TEXAS
Department of Family
and Protective Services

# H. B. 1, Article II, Special Provisions, Section 27

# Department of Family and Protective Services

# 88th Legislature, Regular Session Quarterly Report on Court Monitor Fees

## Fiscal Year 2024 Quarter 1

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**February 2024**

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# Executive Summary

In accordance with the 2024-2025 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, Article II, Special Provision, Section 27, the Texas Department of Family and Protective Services (DFPS) must report no later than 60 business days from the end of each quarter the amount billed from the Court Monitors and all agency costs related to M.D. v. Abbott (hereafter referred to as `federal litigation').

The report shall be prepared in a format specified by the Legislative Budget Board and shall include, but is not limited to:

(1) Invoices submitted by Court Monitors and what specific remedial orders and services were provided;

(2) The number of facilities under heightened monitoring, the number of facilities that have exited heightened monitoring and how they exited; and

(3) How many providers relinquished their licenses with DFPS.

The report includes the invoices submitted monthly by the Court-appointed Monitors, the services provided for the costs, and all other agency costs related to the federal litigation. In addition, the report provides updated information on the number of facilities (also referred to as operations), including General Residential Operations (GROs)[1], Residential Treatment Centers (RTCs), and Child Placing Agencies (CPAs) on heightened monitoring (Remedial Order 20 of the federal litigation), as well as the number of operations that have exited heightened monitoring and reason for their exit. Lastly, the report includes information on the number of operation licenses that were voluntarily relinquished or revoked by the Texas Health and Human Services Commission (HHSC), or its contract with DFPS was voluntarily or involuntarily cancelled.

Data contained in this initial Report on Court Monitor Fees covers the period from September 1, 2019, through November 30, 2023. Future reports will carry these costs forward and include new data for each quarter reported.

In summary, from September 1, 2019, through November 30, 2023:

- The total amount the Court Monitors billed, and all DFPS and HHSC agency cost related to the federal litigation, totaled $203,563,029.[2]
    - DFPS Court Monitors' fees totaled $46,995,493.
    - All other agency costs incurred by DFPS totaled $115,954,898.

[1] General Residential Operations include Operations for Child Care Services Only, Emergency Care Services Only, and Multiple Services and Residential Treatment Centers.
[2] Dollar amounts are rounded to the nearest dollar.

  - HHSC Court Monitors' fees totaled $10,316,084.
  - All other agency costs incurred by HHSC totaled $30,296,555. See Appendix 2 for HHSC costs related to the federal litigation.
- The total number of operations that were subject to heightened monitoring was 137.
  - As of November 30, 2023:
    - 59 were under heightened monitoring
      - 48 were in the plan in effect stage
      - 11 were on post-plan monitoring stage
    - 30 had successfully exited and were no longer under heightened monitoring
    - 48 had exited heightened monitoring through contract termination
- The total number of operations closed because the operation relinquished its license or because HHSC revoked the operation's license was 131.
    - 125 voluntarily relinquished their licenses to HHSC
    - 6 had licenses revoked by HHSC
- The total number of operations that had their contracts terminated by DFPS and Single Source Continuum Contractors (SSCCs) is 370.

# Section I: Agency Costs Related to M.D. vs. Abbott Federal Litigation Case

Section I covers agency costs identified including invoices and costs paid monthly to the Court-appointed Monitors and all other agency costs related to the federal litigation.

The Court-appointed Monitoring team consists of two monitoring organizations - Texas Appleseed and Public Catalyst. These organizations review compliance with the remedial orders. The Monitors have full access to DFPS cases, data, staff, and operations to review compliance and report their findings to the Court.

Special Provision 27 states that "DFPS and HHSC are prohibited from expending funds for the Court Monitors' invoices unless the services relate directly to compliance with a remedial order and are sufficiently described therein." On April 25, 2023, DFPS submitted a request to the Monitors and the Court that all invoices the Monitors submit for payment should include details about the services provided and the specific applicable remedial order(s) for each invoice. The Court ruled on May 1, 2023, that the invoices, as submitted, provided sufficient details regarding services provided by the Court Monitors. A review and approval is completed by the Judge for each invoice submitted by the Court Monitors. Invoices are then submitted by the Monitors to DFPS and contain the following statement:

> "Our work is required by the U.S. District Court's orders, as affirmed by the Fifth Circuit, and is directly supervised by Judge Janis Graham-Jack. The details in this invoice are consistent with the directives we have received from the U.S. District Court and conform in specificity to the information the Court has directed us to provide to the State since August 2019. The Court confirmed these directives to us in 2020 and again in 2023 after the State sought more information. The Court addressed these issues directly with the parties on the record at those times."

In addition to Monitors' fees, DFPS has expended state funds to meet requirements set out by the Court's remedial orders, including, but not limited to, dedicated staff, information technology (IT) projects, and supplemental payments to providers. Those costs are provided in more detail below.

## Agency Costs

Since September 1, 2019, DFPS has incurred a total of $162,950,391 in costs tied directly to the remedial orders, including $6,524,726 for costs incurred between September 1, 2023, and November 30, 2023. The costs include invoices from Texas Appleseed and Public Catalyst, and other agency costs to directly support compliance with the remedial orders. DFPS pays 100% of the Monitor invoices, which totaled $57,311,577 and HHSC reimburses DFPS its portion, which totaled $10,316,084. As of November 30, 2023, DFPS paid $46,995,493 in Monitors' invoices. DFPS is responsible for 82% and HHSC is responsible for 18% of the Monitors' fees.

The costs outlined in the table below do not include all costs associated with improvements made to address concerns the Court identified, such as additional conservatorship (CVS) caseworkers funded by the 87th Legislature.

DFPS agency costs related to this federal lawsuit are classified in the following categories:

- Monitors' invoices
- Dedicated staffing for compliance activities and travel costs
- Supplemental provider payments (for 24-hour awake supervision)
- Technology enhancements
- Contempt fines and plaintiff attorneys' fees

**Table 1: DFPS Agency Costs for Fiscal Years 2020 through 2023 and Quarter One of Fiscal Year 2024[3]**

| Category | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 Q1 | Total |
|---|---|---|---|---|---|---|
| Monitors' Invoices | $7,575,882 | $10,912,513 | $11,756,672 | $13,539,368 | $3,211,058 | $46,995,493[4] |
| Dedicated Compliance Positions[5] | $4,534,270 | $13,783,914 | $14,461,032 | $14,675,416 | $3,267,648 | $50,722,279 |
| Plaintiff's Attorney's Fees | $0 | $0 | $0 | $499,342 | $0 | $499,342 |
| Technology Enhancements | $1,123,750 | $2,549,331 | $2,755,099 | $2,178,648 | $46,021 | $8,652,848 |
| 24-Hour Supervision Supplemental Payments to Providers[6] | $15,071,483 | $15,023,007 | $13,290,578 | $12,534,845 | $0 | $55,919,913 |
| Travel Costs[7] | $0 | $0 | $0 | $10,515 | $0 | $10,515 |
| Contempt Fines | $150,000 | $0 | $0 | $0 | $0 | $150,000 |
| Total | $28,455,385 | $42,268,765 | $42,263,381 | $43,438,133 | $6,524,726 | $162,950,391 |

**Source: Department of Family and Protective Services**

See Appendix 1 for the Monitors' invoices for September 2023, October 2023, and November 2023. Future reports will only contain invoices for the time period covered by that report.

[3] All dollar amounts are rounded to the nearest dollar.
[4] This total represents DFPS' portion of costs for Monitors' invoices. HHSC's portion, which totaled $10,316,084, can be found in Appendix 2.
[5] Dedicated compliance positions include salary and related overhead costs for individual positions responsible for heightened monitoring, 24-hour awake night supervision, and other positions dedicated to compliance with remedial orders.
[6] Supplemental payments to providers are paid to cover costs associated with providing 24-hour supervision as required.
[7] Travel costs include those associated with DFPS witnesses attending in-person hearings. DFPS began tracking travel costs in Fiscal Year 2023.

# Section II: Heightened Monitoring

Section II outlines the number of operations under heightened monitoring, the number of operations that have exited heightened monitoring and how they exited.

Remedial Order 20 directs DFPS and HHSC to "identify, track and address concerns at facilities that show a pattern of contract or policy violations. Such facilities must be subject to heightened monitoring by DFPS, and any successor entity charged with inspections of child care placements and subject to more frequent inspections, corrective actions and, as appropriate, other remedial actions under DFPS' enforcement framework." Heightened monitoring refers to a new form of joint monitoring conducted by DFPS's Child Protective Services, Contracts, and Child Care Investigations teams and HHSC (Child Care Regulation) with the goal of improving care for children in DFPS conservatorship.

DFPS and HHSC administer heightened monitoring based on criteria set out by the Court and with oversight from the Court Monitors. Operations subject to heightened monitoring are identified through analysis of operation history over five years, including citations for minimum standards violations, contract violations, and findings of abuse and/or neglect. The analysis, along with more current performance data, are used to develop a heightened monitoring plan for the operation. DFPS and HHSC share responsibility for conducting weekly unannounced visits to each operation on heightened monitoring to ensure compliance and progress with the operation's plan. In addition, DFPS and HHSC routinely meet with operations on heightened monitoring to discuss their progress toward plan requirements and any concerns.

Operations remain on heightened monitoring for at least one year. Once an operation has been on heightened monitoring at least one year, has completed six months without any high or medium weighted citations in the areas identified in their plan, and does not have any open investigations, the operation may transition to a period of post-plan monitoring, which lasts at least six additional months. During post-plan monitoring, the operation receives less frequent unannounced visits from DFPS and HHSC heightened monitoring staff.

## Heightened Monitoring Data

As of November 30, 2023, 59 operations were on heightened monitoring, including 48 operations in the pre-plan development stage or plan in effect stage and 11 operations on post-plan monitoring. Figure 1 describes the pre-plan development stage, plan in effect stage, and post-plan monitoring stage.

Since the remedial orders were finalized in July 2019, a total of 137 operations have been placed on heightened monitoring and a total of 78 operations have exited heightened monitoring. The tables below break down the data further by CPAs, GROs and RTCs.

Figure 1

| | | |
|---|---|---|
| **Pre-Plan Development Stage:** Begins on the date the operation is placed on HM and ends on the date the operation is given its approved HM plan | **Plan in Effect Stage**: Begins on the date the operation receives its HM plan and continues until the HM developmental team releases the operation from the HM plan and authorizes the operation to move to post-plan monitoring based on the operation meeting certain criteria. | **Post-Plan Monitoring Stage**: Begins on the date the operation is released from the HM plan and ends on the date the operation is removed from HM. |

Figure 2

| | | |
|---|---|---|
| **Child Placing Agency** (CPA)[8] is a person, including a sole proprietor, partnership, or business or government entity, other than the parents of a child, who plans for the placement of or places a child in a child care operation or adoptive home. | **General Residential Operation** (GRO)[9] is a residential child care operation that provides child care for seven or more children or young adults. The care may include treatment services or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, residential treatment centers, and halfway houses. | **Residential Treatment Centers** (RTCs)[10] are general residential operations that provide treatment services to children with emotional disorders. |

[8] Source: Texas Administrative Code §745.21(9)

[9] Source: Texas Administrative Code §748.43(29)

[10] Source: Texas Administrative Code §748.5, Subchapter A, Purpose and Scope

| Table 2: Operations Currently on Heightened Monitoring (as of 11/30/23) | | | | |
|---|---|---|---|---|
| **Heightened Monitoring Status** | **Child Placing Agencies (CPAs)** | **General Residential Operations (GROs)[11]** | **Residential Treatment Centers (RTCs)** | **Total** |
| **Plan in Effect Stage** | 30 | 12 | 6 | 48 |
| **Post Plan Monitoring Stage** | 5 | 4 | 2 | 11 |
| **Current Total** | 35 | 16 | 8 | 59 |

| Table 3: Operations Exiting Heightened Monitoring (09/01/19 – 11/30/23) | | | | |
|---|---|---|---|---|
| **Reason Operation Exited Heightened Monitoring** | **Child Placing Agencies (CPAs)** | **General Residential Operations (GROs)[12]** | **Residential Treatment Centers (RTCs)** | **Total** |
| **Successfully Completed** | 10 | 16 | 4 | 30 |
| **Exited Through Contract Termination** | 16 | 16 | 16 | 48 |
| **Total (since HM began)** | 26 | 32 | 20 | 78 |

[11] General Residential Operations include Operations for Child Care Services Only, Emergency Care Services Only, and Multiple Services

[12] General Residential Operations include Operations for Child Care Services Only, Emergency Care Services Only, and Multiple Services

# Section III: Contract Terminations, License Relinquishments and License Revocations

Section III outlines information about operations who relinquished their license or had their license revoked by HHSC, or their contract with DFPS was terminated.

Operations apply for licenses through HHSC's Child Care Regulation (CCR) Division. Once the operation is approved for licensure, the operation applies for a contract to deliver residential services for children in DFPS conservatorship. Once licensed, operations can contract directly with DFPS and/or Single Source Continuum Contractors (SSCC). Once those contracts are approved, children in DFPS conservatorship can be placed with the operation, including in foster homes via a Child Placing Agency, a General Residential Operation or Residential Treatment Center.

In addition, various circumstances may lead an operation to no longer be licensed by HHSC through either a voluntary license relinquishment or through a license revocation by HHSC. After being licensed and entering into a contract with DFPS or an SSCC, the operation, DFPS, or the SSCC may choose to terminate the contract.

DFPS continues outreach efforts with various operations to increase capacity of available placements for children in DFPS conservatorship to ensure that every child has an appropriate licensed placement if one is needed. DFPS tracks the availability of licensed child care providers and operations who contract with DFPS and/or SSCCs to care for children in DFPS conservatorship and to meet each child's individualized needs.

## License Relinquishments, Revocations, and Contract Terminations Data

From September 1, 2019, through November 30, 2023, 131 operations either relinquished their licenses to HHSC or had their licenses revoked by HHSC. Specifically:

- 120 relinquished their licenses to HHSC.
- 6 had their licenses revoked by HHSC.
- 5 no longer were licensed by HHSC due to an "Other License Action."[13]

[13] Other License Actions can be due to a change in owner or change of location. Both reasons are not license revocations initiated by HHSC. These reasons require the operation to obtain a new license through HHSC.

The data below provides information on the number of operations no longer licensed by HHSC.

| Table 4: License Relinquishments and Revocations through HHSC (09/01/19 – 11/30/23) | | | | | | |
|---|---|---|---|---|---|---|
| License Action | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 Q1 | Total (Per License Action) |
| License Revoked | 1 | 1 | 0 | 3 | 1 | 6 |
| License Relinquished | 36 | 22 | 36 | 23 | 3 | 120 |
| Other License Action | 0 | 0 | 1 | 4 | 0 | 5 |
| Total (Per Fiscal Year) | 37 | 23 | 37 | 30 | 4 | 131 |

In addition to the license actions between operations and HHSC described above, DFPS or contactors may terminate their contract with DFPS to provide care for children in DFPS conservatorship.[14]

Since September 1, 2020, 370 operations no longer have active contracts with DFPS and/or SSCCs to care for children in DFPS conservatorship, with a licensed capacity of 9,852.[15] Specifically, a total of 105 CPAs, 154 GROs, and 111 RTCs no longer have contracts with DFPS and/or SSCCs.

Table 5 below provides totals by fiscal year of operations who no longer have active contracts with DFPS and/or SSCCs from FY 2020 through FY 2024 Q1.

| Table 5 Contract Terminations through DFPS (09/01/19 – 11/30/23) | | | | | | |
|---|---|---|---|---|---|---|
| Fiscal Year | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 Q1 | Totals |
| Total | 66 | 86 | 68 | 126 | 24 | 370 |

[14] Operations who relinquish their license with HHSC or have their license revoked may also have their contract with DFPS terminated. Therefore, operations may be listed both as having their license relinquished or revoked, and as terminating their contract with DFPS.

[15] DFPS does not track licensed capacity for CPAs, which may verify foster homes for one to six children based on the specific home demographics and preference of the foster home. Therefore, these numbers do not reflect licensed capacity in those locations.

# Appendix 1 – Monitors' Invoices Submitted September 2023 through November 2023

Documents transmitted separately.

# Appendix 2 – HHSC Costs

The table below reflects HHSC's costs related to the M.D. vs. Abbott Federal Litigation case. HHSC agency costs related to this federal lawsuit are classified in the following categories:

- Monitors' invoices
- Dedicated staffing for compliance activities, including salary, travel, and operating costs
- IT enhancements
- Plaintiff attorneys' fees
- Total agency costs

| HHSC Agency Costs for Fiscal Years 2020 through 2023 and Quarter One of Fiscal Year 2024[16] | | | | | | |
|---|---|---|---|---|---|---|
| **Category** | **FY 2020** | **FY 2021** | **FY 2022** | **FY 2023** | **FY 2024 Q1** | **Total** |
| **Monitors' Invoices** | $1,662,999 | $2,395,430 | $2,580,733 | $2,972,056 | $704,866 | $10,316,084 |
| **Dedicated Compliance Positions** | $291,022 | $4,623,501 | $5,954,271 | $8,146,278 | $1,871,375 | $20,886,448 |
| **Plaintiff's Attorney's Fees** | $0 | $0 | $0 | $136,032 | $0 | $136,032 |
| **Technology Enhancements** | $0 | $827,883 | $2,895,218 | $5,054,266 | $496,708 | $9,274,075 |
| **Total** | $1,954,021 | $7,846,814 | $11,430,222 | $16,308,632 | $3,072,949 | $40,612,638 |

**Source: Health and Human Services Commission**

[16] All dollar amounts are rounded to the nearest dollar.