

Progress of the Michigan Department of Human Services

Monitoring Report for *Dwayne B. v. Whitmer*
MODIFIED IMPLEMENTATION, SUSTAINABILITY, AND EXIT PLAN

ISSUED April 26, 2022

MISEP 20

JANUARY TO JUNE 2021

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Introduction

This document serves as the seventeenth report to the Honorable Nancy G. Edmunds of the United States District Court for the Eastern District of Michigan in the matter of *Dwayne B. v. Whitmer*, covering Period 20 (January 1, 2021 to June 30, 2021) under the Modified Implementation, Sustainability and Exit Plan (MISEP). On June 27, 2019, the State of Michigan and the Michigan Department of Health and Human Services (DHHS) and Children's Rights, counsel for the plaintiffs, jointly submitted to the court the MISEP, which establishes a path for the improvement of Michigan's child welfare system. Judge Edmunds entered an order directing implementation of the MISEP following its submission by the parties.

Judge Edmunds had previously approved an Initial Agreement among the parties on October 24, 2008, a subsequent Modified Settlement Agreement on July 18, 2011, and an Implementation, Sustainability and Exit Plan (ISEP) on February 6, 2016. DHHS is a statewide multi-service agency providing cash assistance, food assistance, health services, child protection, prevention, and placement services on behalf of the State of Michigan. Children's Rights is a national advocacy organization with experience in class action reform litigation on behalf of children in child welfare systems.

In sum, the MISEP:

- Provides the plaintiff class relief by committing to specific improvements in DHHS' care for vulnerable children, with respect to their safety, permanency, and well-being;
- Requires the implementation of a comprehensive child welfare data and tracking system, with the goal of improving DHHS' ability to account for and manage its work with vulnerable children;
- Establishes benchmarks and performance standards that the State committed to meet to address risks of harm to children's safety, permanency, and well-being; and
- Provides a clear path for DHHS to exit court supervision after the successful achievement and maintenance of Performance Standards for each commitment agreed to by the parties in the MISEP.

The sections of the MISEP related to monitoring and reporting to the court remain largely unchanged from the parties' prior agreement, as do the sections regarding Enforcement, Dispute Resolution, and Attorneys' Fees.

Pursuant to the MISEP, the court appointed Kevin Ryan and Eileen Crummy of Public Catalyst to continue to serve as the court's monitors, charged with reporting on DHHS' progress

implementing its commitments. The monitors and their team are responsible for assessing the state's performance under the MISEP.

Following the onset of the COVID-19 pandemic in Michigan and upon agreement of the parties, on March 19, 2021, Judge Edmunds entered a "Stipulated Order Regarding Commitment Modifications due to COVID-19 to the 01/01/2021 - 06/30/2021 Reporting Period of the MISEP," which recognized the potential impact of the health crisis on implementation of the MISEP.¹

At a status conference on January 20, 2022, Judge Edmunds noted areas of sustained noncompliance and required the Monitors to work with the parties and submit in April 2022 a corrective action plan developed to bring Michigan into compliance with the Court's orders. This report to the Court accompanies the Monitors' simultaneous submission to the Court of a corrective action plan.

This report reflects the status of Michigan's reform efforts as of June 30, 2021. Defined as MISEP Period 20, this report includes progress for the first half of 2021. In the interest of providing the Court with validated performance information as quickly as possible, the parties agreed that this report by the Monitors would consist primarily of a Table setting forth the Monitors' assessment of MISEP performance by Michigan during Period 20.

Summary of Progress and Challenges

See Appendix B, detailing the State's performance in MISEP Periods 17, 18, 19 and 20.

In addition, at the conclusion of MISEP 20, the monitoring team identified multiple commitments eligible for movement based on DHHS' performance during the period. The MISEP allows that once DHHS has satisfied the Designated Performance Standard for certain commitments at the end of one reporting period, as validated by the monitors, the commitment is eligible to be moved to Section 5 of the MISEP (To Be Maintained). Five commitments meet these criteria: CPS Investigations and Screening, Screen Outs (6.12.a); Worker-Child Visits, One Visit Per Month (6.21.b); Worker-Parent Visits, Two Visits During the First Month (6.22.a); Support for Transitioning to Adulthood, YAVFC (6.36.a); and Support for Transitioning to Adulthood, Permanency (6.37). The monitors recommend to the court and the parties that these provisions be moved to "To Be Maintained."

Demographics

DHHS produced demographic data from January 1, 2021 to June 30, 2021. DHHS data indicate that there were 10,235 children in custody as of June 30, 2021. Of the children and youth in care on June 30, 2021, 477 youth (4.7 percent) were enrolled in the Young Adult Voluntary Foster Care

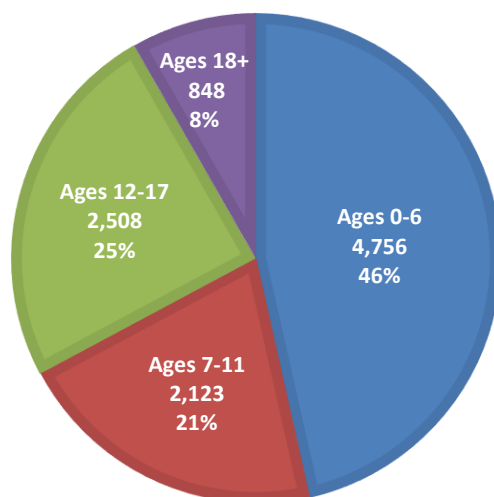
¹ See Appendix A for a copy of the Stipulated Order.

(YAVFC) program. During the reporting period, 1,902² children and youth were placed in foster care and 2,480³ children and youth exited care. DHHS served 12,715⁴ children during the period.

Though young children aged zero to six years make up the largest portion (4,756 or 46 percent), Michigan continues to have a large population of older youth in custody. Twenty-five percent (2,508) are 12 to 17 years of age and eight percent (848) are 18 years and over, as detailed in Figure 1.

Figure 1. Age of Children in Custody on June 30, 2021

Source: MiSACWIS, $n=10,235$



With regard to gender, the population is equally split—50 percent male and 50 percent female. With regard to race, the population of children was 31 percent Black/African American, 54 percent White, under one percent Native American, under one percent Asian, and under one percent Native Hawaiian or Pacific Islander. Additionally, 14 percent of children were reported being of mixed race. Seven percent of children were identified with Hispanic ethnicity and can be of any race. In contrast, the population of all children in the state of Michigan was 74 percent White, 17 percent African American, under one percent Native American, three percent Asian, and under one percent Native Hawaiian or Pacific Islander. Additionally, five percent of children in the state of Michigan were of mixed race, and nine percent of children were identified with Hispanic ethnicity and can be of any race.⁵

² The 1,902 entries include one child who entered care twice.

³ The 2,480 exits include two children who exited care twice.

⁴ The monitoring team identified 39 children who appeared twice in the during cohort file. All children appearing twice in the during cohort were served more than once during the reporting period.

⁵ Data on the race of all children in the state of Michigan was sourced from the U.S. Census Bureau, Population Division, 7/1/2019 Population Estimate.

Table 1. Race of Children in Custody on June 30, 2021 and Race of Children in the State of Michigan on July 1, 2019

Source: MiSACWIS, US Bureau of the Census

Race	Count (DHHS Custody)	Percent (DHHS Custody)	Count (State of Michigan)	Percent (State of Michigan)
White	5,547	54%	1,580,791	74%
Black/African American	3,127	31%	355,649	17%
Mixed Race	1,483	14%	115,292	5%
Native American	46	0.4%	18,426	0.9%
Asian	17	0.1%	--	--
Unable to Determine ⁶	12	0.1%	72,695	3%
Native Hawaiian or Pacific Islander	3	0.0%	1,080	0.1%
Total	10,235	100%	2,143,933	100%
Hispanic ethnicity and of any race	765	7%	182,284	9%

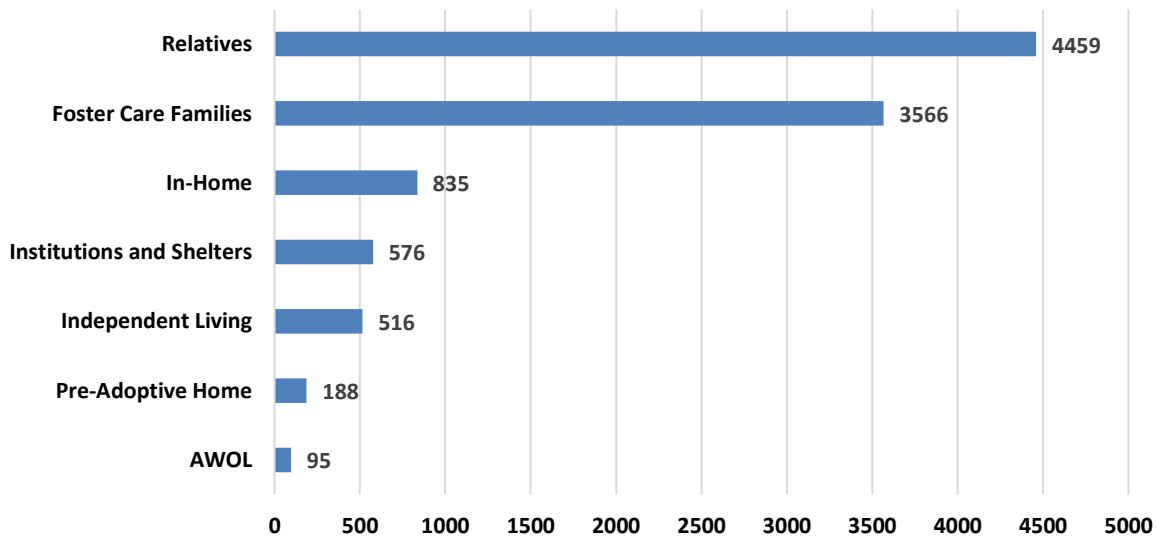
Note: Percentages do not add up to 100 due to rounding.

As the following figure demonstrates, 88 percent of children in DHHS' custody live in family settings, including relatives (44 percent), foster families (35 percent), with their own parents (eight percent), and in homes that intend to adopt (two percent). Of children in custody, 576 (six percent) live in institutional settings, including residential treatment and other congregate care facilities. Another 516 children (five percent) reside in independent living placements, which serve youth on the cusp of aging-out of care. The remaining one percent are AWOL.

⁶ Children with "Unable to Determine" and "No Match Found" entered as their race are pooled together in the "Unable to Determine" row.

Figure 2. Placement Types of Children in Custody on June 30, 2021

Source: MiSACWIS, $n=10,235$



Of the children in care on June 30, 2021, 35 percent were in care less than one year, while 19 percent were in care for more than three years.

Figure 3. Length of Stay of Children in Custody on June 30, 2021

Source: MiSACWIS, $n=10,235$

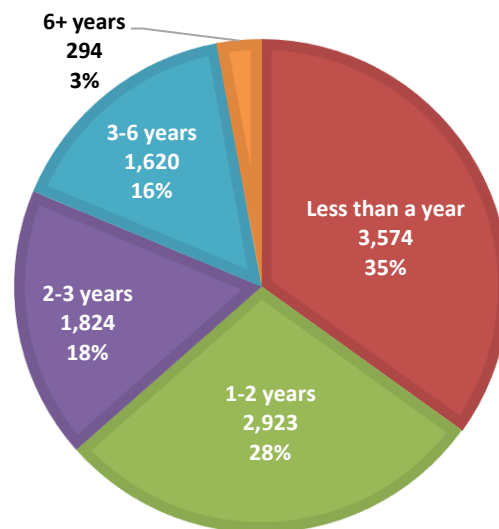


Table 2. Exits from Care by Exit Type, January 1, 2021 to June 30, 2021

Source: MiSACWIS

Exit Type	Frequency	Percent
Reunification	1,080	44%
Adoption	870	35%
Emancipation	285	11%
Guardianship	170	7%
Living with relatives	40	2%
Transfer to another agency	26	1%
Runaway	6	0.2%
Death of child	3	0.1%
Total	2,480	100%

Note: Percentages do not add up to 100 due to rounding.

As the table below demonstrates, of the children in custody on June 30, 2021, the majority (6,437 or 63 percent) had reunification as a federal goal. For the remaining children, 2,295 (22 percent) had a goal of adoption, 890 (nine percent) had a goal of APPLA, 459 (four percent) had a goal of guardianship, and 154 (two percent) had placement with a relative as a federal goal.

Table 3. Federal Goals for Children in Custody as of December 31, 2020⁷

Source: MiSACWIS

Federal Goal	Frequency	Percent
Reunification	6,437	63%
Adoption	2,295	22%
APPLA	890	9%
Guardianship	459	4%
Relative	154	2%
Total	10,235	100%

⁷ Children with a federal goal of APPLA and APPLA-E are pooled together for the “APPLA” row.

Summary of Commitments

Section	Commitment	Performance Standard	Period 20 Performance	Period 20 Achieved
5.1	DHHS shall conduct contract evaluations of all CCI and private CPAs providing placements and services to Plaintiffs to ensure, among other things, the safety and well-being of Plaintiffs and to ensure that the CCI or private CPA is complying with the applicable terms of this Agreement.	--	--	Will be included in the MISEP 21 Report
5.2	DHHS shall commence all investigations of report of child abuse or neglect within the timeframes required by state law. The designated performance standard is 95%.	95%	98.3%	Yes
5.3	95% of CPS caseworkers assigned to investigate allegations of abuse or neglect, including maltreatment in care, shall have a caseload of no more than 12 open investigations.	95%	99.7%	Yes
5.4	95% of CPS caseworkers assigned to provide ongoing services shall have a caseload of no more than 17 families.	95%	99.5%	Yes
5.5	95% of POS workers shall have a caseload of no more than 90 children.	95%	99.4%	Yes
5.6	95% of licensing workers shall have a workload of no more than 30 licensed foster homes or homes pending licensure.	95%	95.8%	Yes
5.7	DHHS shall require CCIs to report to DCWL all uses of seclusion or isolation. If not reported, DCWL shall take appropriate action to address the failure of the provider to report the incident and to assure that the underlying incident has been investigated and resolved.	--	--	Yes
6.1	DHHS shall ensure that of all children in foster care during the applicable federal reporting period, DHHS will maintain an observed rate of victimization per 100,000 days in foster care less than 9.67, utilizing the CFSR Round 3 criteria.	≤ 9.67	--	Due in MISEP 21
6.2	Until Commitment 6.1 is achieved, DHHS, in partnership with an independent entity, will generate, at least annually, a report that analyzes maltreatment in care data to assess risk factors and/or complete root-cause analysis of maltreatment in care. The report will be used to inform DHHS practice. The first report will be issued no later than June 1, 2020.	--	--	Yes
6.3	DHHS shall achieve an observed performance of at least the national standard (40.5%) on CFSR Round Three Permanency Indicator One (Of all children entering foster care in a 12-month period, what percent discharged to permanency within 12 months of entering foster care?)	≥ 40.5%	28.6%	No

Section	Commitment	Performance Standard	Period 20 Performance	Period 20 Achieved
6.4	DHHS will maintain a sufficient number and array of homes capable of serving the needs of the foster care population, including a sufficient number of available licensed placement within the child's home community for adolescents, sibling groups, and children with disabilities. DHHS will develop for each county and statewide an annual recruitment and retention plan, in consultation with the Monitors and experts in the field, and subject to approval by the Monitors. DHHS will implement the plan, with interim timelines, benchmarks, and final targets, to be measured by the Monitors based on DHHS's good-faith efforts to meet the final targets set forth in the plan.	--	--	Will be included in the MISEP 21 Report
6.5	Children in the foster care custody of DHHS shall be placed only in a licensed foster home, a licensed facility, pursuant to an order of the court, or an unlicensed relative.	100%	98.6%	No
6.6.a	Siblings who enter placement at or near the same time shall be placed together unless specified exceptions are met. The designated performance standard is 90%.	90%	71.2%	No
6.6.b	If a sibling group is separated at any time, except for the above reasons, the case manager shall make immediate efforts to locate or recruit a family in whose home the siblings can be reunited. These efforts shall be documented and maintained in the case file and shall be reassessed on a quarterly basis. The Monitors will conduct an independent qualitative review to determine compliance with this commitment. The designated performance standard is 90%.	90%	38.1%	No
6.7	No child shall be placed in a foster home if that placement will result in: (1) more than three foster children in that foster home, (2) a total of six children, including the foster family's birth and adopted children, or (3) more than three children under the age of three residing in that foster home. The designated performance standard is 90%.	90%	92.5%	Yes
6.8	Children shall not remain in emergency or temporary facilities, including but not limited to shelter care, for a period in excess of 30 days, unless specified exceptions apply. No child shall remain in a shelter in excess of 60 days. The designated performance standard is 95%.	95%	68.7%	No

Section	Commitment	Performance Standard	Period 20 Performance	Period 20 Achieved
6.9	Children shall not be placed in an emergency or temporary facility, including but not limited to shelter care, more than one time within a 12-month period, unless specified exceptions apply. Children under 15 years of age experiencing a subsequent emergency or temporary-facility placement within a 12-month period may not remain in an emergency or temporary facility for more than 7 days. Children 15 years of age or older experiencing a subsequent emergency or temporary-facility placement within a 12-month period may not remain in an emergency or temporary facility for more than 30 days.	95%	18.2%	No
6.10.a	When placing a child with a relative who has not been previously licensed as a foster parent, DHHS shall visit the relative's home to determine if it is safe prior to placement; check law enforcement and central registry records for all adults residing in the home within 72 hours following placement; and complete a home study within 30 days. The designated performance standard is 95%.	95%	43.1%	No
6.10.b	When placing a child with a relative who has not been previously licensed as a foster parent, a home study will be renewed every 12 months for the duration of the child's placement with the relative. The designated performance standard is 95%.	95%	37.9%	No
6.11	DHHS shall complete all investigations of reports of child abuse or neglect within the required timeframes. The designated performance standard is 90%.	90%	97.1%	Yes
6.12.a	DHHS shall investigate all allegations of abuse or neglect relating to any child in the foster care custody of DHHS. DHHS shall ensure that allegations of maltreatment in care are not inappropriately screened out for investigation. The Monitors will conduct an independent qualitative review to determine compliance with this commitment. The designated performance standard is 95%.	95%	95.5%	Yes
6.12.a	When DHHS transfers a referral to another agency for investigation, DHHS will independently take appropriate action to ensure the safety and well-being of the child. The Monitors will conduct an independent qualitative review to determine compliance with this commitment. The designated performance standard is 95%.	95%	87.1%	No
6.13	95% of foster care, adoption, CPS, POS, and licensing supervisors shall be responsible for the supervision of no more than five caseworkers.	95%	88.9%	No
6.14	95% of foster care workers shall have a caseload of no more than 15 children.	95%	93.1%	No
6.15	95% of adoption caseworkers shall have a caseload of no more than 15 children.	95%	76.2%	No

Section	Commitment	Performance Standard	Period 20 Performance	Period 20 Achieved
6.16	Supervisors shall meet at least monthly with each assigned worker to review the status and progress of each case on the worker's caseload. Supervisors shall review and approve each service plan. The plan can be approved only after the supervisor has a face-to-face meeting with the worker, which can be the monthly meeting. The designated performance standard is 95%.	95%	90.6% (Initial), 93.6% (Monthly)	No
6.17	DHHS shall complete an Initial Service Plan (ISP), consisting of a written assessment of the child(ren)'s and family's strengths and needs and designed to inform decision-making about services and permanency planning, within 30 days after a child's entry into foster care. The designated performance standard is 95%.	95%	86.2%	No
6.18	For every child in foster care, DHHS shall complete an Updated Service Plan (USP) at least quarterly. The designated performance standard is 95%.	95%	89.5%	No
6.19	Assessments and service plans shall be of sufficient breadth and quality to usefully inform case planning and shall accord with the requirements of 42 U.S.C. 675(1). To be measured through a QSR. The designated performance standard is 90%.	90%	73.2%	No
6.20	DHHS shall ensure that the services identified in the service plan are made available in a timely and appropriate manner to the child and family and shall monitor the provision of services to determine whether they are of appropriate quality and are having the intended effect. To be measured through a QSR. The designated performance standard is 83%.	83%	70.0%	No
6.21.a	Each child in foster care shall be visited by a caseworker at least twice per month during the child's first two months of placement in an initial or new placement. The designated performance standard is 95%.	95%	90.7%	No
6.21.a	Each child in foster care shall be visited by a caseworker at their placement location at least once per month during the child's first two months of placement in an initial or new placement. The designated performance standard is 95%.	95%	93.7%	No
6.21.a	Each child in foster care shall have at least one visit per month that includes a private meeting between the child and caseworker during the child's first two months of placement in an initial or new placement. The designated performance standard is 95%.	95%	92.6%	No
6.21.b	Each child in foster care shall be visited by a caseworker at least once per month. The designated performance standard is 95%.	95%	97.1%	Yes
6.21.b	Each child in foster care shall be visited by a caseworker at their placement location at least once per month. The designated performance standard is 95%.	95%	92.9%	No
6.21.b	Each child in foster care shall have at least one visit per month that includes a private meeting between the child and caseworker. The designated performance standard is 95%.	95%	91.0%	No

Section	Commitment	Performance Standard	Period 20 Performance	Period 20 Achieved
6.22.a	Caseworkers shall visit parents of children with a goal of reunification at least twice during the first month of placement, unless specified exceptions apply. The designated performance standard is 85%.	85%	85.2%	Yes
6.22.a	Caseworkers shall visit parents of children with a goal of reunification at least once in the parent's home during the first month of placement, unless specified exceptions apply. The designated performance standard is 85%.	85%	52.4%	No
6.22.b	Caseworkers shall visit parents of children with a goal of reunification at least once a month, following the child's first month of placement, unless specified exceptions apply. The designated performance standard is 85%.	85%	73.6%	No
6.23	DHHS shall ensure that children in foster care with a goal of reunification shall have at least twice-monthly visitation with their parents, unless specified exceptions apply. The designated performance standard is 85%.	85%	59.1%	No
6.24	DHHS shall ensure that children in foster care who have siblings in custody with whom they are not placed shall have at least monthly visits with their siblings who are placed elsewhere in DHHS foster care custody, unless specified exceptions apply. The designated performance standard is 85%.	85%	73.7%	No
6.25	At least 85% of children shall have an initial medical and mental health examination within 30 days of the child's entry into foster care.	85%	78.0%	N/A – COVID-Impacted
6.25	At least 95% of children shall have an initial medical and mental health examination within 45 days of the child's entry into foster care.	95%	85.6%	N/A – COVID-Impacted
6.26	At least 90% of children shall have an initial dental examination within 90 days of the child's entry into care unless the child has had an exam within six months prior to placement or the child is less than four years of age.	90%	66.4%	N/A – COVID-Impacted
6.27	For children in DHHS custody for three months or less at the time of measurement: DHHS shall ensure that 90% of children in this category receive any necessary immunizations according to the guidelines set forth by the American Academy of Pediatrics within three months of entry into care.	90%	Ranges from 80.3% to 95.8%	N/A – COVID-Impacted
6.28	For children in DHHS custody longer than three months at the time of measurement: DHHS shall ensure that 90% of children in this category receive all required immunizations according to the guidelines set forth by the American Academy of Pediatrics.	90%	Ranges from 84.6% to 96.1%	N/A – COVID-Impacted
6.29	Following an initial medical, dental, or mental health examination, at least 95% of children shall receive periodic and ongoing medical, dental, and mental health care examinations and screenings, according to the guidelines set forth by the American Academy of Pediatrics.	95%	68.7%, 85.0%, 74.5%	N/A – COVID-Impacted

Section	Commitment	Performance Standard	Period 20 Performance	Period 20 Achieved
6.30	DHHS shall ensure that: (1) The child's health records are up to date and included in the case file. Health records include the names and addresses of the child's health care providers, a record of the child's immunizations, the child's known medical problems, the child's medications, and any other relevant health information; (2) the case plan addresses the issue of health and dental care needs; (3) foster parents and foster care providers are provided with the child's health care records.	95%	94.3%, 91.4%, 88.6%	No
6.31	DHHS shall ensure that at least 95% of children have access to medical coverage within 30 days of entry into foster care by providing the placement provider with a Medicaid card or an alternative verification of the child's Medicaid status and Medicaid number as soon as it is available.	95%	90.5%	No
6.32	DHHS shall ensure that at least 95% of children have access to medical coverage within 24 hours or the next business day following subsequent placement by providing the placement provider a Medicaid card or an alternative verification of the child's Medicaid status and Medicaid number as soon as it is available.	95%	79.3%	No
6.33	DHHS shall ensure that informed consent is obtained and documented in writing in connection with each psychotropic medication prescribed to each child in DHHS custody. The designated performance standard is 97%.	97%	71.8%	No
6.34	DHHS shall ensure that: (1) A child is seen regularly by a physician to monitor the effectiveness of the medication, assess any side effects and/or health implications, consider any changes needed to dosage or medication type and determine whether medication is still necessary and/or whether other treatment options would be more appropriate; (2) DHHS shall regularly follow up with foster parents/caregivers about administering medications appropriately and about the child's experience with the medication(s), including any side effects; (3) DHHS shall follow any additional state protocols that may be in place related to the appropriate use and monitoring of medications.	95%	27.3%	No
6.36.a	DHHS will continue to implement policies and provide services to support youth transitioning to adulthood, including ensuring youth have been informed of services available through the Youth Adult Voluntary Foster Care (YAVFC) program. Performance for this commitment will be measured through an increase in the rate of foster youth aging out of the system participating in the YAVFC program for a minimum of two periods.	Positive trending	41.4%	Yes
6.37	DHHS will continue to implement policies and provider services to support the rate of older youth achieving permanency.	Positive trending	51.9%	Yes

**Appendix A. Stipulated Order Regarding Commitment Modifications Due to COVID-19 to the
01/01/2021 – 06/30/2021 Reporting Period of the MISEP**

Case 2:06-cv-13548-NGE-DAS ECF No. 310, PageID.9062 Filed 03/19/21 Page 1 of 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DWAYNE B., by his next friend, John
Stempfle; CARMELA B., by her next
friend William Ladd; LISA J., by her
next friend, Teresa Kibby; and JULIA,
SIMON, and COURTNEY G., by their
next friend, William Ladd; for
themselves and others similarly
situated,

Plaintiffs,

v

GRETCHEN WHITMER, in her official
capacity as Governor of the State of
Michigan, *et al.*,

Defendants.

No. 2:06-cv-13548

HON. NANCY G. EDMUNDS

Class Action

**STIPULATED ORDER
REGARDING
COMMITMENT
MODIFICATIONS DUE TO
COVID-19 TO THE
01/01/2021 – 06/30/2021
REPORTING PERIOD OF
MISEP**

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**STIPULATED ORDER REGARDING COMMITMENT
MODIFICATIONS DUE TO COVID-19 TO THE 01/01/2021 -
06/30/2021 REPORTING PERIOD OF THE MODIFIED
SUSTAINABILITY AND EXIT PLAN (MISEP)**

IT IS HEREBY STIPULATED AND AGREED by the Parties that the COVID-19 pandemic continues to impact some provisions of the Modified Sustainability and Exit Plan (“MISEP”). Accordingly, the Parties agree to the following modifications of these MISEP commitments solely for the monitoring period covering January 1, 2021 – June 30, 2021 (“the Relevant Period”).

**A. Temporary Modifications to MISEP commitments
6.25, 6.26, 6.27, 6.28, and 6.29**

The parties agree that MISEP commitments related to medical and dental care—6.25, 6.26, 6.27, 6.28, and 6.29—continue to be skewed as a result of the pandemic and factors beyond MDHHS’s control. For these reasons, the parties agree that, for the Relevant Period, MDHHS should not be penalized for negatively skewed performance for these commitments. The parties agree that positively skewed performance should likewise not be used as a basis for exiting these commitments from court oversight. Accordingly, the parties agree that MDHHS

performance on MISEP commitments 6.25, 6.26, 6.27, 6.28, and 6.29 will not be used by either party to demonstrate sustained compliance or non-compliance under the terms of the MISEP.

B. Temporary Modification to MISEP commitments 6.16, 6.21, 6.22, 6.23, and 6.24

The parties stipulate to the following for MISEP commitments 6.16, 6.21, 6.22, 6.23, and 6.24, which require face-to-face visits and/or meetings:

1. For purposes of measuring compliance with MISEP commitments 6.16, 6.21, 6.22, 6.23, and 6.24 for the Relevant Period, the definition of “visit” and “meeting” shall include the following:
 - a. For MISEP commitment 6.21 (worker child visits), visits conducted (i) face-to-face or (ii) by video conferencing, FaceTime, Skype, Zoom, or similar videoconferencing technologies.
 - b. For MISEP commitments 6.16 (worker supervisor meetings), 6.22 (worker parent visits), 6.23 (parent child visits), and 6.24 (sibling visits), visits or meetings conducted (i) face-to-face, (ii) by video conferencing, FaceTime, Skype, Zoom, or similar videoconferencing technologies, or (iii) by telephone.

2. This modification does not eliminate all face-to-face visitation with children in care. The alternative visitation options are available for routine visits, but not for emergencies in which the caseworker must respond in person to an immediate child health or safety concern.

C. Reporting for the Relevant Period

For all commitments in the MISEP, MDHHS will continue providing data to the monitor as usual and as needed to issue their report in accordance with the stipulated terms above for commitments 6.16, 6.21, 6.22, 6.23, and 6.24. The monitors will continue to validate and publicly report performance consistent with the terms of the MISEP as modified by the terms described above.

The parties respectfully request this Honorable Court enter an order approving this stipulation.

IT IS SO ORDERED.

Dated: March 19, 2021

s/ Nancy G. Edmunds
HON. NANCY G. EDMUNDS
United States District Judge

Stipulated and Agreed to by:

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Date: March 19, 2021

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Date: March 19, 2021

Appendix B. MISEP Performance, Summary of Commitments

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
Met the performance standard in all eligible periods						
5.2	CPS Investigations, Commencement: DHHS shall commence all investigations of report of child abuse or neglect within the timeframes required by state law. The designated performance standard is 95%.	95%	Yes, 96.8%	Yes, 97.9%	Yes, 97.7%	Yes, 98.3%
5.5	Caseload, POS Workers: 95% of POS workers shall have a caseload of no more than 90 children.	95%	Yes, 95.6%	Yes, 97.8%	Yes, 98.6%	Yes, 99.4%
5.7	Seclusion/Isolation: DHHS shall require CCIs to report to DCWL all uses of seclusion or isolation. If not reported, DCWL shall take appropriate action to address the failure of the provider to report the incident and to assure that the underlying incident has been investigated and resolved.	N/A	Yes	Yes	Yes	Yes
6.2	MIC Data Report: Until Commitment 6.1 is achieved, DHHS, in partnership with an independent entity, will generate, at least annually, a report that analyzes maltreatment in care data to assess risk factors and/or complete root-cause analysis of maltreatment in care. The report will be used to inform DHHS practice. The first report will be issued no later than June 1, 2020.	N/A	N/A	Yes	N/A	Yes
6.7	Maximum Children in a Foster Home: No child shall be placed in a foster home if that placement will result in: (1) more than three foster children in that foster home, (2) a total of six children, including the foster family's birth and adopted children, or (3) more than three children under the age of three residing in that foster home. The designated performance standard is 90%.	90%	Yes, 90.1% Eligible to be moved to "To be Maintained."	Yes, 91.9%	Yes, 90.0%	Yes, 92.5%
6.12.b	CPS Investigations, Screening: DHHS will maintain a Placement Collaboration Unit (PCU) to review and assess screening decisions on plaintiff-class children who are in out-of-home placements and to ensure safety and well-being is addressed on those transferred complaints. The PCU will review 100% of cases until reconsideration for complaints involving plaintiff class children placed out of home are less than 5%.	95%	Yes, 98.5% Eligible to be moved to "To be Maintained."	Yes, 95.4% Eligible to be moved to "Structures and Policies."	N/A	N/A

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.21.b	Visits, Worker-Child: Each child in foster care shall be visited by a caseworker at least once per month. The designated performance standard is 95%.	95%	Yes, 97.6%	N/A – COVID-Impacted, 97.9% (Jan-Feb) 97.1% (March – June)	N/A – COVID-Impacted, 97.1%	Yes, 97.1% Eligible to be moved to “To be Maintained.”
6.36.b	Support for Transitioning to Adulthood, YAVFC: DHHS will continue to implement policies and provide services to support youth transitioning to adulthood, including ensuring youth have been informed of the availability of Medicaid coverage. Performance for this commitment will be measured through an increase in the rate of foster youth aging out of the system who have access to Medicaid. The designated performance standard for this commitment is 95%.	95%	Yes, 98.6% Eligible to be moved to “To be Maintained.”	Yes, 99.6% Eligible to be moved to “Structures and Policies.”	N/A	N/A
Met the performance standard in at least one eligible period						
5.3	Caseload, CPS Investigation Workers: 95% of CPS caseworkers assigned to investigate allegations of abuse or neglect, including maltreatment in care, shall have a caseload of no more than 12 open investigations.	95%	No, 94.4%	Yes, 99.8%	Yes, 100%	Yes, 99.7%
5.4	Caseload, CPS Ongoing Workers: 95% of CPS caseworkers assigned to provide ongoing services shall have a caseload of no more than 17 families.	95%	No, 93.4%	Yes, 99.8%	Yes, 99.8%	Yes, 99.5%
5.6	Caseload, Licensing Workers: 95% of licensing workers shall have a workload of no more than 30 licensed foster homes or homes pending licensure.	95%	No, 94.1%	Yes, 95.0%	No, 93.6%	Yes, 95.8%
6.14	Caseload, Foster Care Workers: 95% of foster care workers shall have a caseload of no more than 15 children.	95%	No, 90.3%	Yes, 95.0% Eligible to be moved to “To be Maintained.”	No, 94.4%	No, 93.1%
6.11	CPS Investigations, Completion: DHHS shall complete all investigations of reports of child abuse or neglect within the required timeframes. The designated performance standard is 90%.	90%	No, 83.4%	Yes, 95.1% Eligible to be moved to “To be Maintained.”	Yes, 96.9%	Yes, 97.1%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.12.a	CPS Investigations, Screening: DHHS shall investigate all allegations of abuse or neglect relating to any child in the foster care custody of DHHS. DHHS shall ensure that allegations of maltreatment in care are not inappropriately screened out for investigation. The Monitors will conduct an independent qualitative review to determine compliance with this commitment. The designated performance standard is 95%.	95%	No, 92.4%	No, 90.9%	No, 87.9%	Yes, 95.5% Eligible to be moved to "To be Maintained."
6.16	Supervisory Oversight: Supervisors shall meet at least monthly with each assigned worker to review the status and progress of each case on the worker's caseload. Supervisors shall review and approve each service plan. The plan can be approved only after the supervisor has a face-to-face meeting with the worker, which can be the monthly meeting. The designated performance standard is 95%.	95%	Yes, 95.0% Eligible to be moved to "To be Maintained."	N/A – COVID-Impacted, 93.3% (Initial, Jan-Feb), 97.3% (Initial, March-June), 92.1% (Monthly, Jan-Feb), 95.4% (Monthly, March-June)	N/A – COVID-Impacted, 86.3% (Initial), 94.4% (Monthly)	No, 90.6% (Initial), 93.6% (Monthly)
6.21.a	Visits, Worker-Child: Each child in foster care shall be visited by a caseworker at their placement location at least once per month during the child's first two months of placement in an initial or new placement. The designated performance standard is 95%.	95%	Yes, 95.2%	N/A – COVID-Impacted, 82.5% (Jan-Feb)	N/A – COVID-Impacted, 91.5%	No, 93.7%
6.21.a	Visits, Worker-Child: Each child in foster care shall have at least one visit per month that includes a private meeting between the child and caseworker during the child's first two months of placement in an initial or new placement. The designated performance standard is 95%.	95%	Yes, 95.3%	N/A – COVID-Impacted, 82.7% (Jan-Feb)	N/A – COVID-Impacted, 89.0%	No, 92.6%
6.21.b	Visits, Worker-Child: Each child in foster care shall be visited by a caseworker at their placement location at least once per month. The designated performance standard is 95%.	95%	Yes, 95.5%	N/A – COVID-Impacted, 96.4% (Jan-Feb)	N/A – COVID-Impacted, 91.7%	No, 92.9%
6.21.b	Visits, Worker-Child: Each child in foster care shall have at least one visit per month that includes a private meeting between the child and caseworker. The designated performance standard is 95%.	95%	Yes, 96.5%	N/A – COVID-Impacted, 95.4% (Jan-Feb)	N/A – COVID-Impacted, 88.7%	No, 91.0%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.22.a	Visits, Worker-Parent: Caseworkers shall visit parents of children with a goal of reunification at least twice during the first month of placement, unless specified exceptions apply. The designated performance standard is 85%.	85%	No, 73.6%	N/A – COVID-Impacted, 71.7% (Jan-Feb), 83.2% (March-June)	N/A – COVID-Impacted, 85.2%	Yes, 85.2% Eligible to be moved to “To be Maintained.”
6.35	Generation of Data: DHHS shall generate from its Child Welfare Information System accurate and timely reports and information regarding the requirements and outcome measures set forth in this Agreement.	N/A	No	Yes Eligible to be moved to “To be Maintained.”	Yes Eligible to be moved to “Structures and Policies.”	N/A
6.36.a	Support for Transitioning to Adulthood, YAVFC: DHHS will continue to implement policies and provide services to support youth transitioning to adulthood, including ensuring youth have been informed of services available through the Youth Adult Voluntary Foster Care (YAVFC) program. Performance for this commitment will be measured through an increase in the rate of foster youth aging out of the system participating in the YAVFC program for a minimum of two periods.	Positive trending	35.1% Baseline	N/A – COVID-Impacted, 34.3%	N/A – COVID-Impacted, 40.7%	Yes, 41.4% Eligible to be moved to “To be Maintained.”
6.37	Support for Transitioning to Adulthood, Permanency: DHHS will continue to implement policies and provider services to support the rate of older youth achieving permanency.	Positive trending	55.1% Baseline	N/A – COVID-Impacted, 50.5%	N/A – COVID-Impacted, 51.4%	Yes, 51.9% Eligible to be moved to “To be Maintained.”
Within 10 percent of the performance standard in at least one period						
6.5	Placement Standard: Children in the foster care custody of DHHS shall be placed only in a licensed foster home, a licensed facility, pursuant to an order of the court, or an unlicensed relative.	100%	No, 95.6%	No, 95.4%	No, 98.7%	No, 98.6%
6.12.a	CPS Investigations, Screening: When DHHS transfers a referral to another agency for investigation, DHHS will independently take appropriate action to ensure the safety and well-being of the child. The Monitors will conduct an independent qualitative review to determine compliance with this commitment. The designated performance standard is 95%.	95%	No, 78.7%	No, 82.3%	No, 85.5%	No, 87.1%
6.13	Caseload, Supervisors: 95% of foster care, adoption, CPS, POS, and licensing supervisors shall be responsible for the supervision of no more than five caseworkers.	95%	No, 84.3%	No, 86.9%	No, 88.2%	No, 88.9%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.17	Assessments and Service Plans, Timeliness of Initial Plan: DHHS shall complete an Initial Service Plan (ISP), consisting of a written assessment of the child(ren)'s and family's strengths and needs and designed to inform decision-making about services and permanency planning, within 30 days after a child's entry into foster care. The designated performance standard is 95%.	95%	No, 82.5%	No, 86.9%	No, 83.0%	No, 86.2%
6.18	Assessments and Service Plans, Timeliness of Updated Plan: For every child in foster care, DHHS shall complete an Updated Service Plan (USP) at least quarterly. The designated performance standard is 95%.	95%	No, 86.6%	No, 90.0%	No, 88%	No, 89.5%
6.21.a	Visits, Worker-Child: Each child in foster care shall be visited by a caseworker at least twice per month during the child's first two months of placement in an initial or new placement. The designated performance standard is 95%.	95%	No, 91.4%	N/A – COVID-Impacted, 90.4% (Jan-Feb), 89.5% (March-June)	N/A – COVID-Impacted, 89.3%	No, 90.7%
6.30	Child Case File, Medical and Psychological: DHHS shall ensure that: (1) The child's health records are up to date and included in the case file. Health records include the names and addresses of the child's health care providers, a record of the child's immunizations, the child's known medical problems, the child's medications, and any other relevant health information; (2) the case plan addresses the issue of health and dental care needs; (3) foster parents and foster care providers are provided with the child's health care records. The designated performance standard is 95%.	95%	No, 75.0%, 62.5%, 59.4%	No, 90.6%, 93.8%, 93.8%	No, 85.7%, 91.8%, 91.8%	No, 94.3%, 91.4%, 88.6%
6.31	Medical Care and Coverage, at Entry: DHHS shall ensure that at least 95% of children have access to medical coverage within 30 days of entry into foster care by providing the placement provider with a Medicaid card or an alternative verification of the child's Medicaid status and Medicaid number as soon as it is available.	95%	No, 88.9%	No, 89.5%	No, 87.7%	No, 90.5%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
Performance is consistently more than 10 percentage points below the standard						
6.3	Permanency Indicator 1: DHHS shall achieve an observed performance of at least the national standard (40.5%) on CFSR Round Three Permanency Indicator One (Of all children entering foster care in a 12-month period, what percent discharged to permanency within 12 months of entering foster care?)	≥ 40.5%	No, 26.6%	No, 27.3%	No, 27.4%	No, 28.6%
6.6.a	Separation of Siblings: Siblings who enter placement at or near the same time shall be placed together unless specified exceptions are met. The designated performance standard is 90%.	90%	No, 68.1%	No, 72.4%	No, 73.4%	No, 71.2%
6.15	Caseload, Adoption Workers: 95% of adoption caseworkers shall have a caseload of no more than 15 children.	95%	No, 66.7%	No, 78.2%	No, 81.5%	No, 76.2%
6.19	Assessment and Service Plans, Content: Assessments and service plans shall be of sufficient breadth and quality to usefully inform case planning and shall accord with the requirements of 42 U.S.C. 675(1). To be measured through a QSR. The designated performance standard is 90%.	90%	No, 66.7%	No, 73.5%	No, 57.6%	No, 73.2%
6.20	Provision of Services: DHHS shall ensure that the services identified in the service plan are made available in a timely and appropriate manner to the child and family and shall monitor the provision of services to determine whether they are of appropriate quality and are having the intended effect. To be measured through a QSR. The designated performance standard is 83%.	83%	No, 69.3%	No, 71.6%	No, 51.7%	No, 70.0%
6.22.b	Visits, Worker-Parent: Caseworkers shall visit parents of children with a goal of reunification at least once a month, following the child's first month of placement, unless specified exceptions apply. The designated performance standard is 85%.	85%	No, 69.4%	N/A – COVID-Impacted, 69.6% (Jan-Feb), 71.7% (March-June)	N/A – COVID-Impacted, 74.1%	No, 73.6%
6.24	Visits, Between Siblings: DHHS shall ensure that children in foster care who have siblings in custody with whom they are not placed shall have at least monthly visits with their siblings who are placed elsewhere in DHHS foster care custody, unless specified exceptions apply. The designated performance standard is 85%.	85%	No, 72.9%	N/A – COVID-Impacted, 69.5% (Jan-Feb), 56.8% (March-June)	N/A – COVID-Impacted, 69.2%	No, 73.7%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.32	Medical Care and Coverage, Subsequent Placement: DHHS shall ensure that at least 95% of children have access to medical coverage within 24 hours or the next business day following subsequent placement by providing the placement provider a Medicaid card or an alternative verification of the child's Medicaid status and Medicaid number as soon as it is available.	95%	No, 82.8%	No, 82.1%	No, 78.5%	No, 79.3%
Performance is consistently more than 20 percentage points below the standard						
6.6.b	Separation of Siblings: If a sibling group is separated at any time, except for the above reasons, the case manager shall make immediate efforts to locate or recruit a family in whose home the siblings can be reunited. These efforts shall be documented and maintained in the case file and shall be reassessed on a quarterly basis. The Monitors will conduct an independent qualitative review to determine compliance with this commitment. The designated performance standard is 90%.	90%	No, 61.2%	No, 36.8%	No, 29.8%	No, 38.1%
6.8	Emergency or Temporary Facilities, Length of Stay: Children shall not remain in emergency or temporary facilities, including but not limited to shelter care, for a period in excess of 30 days, unless specified exceptions apply. No child shall remain in a shelter in excess of 60 days. The designated performance standard is 95%.	95%	No, 67.9%	No, 64.2%	No, 62.9%	No, 68.7%
6.10.a	Relative Foster Parents: When placing a child with a relative who has not been previously licensed as a foster parent, DHHS shall visit the relative's home to determine if it is safe prior to placement; check law enforcement and central registry records for all adults residing in the home within 72 hours following placement; and complete a home study within 30 days. The designated performance standard is 95%.	95%	No, 53.0%	No, 73.8%	No, 41.5%	No, 43.1%
6.23	Visits, Parent-Child: DHHS shall ensure that children in foster care with a goal of reunification shall have at least twice-monthly visitation with their parents, unless specified exceptions apply. The designated performance standard is 85%.	85%	No, 62.5%	N/A – COVID-Impacted, 64.7% (Jan-Feb), 59.4% (March-June)	N/A – COVID-Impacted, 62.0%	No, 59.1%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.33	Psychotropic Medication, Informed Consent: DHHS shall ensure that informed consent is obtained and documented in writing in connection with each psychotropic medication prescribed to each child in DHHS custody. The designated performance standard is 97%.	97%	No, 75.9%	No, 74.4%	No, 76.1%	No, 71.8%
Performance is consistently more than 30 percentage points below the standard						
6.22.a	Visits, Worker-Parent: Caseworkers shall visit parents of children with a goal of reunification at least once in the parent's home during the first month of placement, unless specified exceptions apply. The designated performance standard is 85%.	85%	No, 47.9%	N/A – COVID-Impacted, 53.4%	N/A – COVID-Impacted, 45.6%	No, 52.4%
Performance is consistently more than 50 percentage points below the standard						
6.9	Emergency or Temporary Facilities, Repeated Placement: Children shall not be placed in an emergency or temporary facility, including but not limited to shelter care, more than one time within a 12-month period, unless specified exceptions apply. Children under 15 years of age experiencing a subsequent emergency or temporary-facility placement within a 12-month period may not remain in an emergency or temporary facility for more than 7 days. Children 15 years of age or older experiencing a subsequent emergency or temporary-facility placement within a 12-month period may not remain in an emergency or temporary facility for more than 30 days.	95%	No, 6.3%	No, 12.5%	No, 2.9%	No, 18.2%
6.10.b	Relative Foster Parents: When placing a child with a relative who has not been previously licensed as a foster parent, a home study will be renewed every 12 months for the duration of the child's placement with the relative. The designated performance standard is 95%.	95%	No, 9.7%	No, 36.5%	No, 14.1%	No, 37.9%

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.34	Psychotropic Medication, Documentation: DHHS shall ensure that: (1) A child is seen regularly by a physician to monitor the effectiveness of the medication, assess any side effects and/or health implications, consider any changes needed to dosage or medication type and determine whether medication is still necessary and/or whether other treatment options would be more appropriate; (2) DHHS shall regularly follow up with foster parents/caregivers about administering medications appropriately and about the child's experience with the medication(s), including any side effects; (3) DHHS shall follow any additional state protocols that may be in place related to the appropriate use and monitoring of medications.	95%	No, 33.8%	No, 26.9%	No, 34.8%	No, 27.3%
Performance has never been achieved, no performance standard						
5.1	Contract-Agency Evaluation: DHHS shall conduct contract evaluations of all CCIs and private CPAs providing placements and services to Plaintiffs to ensure, among other things, the safety and well-being of Plaintiffs and to ensure that the CCI or private CPA is complying with the applicable terms of this Agreement.	N/A	No	No	No	Will be included in the MISEP 21 Report
Not applicable or unable to verify in all periods						
6.1	Safety – Maltreatment in Foster Care: DHHS shall ensure that of all children in foster care during the applicable federal reporting period, DHHS will maintain an observed rate of victimization per 100,000 days in foster care less than 9.67, utilizing the CFSR Round 3 criteria.	≤ 9.67	Unable to verify	N/A	Unable to verify	N/A

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
COVID-Impacted commitments⁸						
6.4	Foster Home Array: DHHS will maintain a sufficient number and array of homes capable of serving the needs of the foster care population, including a sufficient number of available licensed placement within the child's home community for adolescents, sibling groups, and children with disabilities. DHHS will develop for each county and statewide an annual recruitment and retention plan, in consultation with the Monitors and experts in the field, and subject to approval by the Monitors. DHHS will implement the plan, with interim timelines, benchmarks, and final targets, to be measured by the Monitors based on DHHS's good-faith efforts to meet the final targets set forth in the plan.	N/A	Yes	N/A – COVID-Impacted	N/A – COVID-Impacted	Will be included in the MISEP 21 Report
6.25	Medical and Mental Health Examinations: At least 85% of children shall have an initial medical and mental health examination within 30 days of the child's entry into foster care.	85%	No, 83.9%	N/A – COVID-Impacted, 69.8%	N/A – COVID-Impacted, 69.8%	N/A – COVID-Impacted, 78.0%
6.25	Medical and Mental Health Examinations: At least 95% of children shall have an initial medical and mental health examination within 45 days of the child's entry into foster care.	95%	No, 89.3%	N/A – COVID-Impacted, 76.6%	N/A – COVID-Impacted, 77.9%	N/A – COVID-Impacted, 85.6%
6.26	Dental Examinations: At least 90% of children shall have an initial dental examination within 90 days of the child's entry into care unless the child has had an exam within six months prior to placement or the child is less than four years of age.	90%	No, 77.3%	N/A – COVID-Impacted, 36.4%	N/A – COVID-Impacted, 56.7%	N/A – COVID-Impacted, 66.4%
6.27	Immunizations, in Custody 3 Months or Less: For children in DHHS custody for three months or less at the time of measurement: DHHS shall ensure that 90% of children in this category receive any necessary immunizations according to the guidelines set forth by the American Academy of Pediatrics within three months of entry into care.	90%	N/A	N/A – COVID-Impacted and subject to separate March 12, 2021 order	N/A – COVID-Impacted, ranges from 61.2% to 94%	N/A – COVID-Impacted, ranges from 80.3% to 95.8%

⁸ Per the September 15, 2020, November 18, 2020 and March 19, 2021 stipulated orders these commitments are COVID-impacted commitments and performance for Periods 18, 19, or 20 will not be used by either party to demonstrate sustained compliance or noncompliance with the terms of the MISEP.

Section	Commitment	Standard	MISEP 17	MISEP 18	MISEP 19	MISEP 20
6.28	Immunizations, in Custody Longer Than 3 Months: For children in DHHS custody longer than three months at the time of measurement: DHHS shall ensure that 90% of children in this category receive all required immunizations according to the guidelines set forth by the American Academy of Pediatrics.	90%	N/A	N/A – COVID-Impacted and subject to separate March 12, 2021 order	N/A – COVID-Impacted, ranges from 18.2% to 97.2%	N/A – COVID-Impacted, ranges from 84.6% to 96.1%
6.29	Examinations and Screenings: Following an initial medical, dental, or mental health examination, at least 95% of children shall receive periodic and ongoing medical, dental, and mental health care examinations and screenings, according to the guidelines set forth by the American Academy of Pediatrics.	95%	No, 69.7%, 87.7%, 92.1%	N/A – COVID-Impacted, 58.3%, 75.6%, 38.6%	N/A – COVID-Impacted, 61.8%, 81.7%, 70.5%	N/A – COVID-Impacted, 68.7%, 85.0%, 74.5%