

February 11, 2022

**HHSC/DFPS Joint Response to the Report of the Expert Panel on
Recommendations for Improving Texas' Safe Placement and Services
for Children, Youth and Families**

Introduction:

The Health and Human Services Commission (HHSC) and Department of Family and Protective Services (DFPS) received and reviewed the "Recommendations for Improving Texas' Safe Placement and Services for Children, Youth, and Families: A Report of the Expert Panel Appointed under the Collaboration Agreement of the Texas Department of Family and Protective Services, Texas Health and Human Services Commission and the *M.D. v. Abbott* Plaintiffs", dated January 10, 2022.¹

Pursuant to the October 22, 2021 agreement, HHSC and DFPS participated in a meeting on January 21, 2022 for discussion of the report. At the conclusion of the meeting, HHSC and DFPS agreed to evaluate all the recommendations and tender this Joint Response to the Court Monitors by February 11, 2022.

Below are HHSC and DFPS' responses and relevant proposed timelines addressing each of the 23 recommendations under Section 4 of the Expert Panel's report. HHSC and DFPS tender each of these responses voluntarily, in the spirit of collaboration. HHSC and DFPS incorporate, by reference, all terms of the October 22, 2021 collaboration agreement into this Joint Response. HHSC and DFPS have developed each of the following specific responses and timelines in good faith based on the best information available at the time of this Joint Response; however responses and timelines are subject to change. All responses and timelines are expressly limited by and subject to the agencies' statutory authority and available funds. Specific items may require legislative action or relevant appropriations for implementation.

¹ HHSC and DFPS recognize that the panel's report and all recommendations were made pursuant to and are subject to the October 22, 2021 "Agreement between HHSC, DFPS, and Plaintiffs' Counsel to Collaborate" which includes the following specific agreements:

- The Expert Panel recommendations are advisory.
- While defendants commit to cooperate in good faith with the Expert Panel, and consider the recommendations, defendants are not obligated to accept the recommendations in whole or in part, and the recommendations will impose no obligations upon defendants.
- No privileges or protections are waived by defendants by virtue of disclosure to the Expert Panel or any of its members.
- Nothing in (the October 22, 2021 agreement) expands or limits the scope of this litigation or any injunctive orders entered in it.

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HHSC and DFPS Responses to Expert Panel Recommendations:

1) Develop Guiding Principles, Page No. 14

The state should immediately adopt a set of shared values and principles that guides their work in eliminating the problem of children without placement.

HHSC/DFPS Response: HHSC and DFPS are working together to implement this recommendation.

Timeline: HHSC and DFPS expect to have the Guiding Principles completed by no later than February 28, 2022.

2) Strengthen Infrastructure and Accountability, State Interagency Team, Page No. 15

Within 30 days, assign a single high-level leadership position from DFPS to lead a dedicated state interagency team to be accountable for the elimination of children being placed in unlicensed care.

HHSC/DFPS Response: HHSC and DFPS are working together to implement this recommendation.

Timeline: HHSC and DFPS have already selected interagency team members and are making plans to hold an initial team meeting. DFPS intends to assign a single high-level leadership position by February 28, 2022.

3) Strengthen Infrastructure and Accountability, Clinical Coordinators, Page No. 15

Within 30 days, DFPS to assign Clinical Coordination Services to all youth in unlicensed care. A Clinical Coordinator position should be hired or designated within the DFPS Services Unit for every region.

DFPS Response: DFPS intends to implement this recommendation.

Timeline: DFPS should be able to hire the Clinical Coordinators by March 30, 2022.

4) Strengthen Infrastructure and Accountability, Lead and Lag Measures, Page No. 16

Within 60 days, develop a cadence of accountability within the state interagency team to measure “lead and lag measures” and establish targets for reduction of children in unlicensed care.

HHSC/DFPS Response: HHSC and DFPS intend to work together to implement this recommendation.

Timeline: The HHSC and DFPS Commissioners intend to assign this task to the state interagency team (See Response #2, above). DFPS already has a data system of accountability with lead and lag measures that it intends to share with the state interagency team for it to build upon to further develop a cadence (clear goals, assessing outcomes, decision-making authority within the interagency team, tracking progress, and feedback) with established targets for reduction. The timeline will need to be established by the interagency team but both Commissioners will stress that implementation of this recommendation is a top priority.

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5) Strengthen Infrastructure and Accountability, Data Analysis, Page No. 16

Within 90 days, the DFPS and HHSC Interagency Team should complete an analysis of the data on the more than 2100 times a child experienced an out-of-state placement during the 2021 calendar year.

HHSC/DFPS Response: HHSC and DFPS intend to work together to implement this recommendation.

Timeline: The HHSC and DFPS Commissioners intend to assign this task to the state interagency team (See Response #2, above). DFPS already has the data for out-of-state placements for youth for 2021 calendar year and is currently doing an in-depth analysis that will be shared with the interagency team. The timeline will need to be established by the interagency team but both Commissioners will stress that implementation of this recommendation is a top priority.

6) Strengthen Infrastructure and Accountability, DFPS Community Liaison, Page No. 17

Within 90 days, assign a DFPS Community Liaison to the four regions that have the highest number of children without placement, to build community capacity to prevent placements in unlicensed care and to transition children out of unlicensed care into safe settings.

DFPS Response: DFPS intends to implement this recommendation.

Timeline: DFPS should be able to hire Community Liaisons by March 30, 2022.

7) Strengthen Infrastructure and Accountability, DFPS Technical Assistance, Page No. 17

Within 90 days, increase the capacity of the DFPS leadership team by gaining technical assistance with an external consultant (or team) with direct experience in child welfare systems.

DFPS Response: DFPS intends to implement this recommendation.

Timeline: DFPS has already secured the consultant and anticipates having an initial meeting to begin working on this recommendation by March 15, 2022.

8) Expand family-based placement options and access to flexible non-placement resources, Turning Point Program, Page No. 18

Within 30 days, HHSC/DFPS and the state interagency team should develop a plan to expand the Turning Point Program to additional counties with the greatest need.

HHSC/DFPS Response: HHSC and DFPS intend to implement this recommendation. HHSC is leading implementation and has already taken steps to develop this recommended plan. HHSC will update the interagency team and DFPS will keep staff updated about the availability of these services.

Timeline: Areas of greatest need and cost implications are actively being determined and an expansion plan is expected to be finalized by March 1, 2022. After the plan is finalized, implementation would be subject to available funds and is expected to take at least six months, to include identification and training of one or more providers willing and able to safely begin providing services. The procurement for STAR Health is ongoing and may impact timelines.

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9) Expand family-based placement options and access to flexible non-placement resources, Pool of Funds, Page No. 18

Within 60 days, DFPS and the state interagency team should designate a pool of funds in each region that can be accessed quickly for trauma-informed services and supports to families, kin caregivers and foster parents beyond traditional outpatient therapies.

HHSC/DFPS Response: DFPS and HHSC (by virtue of participation in the interagency team) intend to implement this recommendation to the extent possible with existing resources and legislative authority.

Timeline: A legislative initiative would be needed to authorize the creation of this recommended pool of funds for each region to provide trauma-informed services and supports to families. If approved by the legislature, funding would likely be available on or after September 1, 2023 (Start of next state fiscal biennium).

10) Expand family-based placement options and access to flexible non-placement resources, Treatment Foster Care, Page No. 18

Within 60 days, DFPS and the state interagency team should reach out to providers to develop a plan for increasing the availability of treatment foster care (TFC), starting in regions with the highest number of children in unlicensed care.

DFPS Response: DFPS intends to implement this recommendation.

Timeline: DFPS intends to hold an initial meeting with providers to develop a plan to increase the availability of TFC by March 30, 2022.

11) Expand family-based placement options and access to flexible non-placement resources, Partial Hospitalization, Page No. 19

Within 60 days, HHSC should identify the existing partial hospitalization programs with the highest potential for expansion and begin negotiation to procure more slots.

HHSC Response: HHSC intends to explore provider capacity to expand partial hospitalization services that may exist across the state. To implement capacity expansion, HHSC would need additional resources. Additionally, HHSC has already requested approval from CMS for Managed Care Organizations (“MCOs”), including the STAR Health MCO, to be able to provide partial hospitalization as an in-lieu-of service (See Response #18, below).

Timeline: HHSC will include this assessment of provider capacity for partial hospitalization in the mental health plan in 90 days. HHSC requested approval from CMS for MCOs, including the STAR Health MCO, to be able to provide partial hospitalization as an in-lieu-of service in response to prior legislation (SB 1177, 86th Texas Legislative Session). HHSC’s understanding is that HHSC’s request is pending and CMS has not yet approved this request. HHSC asked CMS again on January 31, 2022 for a status update on this request.

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12) Expand family-based placement options and access to flexible non-placement resources, YES Waiver, Page No. 19

Within 60 days, HHSC should develop a plan to increase access to the YES Waiver for youth in unlicensed care. Stakeholders noted that when they can access the YES Waiver, families and children benefit from the Wraparound approach, specialized therapies, and supports for parents.

HHSC Response: HHSC intends to develop a plan to increase access to the YES waiver program.

Timeline: Although the panel has recommended issuance of this plan within 60 days, HHSC believes it is more appropriate to release this plan within 90 days, the same time as the release of the anticipated larger children's mental health expansion plan.

13) Expand family-based placement options and access to flexible non-placement resources, Provider Workgroup, Page No. 19

Within 90 days, convene a provider working group with DFPS, HHSC and M.D. v. Abbott court monitors to begin to rebuild the relationships needed to address the immediate crisis and to create the capacity needed for the future.

HHSC/DFPS Response: HHSC and DFPS intend to work together to implement this recommendation.

Timeline: Monitor Kevin Ryan proposed that the provider work group retain one or more of the neutral experts who authored the recommendations and has proposed that the funding for the consultant fees could come from funds held in trust by the plaintiffs' counsel. Both HHSC and DFPS advised Mr. Ryan that this would be an acceptable arrangement. Mr. Ryan is pursuing the proposed arrangement with plaintiffs' counsel and the expert panel.

14) Expand family-based placement options and access to flexible non-placement resources, HHSC Residential Treatment Center, Page No. 20

Within 90 days, increase resources, access, and flexibility to the HHSC Residential Treatment Center (RTC) Project.

HHSC Response: HHSC has analyzed this recommendation and identified several short-term and long-term challenges related to the expansion of the RTC Project. Although HHSC has determined that it is not possible to increase resources, access, and flexibility within the panel's recommended 90-day timeframe, HHSC intends to develop a plan within 90 days to identify (1) specific challenges related to increasing resources, access, and flexibility to the RTC Project; and (2) options to overcome these challenges.

Timeline: HHSC intends to develop a plan within 90 days to identify (1) challenges related to increasing resources, access, and flexibility to the RTC Project; and (2) options to overcome these challenges. Work on this initiative will be incorporated into the larger Mental Health Plan.

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15) Eliminate barriers and expand the service array for children and families, Medicaid mobile crisis,
Page No. 20

In the first quarter of 2022 HHSC to explore Medicaid option for mobile crisis, Recently, CMS announced a new Medicaid option for supporting community-based mobile crisis intervention services for individuals with Medicaid that is a great opportunity for Texas.

HHSC Response: Mobile crisis is an existing service currently available in Texas Medicaid through the Mental Health Rehabilitation benefit. HHSC intends to explore the feasibility of Medicaid options for mobile crisis beyond existing services. Expansion of these services would be subject to available funding and CMS approval. HHSC is also working to expand the Turning Point program that includes mobile crisis services.

Timeline: HHSC has already begun exploring these options, consistent with the panel's recommendation to do so by the "first quarter of 2022". HHSC estimates that it will take approximately 45 days to establish whether the new state plan option is feasible in Texas and to identify a plan for implementation. **If pursued, the timeline to obtain CMS approval and then implement the additional services would be estimated at 14-20 months.** All timelines may be impacted by the need for a State Plan Amendment ("SPA") and may require legislative approval due to maintenance of effort requirements.

16) Eliminate barriers and expand the service array for children and families, Family First Prevention Act & QRTPs, Page No. 21

In the first quarter of 2022, accelerate efforts to implement the federal Family First Prevention Services Act so that Texas-based providers who are ready to be licensed as qualified residential treatment programs (QRTPs) can launch.

HHSC/DFPS Response: DFPS is directed under SB 1896 to develop QRTPs as part of its ongoing continuum of care. Moreover, DFPS and HHSC were already working together on the rate model development in support of a QRTP pilot.

Timeline: HHSC, with input from DFPS, recently developed a rate model for DFPS for QRTP rates, which DFPS is using to determine the rate for its QRTP pilot. DFPS anticipates posting open enrollment for the pilot within this first quarter of calendar year 2022.

17) Eliminate barriers and expand the service array for children and families, Targeted Placement Options, Page No. 21

Within the next 6 months, develop a means of recruiting and contracting for targeted placement options that meet the specific needs of children at risk of being in unlicensed placement.

DFPS Response: DFPS intends to implement this recommendation with input from the Provider Working Group.

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Timeline: DFPS intends to meet with the provider working group and individuals with lived experience to begin developing a means of recruiting and contracting for targeted placement options no later than June 1, 2022.

18) Eliminate barriers and expand the service array for children and families, Phase One Medicaid expansion, Page No. 21

On or before September 2022, HHSC should establish Medicaid expansion through continued efforts with CMS to get Phase One Medicaid expansion services approved and available.

HHSC Response: HHSC intends to continue to pursue efforts to establish “in lieu of” services through CMS. In October 2021, HHSC requested CMS approval to implement certain Phase One services, including Partial Hospitalization Services, Coordinated Specialty Care Services, and Intensive Outpatient Program Services. HHSC has not yet received a final response to this request. Once CMS approval is received, HHSC intends to begin adopting MCO contract amendments and ensuring other implementation steps are taken including system changes, training staff, updating materials, identifying service providers, and educating providers and members. Implementation of Phase Two in-lieu-of services is contingent on the cost effectiveness review, available funding, and approval by CMS.

Timeline: HHSC is unable to commit to establishment of these services by the panel’s recommended timeline of September 2022 because the services are dependent on CMS approval. HHSC asked CMS again on January 31, 2022 for a status update on the pending request. Once approved, HHSC estimates Phase One implementation could take 5-8 months and Phase Two implementation could take 16-19 months if determined feasible.

19) Eliminate barriers and expand the service array for children and families, Foster Care Modernization, Page No. 21

In the first quarter of 2022, accelerate, as is allowed by law, the Foster Care Modernization Project developed jointly by HHSC and DFPS.

HHSC/DFPS Response: HHSC and DFPS support the panel’s stated objective to “eliminate barriers and expand the service array for children and families” through the modernization of foster care rates.

Timeline: After analysis of this recommendation, HHSC and DFPS have determined that it is not possible to further accelerate the timelines of the Foster Care Rate Modernization Project. The timeline has already accelerated from the normal rate development cycle. After receiving DFPS’s “Foster Care Rate Modernization Report: Final Service Descriptions” (published on January 1, 2022), HHSC lacks sufficient information to perform the pro forma rate setting process. Due to the need to consult with providers and other stakeholders, HHSC understands that DFPS’ timeline of the referenced validation and refinement process in their report will produce answers to HHSC’s outstanding questions in March 2022. As a result of the time required to finalize the service descriptions with the input of stakeholders, HHSC’s ability to provide rate models by December 1, 2022 is currently considered to be at risk. Recognizing the importance of the rate modernization project, meetings are currently being held twice a week with a goal to continue to move the project forward.

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20) Develop a statewide children's mental health system of care, Page No. 22

Texas should begin immediately to identify the resources and coordination efforts needed to finally meet the mental health needs of children and youth.

HHSC/DFPS Response: HHSC and DFPS intend to work together on an improved statewide children's mental health system of care. Texas System of Care (TxSOC), is a statewide framework and approach to strengthen state and local efforts to weave mental health supports and services into seamless systems of care for children, youth, young adults, and their families. The goal is for all Texas children and youth to have access to high quality mental health care that is family- and youth-driven, community-based, culturally responsive, and sustainable. In 2013, 2017, and 2021, HHSC was awarded four-year cooperative agreements from the Substance Abuse and Mental Health Services Administration (SAMHSA) for SOC implementation. The current four-year TxSOC grant funding from SAMHSA totaling \$11.5 million began on August 31, 2021. HHSC intends to use these funds to improve mental health services for children and youth.

Timeline: HHSC believes it is appropriate to issue plans related to this recommendation within 90 days at the same time as the release of the anticipated larger children's mental health expansion plan.

21) Develop and strengthen child welfare practice to align with guiding principles and practice model, Kinship Care, Page No. 23

Beginning Immediately, DFPS should take steps to increase the use of and support for kinship care.

DFPS Response: DFPS intends to implement this recommendation and previously had taken steps to increase the use of and support for kinship care.

Timeline: DFPS is currently implementing.

22) Develop and strengthen child welfare practice to align with guiding principles and practice model, Family Group Conferencing, Page No. 24

Beginning 2022, DFPS should engage with an expert consultant on family team meetings to recalibrate and reinvigorate Texas' use of family group conferencing (FGC) as a key strategy for improving engagement of families and safety and permanence for children.

DFPS Response: DFPS intends to implement this recommendation.

Timeline: DFPS already has identified a potential expert consultant and anticipates an initial meeting to be held by March 30, 2022.

23) Develop and strengthen child welfare practice to align with guiding principles and practice model, Engagement of People with Lived Experience, Page No. 24

By the end of 2022, DFPS should create an action plan to expand engagement and co-creation efforts with individuals with lived experience.

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DFPS Response: DFPS intends to implement this recommendation.

Timeline: DFPS is currently implementing this recommendation through ongoing efforts and intends to have a plan prior to year-end.