

ENTERED

March 18, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D.; bnf STUKENBERG, *et al*,

Plaintiffs,

VS.

GREG ABBOTT, *et al*,

Defendants.

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CIVIL ACTION NO. 2:11-CV-84

ORDER

For all the reasons outlined so carefully in the Monitors' filing of March 3, 2020, (D.E. 832), the Court adopts the following definitions applicable to remedial order 20 referenced in the Court's Final Order entered on January 19, 2018, (D.E. 559), and the Court's Order entered on November 20, 2018, (D.E. 606):

Pattern:

A pattern is defined as a high rate of contract and standards violations for at least three of the last five years.

Steps in identifying the pattern:

1. Each agency shall review data for the rate of contract and standards violations, including confirmed findings of abuse and neglect, for the last five years. The rate is calculated using the number of violations divided by the operation's capacity multiplied by 10 (Number of contract or standards violations/capacity X 10).
2. For each of the last five years, compare the operation's rate of violations to the combined rate of violations for all operations of similar size (small, medium, or large) and service type (basic general residential operation, residential treatment center, child placing agency, and independent foster family and group homes).
3. If the operation's rate of violations rated medium, medium-high, or high is above the combined rate of violations rated medium, medium-high, or high for operations of similar size and service type for three of the last five years, then there is a pattern of violations.
4. Each agency shall inform the other of all operations identified as having a pattern of deficiencies.

Operation Size:

- Small operations: Those with a capacity of 20 or fewer children or, for CPAs, 20 or fewer open foster homes;
- Medium operations: Those with a capacity of 21-50 children or 21- 50 open foster homes; and
- Large operations: Those with a capacity of more than 50 children or more than 50 open foster homes.

Operation Service Type:

Basic General Residential Operation
General Residential Operation – Residential Treatment Center
Child Placing Agency
Independent Foster Family and Group Homes

Heightened Monitoring

When an operation is identified for heightened monitoring, a Facility Intervention Team Staffing (FITS) is scheduled within 5 days. The intervention team is made up of staff from, at least, RCCL, DFPS CCI, DFPS Contracts, and CPS.

During the FITS, the team will review:

- Any trends for the operation identified as a result of the 5-year retrospective analysis.
- Any monitoring plans or corrective or enforcement actions for the operation in the last 5 years;
- Any risk analyses conducted by RCCL or DFPS for the operation in the last 5 years.

If the review reveals events that implicate an ongoing concern for the health and safety of children, the intervention team will develop a safety plan and temporarily suspend placements until all concerns for children’s health and safety have been addressed. This must be documented in CLASS.

The FITS team is responsible for developing a heightened monitoring plan that:

- Outlines a coordinated response from RCCL & DFPS, including a list of staff from both agencies who will serve on the heightened monitoring team for the operation;
- Describes a detailed and specific plan addressing:
 - The pattern of policy violations that led to heightened monitoring;
 - Any barriers to compliance identified during a review of previous corrective or enforcement actions or risk analyses;
 - Any technical assistance needed by the operation from FPS, RCCL, or a third party;
 - The steps the operation must take to satisfy the plan.

While an operation is on heightened monitoring, RCCL and DFPS will share responsibility for at least weekly unannounced visits to the operation, and any placements of PMC children must be directly approved by the Associate Commissioner of CPS.

The heightened monitoring plan will remain in place for at least one year and until:

- the operation satisfies the conditions of the plan;
- at least six months' successive unannounced visits indicate the operation is in compliance with the standards and contract requirements that led to heightened monitoring; and
- the operation is not out of compliance on any medium-high or high weighted licensing standards.

After the operation is released from the plan, DFPS and RCCL will coordinate to make at least three unannounced visits in the three months following the release from the plan, and the heightened monitoring team will continue to track intake data for the operation for six months to ensure it does not lose progress made during monitoring.

If the operation does not come into compliance with the plan during the heightened monitoring period, DFPS and RCCL will identify one or more of the following penalties:

- suspension of placements;
- imposition of fines;
- suspension or revocation of the facility or CPA's license;
- termination of the contract.

The heightened monitoring plan, unannounced visits associated with the plan, and progress toward meeting the plan must all be documented in CLASS. Caseworkers for PMC children in operations under heightened monitoring must be made aware of the monitoring.

SIGNED and ORDERED this 18th day of March, 2020.



Janis Graham Jack
Senior United States District Judge