



**New York City Department of Investigation
Review of ACS' Systemic Safety Accountability
Mechanisms for Foster Care Providers**

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I. Executive Summary

The New York City Administration for Children's Services (ACS) is charged with ensuring the safety of approximately 8,500 New York City children in foster care. ACS contracts with private, non-profit organizations (providers) to place more than 75 percent of these children in family or kinship foster care arrangements under its Family Foster Care (FFC) program.¹ In 2018, the New York City Department of Investigation (DOI) completed a review of ACS' systemic processes for evaluating and overseeing these providers and ensuring the safety of children in their care.² DOI discovered that, while ACS' evaluation process uncovered and documented serious safety concerns for children in foster care, ACS frequently failed to then ensure that providers addressed those concerns.

Specifically, DOI found that:

- ACS failed to timely require that providers with low safety scores improve their safety performance. As a result, ACS often failed to impose consequences based on providers' low safety scores on internal ACS evaluations.
- ACS similarly failed to adequately address high rates of maltreatment of children in foster care.
 - In Fiscal Year 16 (FY16), 41 percent of ACS' FFC providers fell short of the federal guideline for maltreatment in care³ by more than double. In FY17, 86 percent of these providers fell short of the federal guideline by more than double.⁴

¹ ACS, Flash Report, September 2018 (data for the last day of July 2018). The FFC program serves children who are placed in foster homes with relatives or non-relatives and do not require enhanced services. In addition, ACS' Residential, Therapeutic, and Specialized Foster Care programs serve children who need a higher level of care. DOI's review examined the FFC program.

² For this report, DOI's review focused on ACS' systemic processes for evaluating and overseeing FFC providers' safety performance at the program level. DOI did not review ACS' case-by-case processes for addressing specific instances of safety issues involving individual children. For example, DOI did not review the work of ACS' Office of Special Investigations (OSI); which investigates individual reports of alleged abuse and neglect of children in foster care, determines when abuse or neglect in foster care has occurred, and develops corrective action plans to address case-specific findings; or the work of ACS' Corrective Action Monitoring Unit, which monitors implementation of such plans. These other procedures address issues in individual cases, but DOI's review concerned systemic matters.

³ On May 13, 2015, the U.S. Department of Health and Human Services (HHS) issued what it called a federal "standard" for maltreatment in care that States were expected to work to achieve. HHS has informed DOI that it currently considers the "standard" to be a guideline that States should work towards. ACS does not use this guideline for individual providers, but DOI considered it as an appropriate comparison.

⁴ Under the previous maltreatment in care federal measure, for which data was last publicly reported in federal FY16, New York State ranked 46 out of 46 states for which data was reported. U.S. Department of Health and Human Services, Administration for Children & Families, Children's

- In FY16, 479 children (3.6 percent) were abused or neglected while supervised by FFC providers. In FY17, that number rose to 599 children (4.9 percent), despite the fact that the number of children supervised by FFC providers declined.⁵
- Despite the performance issues described above, ACS rarely imposed consequences on providers with high maltreatment in care rates, including Heightened Monitoring Status (HMS), which triggers increased ACS support and oversight, or Corrective Action Status (CAS), which results in a public vendor rating of “poor” and can impact the provider’s future contracts.
- ACS also failed to require providers that had documented safety issues to focus on improving safety during ACS’ systemic quality improvement process.

To ensure ACS holds its providers accountable for safeguarding New York City children in foster care, DOI made several recommendations to ACS including: establishing consequences for low safety scores, tying provider contracts to safety performance, and requiring providers that perform poorly on safety to focus their quality improvement efforts on safety and show meaningful and sustainable improvement.

ACS fully cooperated with this investigation and has accepted DOI’s recommendations. ACS has agreed to review the current circumstances of the children who experienced abuse (not neglect) in care during FY16 and FY17 to ensure their current safety. That review is ongoing. DOI will monitor implementation of all of its recommendations.

Bureau, Child Welfare Outcomes Report Data, available at <https://cwoutcomes.acf.hhs.gov/cwodatasite/recurrence/index>. New York City (ACS) is responsible for approximately 52 percent of all children in foster care in New York State.

⁵ In FY16, foster parents perpetrated 24 percent of the maltreatment in care that children placed in FFC experienced. In FY17, that finding was 19 percent. The majority of incidents of maltreatment in care occur outside of the foster home, for example, when children are on trial discharge or visiting with their families. In order for a child to be placed on trial discharge at the request of the provider, the provider makes an assessment, an ACS attorney makes an application to the court, and the court must agree. In order for a child to have an unsupervised visit with a parent, the provider must make an assessment to best ensure that the child will be safe and, in some cases, the court must agree. In both instances, the court can also enter an order following the application of a parent or child through their attorney. The child remains in ACS custody, and the provider remains the supervising entity during both trial discharge and visitation.

II. Background

DOI reviewed FFC providers' child safety performance through ACS' annual Scorecard process. Scorecard is ACS' primary process for collecting and analyzing data in order to evaluate the performance of providers and outcomes for children in foster care. ACS considers three areas in its Scorecard evaluation: safety, permanency,⁶ and well-being.⁷ ACS then ranks each provider according to its overall safety, permanency, and well-being scores, which affords providers the opportunity to compare their performance to that of the other providers that are operating the same type of program.

DOI analyzed ACS' FY16 and FY17 Scorecard reports and its underlying data with respect to key safety measures for 22 FFC providers.⁸ DOI focused, in particular, on the data for the six providers with the lowest overall safety scores in FY16.⁹

DOI also examined ACS' oversight of the six providers with the lowest safety scores in FY16 through its Collaborative Quality Improvement (CoQI) process, which ACS utilizes as its primary quality improvement mechanism in tandem with other processes. In addition to reviewing numerous relevant records, reports, and ACS documents relating to these providers and ACS' Scorecard and CoQI processes, DOI interviewed ACS staff, staff from the six providers, and a staff member from a provider that earned a high overall safety score.

III. ACS' Scorecard Evaluations for FFC Providers Showed Safety Concerns for Children in Foster Care

A. ACS' Internal Evaluations of Providers Resulted in Low Safety Scores

ACS' Scorecard process involves ACS scoring foster care providers on overall safety, as well as on several specific safety measures. The overall safety score is comprised of fifty percent maltreatment in care and subsequent maltreatment, which are the Scorecard safety outcome measures, and fifty percent other safety measures, which are the Scorecard safety process and practice measures.¹⁰

⁶ Permanency refers to reunifying children with their families or discharging children from foster care to permanent families.

⁷ Well-being considers children's educational, physical, and emotional needs.

⁸ For FY16, ACS did not score 1 of the 23 FFC providers on certain measures due to that provider's small sample size. As a result, DOI did not consider that provider in its review. ACS' FY18 Scorecard data is not yet available.

⁹ In this report, the six providers are referred to individually as Provider 1, Provider 2, Provider 3, etc. Because DOI conducted confidential interviews with employees from the providers, DOI is not including these providers' names in this report.

¹⁰ The "other measures" are Frequency of Absent without Leave, Responsiveness to ACS Office of Special Investigations' Corrective Action Plans, ACS' Provider Agency Measurement System Review, Foster Parent Training and Certification, and Timeliness of Foster Home Certifications.

Maltreatment in care refers to incidents where children in ACS foster care custody are found to have suffered abuse, neglect, or both. ACS defines subsequent maltreatment in this context as the percent of children who experience maltreatment within the 12 months following their discharge home or to a relative who assumes their guardianship. While, as noted, ACS utilizes several performance measures, because the federal government and ACS use the same definition of maltreatment in care and the federal government has established a performance guideline for this measure, DOI focused its review on the maltreatment in care measure.¹¹

The table below shows the FY16 Scorecard overall safety scores and the safety ranking for the six providers with the lowest overall safety scores out of the 22 total FFC providers scored in FY16. The table also provides the maltreatment in care scores for these six providers.¹² In addition, the table sets forth the average score that ACS calculated of all FFC providers for each category shown.

Table 1: Six Lowest Ranked Providers on Safety in FY16 Scorecard

6 Lowest Ranked FFC Providers on Safety	Safety Rank	Overall Safety Score	Maltreatment in Care Score
	Out of 22	Average Score = 81	Average Score = 73
Provider 1	22	47	2
Provider 2	21	50	19
Provider 3	20	55	10
Provider 4	19	66	58
Provider 5	18	72	73
Provider 6	17	75	79

These six providers' scores all fell below the average score for overall safety, as determined by ACS, and four of the six also scored below the average on maltreatment in care. The maltreatment in care scores for the three lowest scoring providers on overall safety were 2, 19, and 10 (out of 100), respectively, when the system average for FFC providers was 73.¹³

¹¹ The federal government does not use the subsequent maltreatment measure that ACS uses for foster care; therefore, DOI did not focus its review on this measure. According to ACS, all data regarding maltreatment in care included in this report involved allegations that ACS' OSI unit substantiated.

¹² Small FFC providers will score lower on maltreatment in care than larger FFC providers based on fewer incidents of maltreatment in care. FFC providers that supervise fewer children can see wider fluctuations in maltreatment in care results.

¹³ ACS reported to DOI that, based on preliminary FY18 data that DOI has not had the opportunity to fully review, four of the six providers demonstrated improvement, and ACS has placed the other two providers on HMS.

B. Many FFC Providers Fell Significantly Short of the Federal Maltreatment in Care Guideline in FY16 and FY17

ACS measures maltreatment in care using the maltreatment in care rate, which is the number of maltreatment in care incidents that children in foster care experience per 100,000 foster care days.¹⁴ This is the same measure the federal government uses for maltreatment in care. The federal government has also established a guideline for the maltreatment in care rate of no more than 8.5 maltreatment in care incidents per 100,000 foster care days. When ACS scores its providers, a higher maltreatment in care rate results in a lower maltreatment in care score, and a lower maltreatment in care score can result in a lower overall safety score.

As part of this investigation, DOI reviewed the maltreatment in care rates for FFC providers and compared their performance to the federal maltreatment in care guideline. DOI found that, in FY16, 41 percent of FFC providers fell short of the federal maltreatment in care guideline by more than double. In FY17, 86 percent of FFC providers fell short of the federal maltreatment in care guideline by more than double. In addition, in FY17, 82 percent of all FFC providers – or 18 of 22 providers – performed worse on maltreatment in care than in FY16.

The table below shows the number of FFC providers that fell short of the federal guideline. As shown, in FY16, 20 of the 22 FFC providers fell short of the federal maltreatment in care guideline. In FY17, 21 of the 22 providers fell short of the guideline. In addition, in FY17, 19 of the providers fell short of the federal guideline by more than two times the guideline, and two of those providers fell short of the federal guideline by more than four times the guideline.¹⁵

¹⁴ Number of care days includes “all days for all children in foster care at any point during a 12-month period.” This does not include children age 18 or older, incidents that did not occur while the child was in foster care, or reports of alleged maltreatment of children in foster care for less than eight days. Federal Register, Vol. 79, No. 197, Rules and Regulations, Statewide Data Indicators and National Standards for Child and Family Services Reviews, Oct. 10, 2014, available at <https://www.gpo.gov/fdsys/pkg/FR-2014-10-10/pdf/2014-24204.pdf>.

¹⁵ These two providers were not among the six providers on which DOI focused its review based on the providers’ FY16 Scorecard overall safety scores.

Table 2: FFC Provider Performance that Fell Short of the Federal Maltreatment in Care Guideline, FY16 and FY17

FY	Total # of FFC Providers	# that Fell Short of the Federal Guideline	# that Fell Short of the Federal Guideline by 2 to 4 Times the Guideline	# that Fell Short of the Federal Guideline by more than 4 Times the Guideline
16	22	20	9	0
17	22	21	17	2

The table below shows the six providers' rates of maltreatment in care in FY16 and FY17 as compared to the federal guideline. As shown, these providers fell short of the federal guideline in both years, some by more than three times the guideline.¹⁶

Table 3: Six Providers' Maltreatment in Care Rates and the Federal Maltreatment in Care Guideline, FY16 and FY17

Provider	FY16 Maltreatment in Care Rate	FY17 Maltreatment in Care Rate	Federal Maltreatment in Care Rate Guideline
Provider 1	28.9	28.2	8.5
Provider 2	26.1	20.0	
Provider 3	27.6	27.5	
Provider 4	19.7	20.6	
Provider 5	17.3	28.9	
Provider 6	16.4	28.3	

C. Children Under Supervision of FFC Providers with Low Safety Scores Experienced High Rates of Maltreatment in Care

DOI compared the Scorecard maltreatment in care data for the six lowest scoring FFC providers to the data for the other 16 providers. DOI found that, in FY16, three of the six providers had the highest maltreatment in care rates. In addition, all six were in the bottom 10 of all FFC providers based on their maltreatment in care rates. In FY17, four of the six providers were in the bottom nine of all FFC providers.

The maltreatment in care incidents referenced above included both abuse and neglect. According to ACS, abuse incidents, the most serious type of maltreatment in care, are defined as lacerations/bruises/welts; sexual abuse; excessive corporal

¹⁶ It should be noted that two of the six lowest scoring providers on overall safety in FY16 scored in the top ten of all FFC providers on maltreatment in care in FY17, despite having maltreatment in care rates that were more than twice the federal guideline.

punishment; choking/twisting/shaking; fractures; burning/scalding; internal injuries; poisoning/noxious substances; and DOA/fatality. The table below shows the total number of maltreatment in care incidents classified as abuse and the type of abuse incidents that children placed in foster care with the six lowest scoring providers on safety in FY16 experienced.

Table 4: Types of Maltreatment in Care Classified as Abuse at the Six Lowest Scoring FFC Providers, FY16 and FY17

	Lacerations/ Bruises/ Welts	Sexual Abuse	Excessive Corporal Punishment	Choking/ Twisting/ Shaking	Fractures	Burning/ Scalding	Total # Abuse Maltreatment in Care Findings
FY16	17	15	14	3	2	2	53
FY17	21	11	12	8	2	1	55

As shown in the table above, in FY16, ACS substantiated 53 abuse allegations during a total of 37 investigations, nine of which were related to abuse that occurred in foster homes. In FY17, ACS substantiated 55 abuse allegations during a total of 45 investigations, three of which were related to abuse that occurred in foster homes.¹⁷

When looking at individual children rather than incidents, the FY16 and FY17 data also shows that these six providers had a larger percentage of individual children that experienced maltreatment in care than the remaining 16 providers. The next table shows the percentages and numbers of individual children who experienced maltreatment in care, both abuse and neglect, in FY16 and FY17, comparing the six lowest scoring providers with the remaining providers. The federal government does not currently have a standard or guideline for this measure.

¹⁷ As previously noted, the majority of incidents of maltreatment in care occur outside of the foster home, for example, when children are on trial discharge or visiting with their families. The child remains in ACS custody and the provider remains the supervising entity during both trial discharge and visitation.

**Table 5: Number and Percent of Children Maltreated in Care
While Placed with FFC Providers, FY16 and FY17**

	FY16		FY17	
	% of Individual Children Maltreated in Care	# of Individual Children Maltreated in Care	% of Individual Children Maltreated in Care	# of Individual Children Maltreated in Care
6 Lowest Scoring FFC Providers	4.5%	174 out of 3,876	5.1%	187 out of 3,632
Other FFC Providers	3.3%	305 out of 9,380	4.8%	412 out of 8,529
All FFC Providers	3.6%	479 out of 13,256	4.9%	599 out of 12,161

During FY16, 479 children suffered maltreatment in care while placed with the 22 FFC providers. Despite the fact that the number of children placed with FFC providers declined during FY17, the number of children that suffered maltreatment in care rose to 599. The majority of maltreatment incidents during this period involved children who were on trial discharge or visiting with their families.¹⁸

IV. ACS Failed to Ensure Overall Child Safety by Not Timely Holding Providers Accountable for Low Safety Scores

DOI's investigation revealed that low safety scores or performance that fell short of the federal maltreatment in care guideline did not trigger immediate formal or concrete steps to address those safety performance issues. When ACS did impose consequences for a provider's low safety scores or performance that fell short of the federal guideline, it took ACS two years for it to do so.

According to ACS, it does not have "failing" Scorecard scores. ACS acknowledged that particularly low scores from the FY16 Scorecard results, such as the maltreatment in care scores of 2, 10, and 19 that the three lowest scoring providers earned, are very bad scores. However, ACS did not characterize these scores, or any scores, as failing.

ACS also did not set minimum requirements for Scorecard performance or require providers to not fall short of the federal maltreatment in care guideline in providers' contracts. In fact, ACS renewed contracts for the six FFC providers, as well as the other FFC providers, for the time period from July 1, 2016 through June 30,

¹⁸ As previously noted, in FY16, foster parents perpetrated 24 percent of the maltreatment in care that children placed in FFC experienced. In FY17, that finding was 19 percent.

2020, and these contracts were silent as to Scorecard performance requirements and federal safety standards and guidelines.

Finally, three of the six lowest scoring FFC providers in FY16 continued to perform poorly on safety in FY17, and ACS placed two of them on HMS, one in FY17 and the other in FY18. ACS, in response to this report, has now placed another of the six lowest performing providers in FY16 on HMS. While on HMS, a provider must improve its performance on particular measures within a specified period of time while receiving enhanced ACS support and oversight. The provider must also show that it will be able to sustain this improved performance without ACS' enhanced support or oversight. When a provider does not improve or has a more serious issue, ACS may place that provider on CAS, another ACS accountability mechanism, which results in a public vendor rating of "poor," can impact the provider's future contracts, and, if not successfully addressed, will result in ACS' termination of the provider's contract. ACS failed to adequately utilize these tools to address low safety scores or performance issues.

V. ACS Did Not Require Providers with Documented Safety Concerns to Focus on Safety During the CoQI Process

Since it launched CoQI in 2015, ACS has utilized this quality improvement process as its systemic method for improving deficiencies in the foster care and preventive services that providers deliver to New York City children and families.¹⁹

ACS' CoQI model involves a series of steps for identifying issues, termed "challenges," to address with the provider during the process. These steps include having the provider identify one challenge it will focus on during the CoQI process, develop a plan to address the challenge, and identify a measurable and achievable numeric performance target that shows that sufficient improvement is made. ACS and the provider then assess progress toward meeting the target. ACS shares various information, including Scorecard data, with providers during the CoQI cycle. The CoQI process also includes monthly teleconferences with providers that are not meeting certain safety-related requirements, such as face-to-face contacts with children and staffing levels.

In its review of ACS' CoQI process regarding the six providers with the lowest safety scores in FY16, DOI uncovered several deficiencies in the CoQI process.

¹⁹ ACS' Division of Policy, Planning, and Measurement (DPPM) staff implement the CoQI process, and much of the day-to-day work is handled by DPPM's Office of Agency Program Assistance (APA) staff. In 2017 and the first half of 2018, ACS experienced significant staffing vacancies and turnover in its foster care APA unit. In October 2018, ACS confirmed that its foster care APA unit was fully staffed.

A. ACS Did Not Require Providers with Low Scorecard Safety Scores to Address a Challenge Related to Safety During the CoQI Process

Significantly, ACS did not require providers that received low safety scores, as identified through the Scorecard process, to focus on safety during the next CoQI cycle. In fact, ACS gave providers sole discretion to select the one challenge that they would address in the CoQI process. Accordingly, ACS did not sufficiently link its Scorecard safety findings with its CoQI process.

As shown in the table below, DOI found that four of the six lowest scoring providers on overall safety in FY16 did not, despite their scores, choose a 2017 CoQI challenge that directly involved safety issues. In fact, these four providers, all of which had scored poorly on safety, focused their 2017 CoQI work on permanency issues, specifically related to moving children out of foster care and into permanent homes more quickly.

Table 6: 2017 CoQI Priority Focus Area for Six Lowest Performing Providers on Safety in FY16

6 Lowest Ranked FFC Providers for Safety in FY16 Scorecard	2017 CoQI Priority Focus Area
Provider 1	safety
Provider 2	safety
Provider 3	permanency
Provider 4	permanency
Provider 5	permanency
Provider 6	permanency

In its CoQI process, ACS also did not require providers that run both foster care and preventive services programs to separately address a challenge in each program – although providers may request to address one challenge in each program during the process. As a result, providers may focus on a preventive services challenge without addressing a foster care challenge, regardless of the scope and nature of any foster care challenge.

B. ACS Required Providers to Set Their Own Performance Targets and Failed to Hold Providers Accountable for Not Meeting those Targets

ACS required that providers set their own CoQI performance targets; however, ACS did not require that providers utilize any reliable methodology to select those targets. As a result, some providers simply guessed as to what might constitute a reasonable performance target.

Further, ACS failed to require that providers meet their CoQI performance targets. In fact, ACS typically took no action when a provider failed to meet its own target, beyond facilitating a discussion with provider staff regarding the barriers that impacted the provider's inability to meet the target. Providers that did not improve by the end of the CoQI cycle were not required to address a problem that was not remedied during the cycle. Instead, ACS gave the provider the sole discretion to either select a new challenge for the next CoQI cycle or to continue to work on meeting the performance target for the challenge from the previous cycle.

C. Some Providers Lacked a Clear Understanding of the CoQI Process or Lack the Resources to Achieve CoQI Objectives

Most provider staff that DOI interviewed reported that CoQI is an important and necessary process; however, many also said that it is complicated, time-consuming, and not always in line with available provider resources and capacities. In addition, some provider staff involved in the CoQI process do not have a clear understanding of the process. For example, some provider staff were unable to accurately describe the steps of the CoQI process, and many stated that the purpose of CoQI meetings or calls was sometimes unclear.

VI. Conclusion and Recommendations

ACS has a duty to keep children in foster care safe. It also has a duty to oversee its foster care providers and ensure that the providers are meeting their contractual obligations to keep children in foster care safe. DOI's review revealed that ACS does not have sufficient processes in place to ensure that providers address safety issues identified during its Scorecard review and CoQI process. To address the deficiencies DOI identified during its review, DOI has made the following recommendations to ACS:

1. ACS should conduct an emergency safety audit of the current lowest scoring providers on safety and decide whether any action, such as placement on HMS or CAS or contract termination, is necessary and report its findings to DOI within 90 days.

2. ACS should follow-up on the current safety of the children that experienced the types of abuse in care shown in Table 4 and report its findings to DOI within 90 days.
3. ACS should aggregate the OSI corrective actions that OSI issues in response to its case-by-case investigations. ACS should identify recurring themes, both for each provider and for the system as a whole, and ensure that each provider addresses the relevant themes timely.
4. ACS should prioritize safety in the Scorecard and CoQI processes.
5. ACS should create a threshold for Scorecard scores that are considered “unacceptable” and establish a formal process it will implement when a provider is given an unacceptable score in the areas of safety, permanency, or well-being.
6. ACS should develop criteria for placing a provider whose score(s) fall below the established threshold on HMS or CAS.
7. ACS should set forth in provider contracts, or other binding policies governing provider performance, the consequences for unacceptable scores, for not meeting HMS criteria, and for not implementing required corrective actions and should consider providers’ Scorecard scores and all key performance issues when determining the length of contracts and contract renewals for individual providers.
8. ACS should require providers that score below the system-wide average on a safety-related outcome measure (i.e., maltreatment in care and subsequent maltreatment) to address their safety issues during the CoQI process or be subject to HMS or CAS and ultimately contract termination if meaningful and sustainable improvements are not made.
9. ACS should require providers that operate both foster care and preventive services programs to address separate challenges for each program during the CoQI cycle when data shows that separate challenges need to be addressed.
10. ACS should ensure that providers utilize reliable methods for determining their CoQI performance targets, and ACS should approve acceptable targets.
11. ACS should require that providers that do not achieve performance targets during the CoQI cycle continue working to achieve those targets during the subsequent CoQI cycle or formally outside of the CoQI process and should

address any persistent provider failures to improve child safety through accountability measures up to and including terminating the provider's foster care contract.

12.ACS should publicly release its annual Scorecard findings.

ACS has reviewed the above recommendations and has agreed to implement them. DOI will monitor ACS' implementation of these recommendations.