HHSC explained that they cannot commit to a timeline to expand “in lieu of” services because they are [waiting for federal Centers for Medicare and Medicaid Services \(CMS\) approval](#). While HHSC is in discussions with CMS to resolve questions about certain services that may be offered “in lieu of” inpatient hospitalization, we encourage HHSC to immediately implement the services that CMS does *not* have questions about so that Medicaid health plans can begin offering valuable, cost-effective alternatives to inpatient care. As HHSC continues implementation of SB 1177, the agency should explore strategies to eliminate delays to the [planned expansion](#) of Phase 2, which will include services offered “in lieu of” outpatient mental health services.⁶

Considerations for DFPS

The Panel recommended **building on [Parent Collaboration Groups \(PCGs\)](#) to develop [family partner support services](#)**. DFPS committed to acting on this recommendation. However, rather than reinventing the wheel and recreating family partner programs, PCGs at DFPS should partner with [HHSC's Peer Services Unit](#). DFPS can build on existing family partner support services in Texas, generally provided at Local Mental Health Authorities. Family partners offer support services for the caregiver of a child receiving mental health services, and the agencies should work together to strengthen their role in child protection.

⁵ Instead of adding new services into Medicaid managed care, which is a cost to the state, these “in lieu of” services are added as cost-neutral substitutes to give children, families, and providers options in treatment while allowing flexibility at the managed care organization (MCO) level.

⁶ Phase two services – services in lieu of outpatient services – include multisystemic therapy and functional family therapy, which provide in-home support for at-risk youth and their families.

State lawmakers should take action during the 2023 session.

Over the interim and next session, there are many actions the Legislature should take to advance DFPS and HHSC's efforts to end the children without placement crisis. If any actions are authorized before the 2023 Legislative session to pool funding for mental health services or increase financial support for kinship caregivers, legislators should extend those actions. If no actions are authorized before the next session, Legislators should address both of these recommendations through appropriations or legislation.

In line with the Panel recommendation to develop a *children's mental health system of care*, legislators should hold HHSC, DFPS, and other state child-serving agencies accountable for achieving this goal. Texas' mental health system of care must be well-coordinated both statewide and at the local level and must be aligned with child and family needs. Accountability can start by requiring all state agencies that receive funding for children's mental health services to adhere to [Texas' System of Care](#) guiding principles and family-centered approach.

The Panel recommended developing *youth and young adult peer support and family partner support services*. Legislators should improve access to these services by advancing proposals to:

- Ensure that more youth with mental health challenges can benefit from [youth and young adult peer specialists](#) who have a unique capacity to help a youth recover based on their shared experiences and understanding; and
- Ensure parents and caregivers of children with mental health needs can leverage the skills of [family partner supports](#) to more successfully navigate the mental health treatment process.

The Panel urged Texas to *accelerate efforts to implement the [Family First Prevention Services Act \(FFPSA\)](#)*, particularly regarding the creation of higher-quality facilities referred to as Qualified Residential Treatment Programs (QRTPs). This recommendation aligns with FFPSA's goal to improve the quality and safety of foster care facilities across the country. FFPSA promotes quality foster care services by restricting state use of federal child welfare dollars only to children placed with families, in facilities serving special populations (such as trafficking victims or teen parents), and in QRTPs. Unfortunately, Texas likely cannot accelerate efforts to implement FFPSA because the Legislature allocated [Family First Transition Act](#) funding to legislatively-created pilot programs that are currently guiding the implementation of FFPSA and do not offer the agency much flexibility. Beyond the Panel recommendation, FFPSA implementation should also prioritize keeping children safe with their families and out of foster care. To better leverage the FFPSA to reduce the number of children without placement, and implement the Panel recommendation to accelerate FFPSA implementation, legislators should:

- Appropriately change statute or budget riders to reflect any lessons learned as part of the analysis DFPS is conducting of the FFPSA pilot projects during the interim to prevent children from entering foster care and develop QRTPs in Texas;

- Reevaluate the “at risk of foster care” candidacy definition set by budget rider and statute to ensure federal funds can support services for children at risk of entering foster care because of a mental health challenge;
- Invest state funding in evidence-based mental health services for children, and evaluate whether or not services eligible for federal child welfare dollars under FFPSA are excluded from the state’s FFPSA pilots;
- Use the [SB 1575](#) Workgroup recommendations as a guide for improving the quality of RTCs and the practices used by the state to place children in RTCs. RTCs are designed to support the mental health needs of children, especially children with more significant mental health concerns. But the goal should be to serve children and then transfer children in foster care to homes with families as soon as possible. The legislatively commissioned SB 1575 Workgroup, led by the [Children's Commission](#), will release its recommendations before the 2023 legislative session.

If you have any questions or would like to meet to discuss these recommendations and our analysis further, please contact our staff:

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