

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**UNACCOMPANIED ALIEN
CHILDREN CARE PROVIDER
FACILITIES GENERALLY
CONDUCTED REQUIRED
BACKGROUND CHECKS BUT
FACED CHALLENGES IN HIRING,
SCREENING, AND RETAINING
EMPLOYEES**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



**Joanne M. Chiedi
Acting Inspector General**

**September 2019
A-12-19-20001**

Office of Inspector General

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Report in Brief

Date: September 2019
Report No. A-12-19-20001

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

The Office of Refugee Resettlement (ORR), a Program Office of the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS), manages the Unaccompanied Alien Children (UAC) Program. The Program serves children who arrive in the United States unaccompanied, as well as children who are separated from their parents or legal guardians by immigration authorities. To ensure the health and safety of children in the ORR UAC Program, OIG is conducting reviews of efforts by ORR facilities to protect all children in their care.

Our objectives were to determine whether selected facilities (1) conducted required background checks for staff who had access to children, (2) employed case managers and mental health clinicians who met the minimum education requirements, and (3) faced any staffing challenges related to hiring and retention.

How OIG Did This Review

We conducted site visits to 45 facilities and reviewed a sample of employee personnel files to determine whether required employee background checks were completed and whether case managers and mental health clinicians met minimum requirements. We also reviewed facilities' staffing ratios for case managers and mental health clinicians to determine adherence to established staffing requirements. At each facility, we conducted interviews with various knowledgeable officials to collect information on the challenges that facilities faced in screening, hiring, and retaining qualified employees.

Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees

What OIG Found

In general, facilities serving UAC met a range of background checks and qualification requirements designed to keep individuals who may pose a risk to the safety and well-being of children from having direct access to children. However, some facilities did not have evidence of the required Federal Bureau of Investigation (FBI) fingerprint or Child Protective Services (CPS) check results and did not always ensure that the out-of-State CPS checks were conducted. In addition, we found that over half of the facilities we reviewed allowed employees to begin employment before receiving the results of either the FBI fingerprint check or the CPS check, or both (ORR issued guidance to address this in March 2019). In addition to the compliance-related issues, ORR granted six facilities a waiver from conducting the CPS check for employees with direct access to children.

From our review of employee qualifications, we found that most facilities hired mental health clinicians who met ORR education requirements; however, many facilities hired case managers who did not. In addition, facilities had difficulty maintaining required staffing ratios because of challenges experienced in screening, hiring, and retaining qualified employees.

What OIG Recommends and Administration for Children and Families Comments

We make several recommendations to ORR to improve UAC Program operations related to background checks, education requirements, staffing ratios, and waivers of CPS checks. The report contains the specific recommendations. In written comments on our report, ACF concurred with our recommendations and outlined corrective actions it had taken or plans to take to address the findings identified in the report. For example, ORR updated its internal monitoring protocols to review care providers' background investigation processes; rescinded all waivers for child abuse and neglect checks (CPS); and ensured that case managers and mental health clinicians meet ORR's minimum education requirements.

Although factors outside of HHS's control may have contributed to the challenges with background checks and employee qualifications that we identified, ACF and ORR have an important role in working with facilities to prevent similar challenges in the future.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Office of Refugee Resettlement (ORR), a program office of the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS), manages the Unaccompanied Alien Children (UAC) Program. UAC are children who have no lawful immigration status in the United States and who have no parent or legal guardian in this country available to assume custody and care for them.¹ The UAC Program serves children who arrive in the United States unaccompanied, as well as children who are separated from their parents or legal guardians by immigration authorities within the Department of Homeland Security. To ensure the health and safety of children in the ORR UAC Program, including when the UAC Program experiences a sudden change in the number or needs of children, the Office of Inspector General (OIG) is conducting reviews of efforts by ORR facilities to protect all children in their care from harm. This review focuses on ORR-funded facilities' efforts to maintain appropriate levels of qualified, screened facility employees² as part of their responsibility to ensure the safety and well-being of children in their care.

OBJECTIVES

Our objectives were to determine whether selected ORR facilities (1) conducted required background checks for employees who had direct access to children,³ (2) employed case managers and mental health clinicians who met the minimum education qualifications, and (3) faced any challenges in hiring and retaining staff.

BACKGROUND

Federal law requires the safe and timely placement of children in the least restrictive setting that is in the best interest of the child.⁴ To that end, ORR funds a network of more than 100 care provider facilities (facilities) that provide temporary care for children until they are released to a sponsor or otherwise leave ORR custody. Operating under cooperative

¹ 6 U.S.C. § 279(g)(2).

² To avoid confusion, we have used the term "employee" throughout the report when referring to staff and contractors. Although there are also background check requirements for facility volunteers who will have access to children, our review did not include volunteers.

³ ORR requires background checks for all employees, contractors or volunteers who have "direct access" to children. *ORR Guide, Children Entering the United States Unaccompanied (ORR Guide or Guide)* § 4.3.2, Employee Background Investigations and Hiring Decisions. In followup correspondence, ORR further explained that "direct access means being able to approach a child without the intervention of a person or a physical barrier."

⁴ 8 U.S.C. § 1232(c)(2).

agreements and contracts with ORR, these facilities provide housing, food, medical care, mental health services, recreational activities, and educational services for the children in their care. In Federal fiscal year 2018, the UAC Program received appropriations of \$1.6 billion and cared for at least 49,100. About 12,400 children were in the UAC Program at the time of our review.

To facilitate placement of children in an appropriate setting, ORR has several types of facilities in its network. The continuum of facility options in this network includes foster care, group homes, shelter, staff secure, secure,⁵ and residential treatment centers. Most are licensed or accredited under the laws of their respective States. Regardless of where they are placed, the children await release to an appropriate sponsor (when possible) and judicial resolution of their immigration status. At times, ORR experiences surges in the numbers of migrant children coming into the United States. During such an “influx,” ORR enters into agreements with temporary emergency care facilities, called “influx care facilities,” to provide shelter and services.⁶ According to HHS officials, ORR can quickly activate or de-activate those facilities depending on the demand for open beds for UACs. Officials stated that influx care facilities are activated once the number of available beds in its network falls below 15 percent of overall capacity. Intended only as short-term-care facilities, ORR does not require that these influx providers be licensed by the State in which they operate—although, like all ORR care providers, influx care facilities must meet the minimum standards described in the Flores Settlement Agreement and ORR policies.

While unaccompanied children are in the legal custody of HHS throughout their stay in ORR care, they are in the physical custody of the care provider facility. To ensure that these facilities provide a safe environment, ORR imposes requirements for preventing and addressing potential dangers. Some, like the standards addressed in this review and summarized below, relate to the backgrounds and qualifications of facility employees who have direct contact with the children, as well as minimum staff-to-child ratios.

Employee Background Investigations

Care provider facilities are prohibited from hiring or enlisting the services of any individual who will have direct contact with children if the applicant has engaged in sexual abuse, sexual

⁵ ORR stipulates that secure facilities must follow the standards set out in the Department of Justice (DOJ) National Standards to Prevent, Detect, and Respond to Prison Rape (28 CFR Part 115), including their standards for hiring and promotion. Those regulations require that covered facilities “perform a criminal background records check” and “consult any child abuse registry maintained by the State or locality in which the employee would work.” (28 CFR § 115.317). The Cooperative Agreement with secure facilities further requires those facilities to complete background checks “in accordance with ORR’s minimum standards and State licensing requirements.” (See, § IV.C.2.) Thus, for purposes of our review, the standards for secure and non-secure facilities were the same.

⁶ *ORR Guide* § 1.7, Placement and Operations During an Influx. Note that the *ORR Guide* is frequently amended and updated; we have referred to *Guide* sections that were in effect at the time of our review. Where pertinent, we have noted updates to those provisions.

harassment or any type of inappropriate sexual behavior.⁷ To implement these safeguards, facilities must complete background investigations on all prospective staff, contractors, and volunteers who will have access to children in ORR care.⁸ Background checks must be completed “prior to being hired and gaining access to children or youth.”⁹ ORR’s “prior to hire” requirement is stricter than some State licensing standards, which permit applicants to begin work while background check results are pending to avoid staff shortages.

ORR policy requires that background checks comply with individual State licensing requirements. Because these vary from State to State, the background investigations for all ORR facilities must include, at a minimum a:

- *Federal Bureau of Investigation (FBI) fingerprint check*¹⁰ of national and State criminal history repositories. The FBI fingerprint-based criminal history records check draws from law enforcement information across Federal, State, and local jurisdictions. An FBI check may also be required under individual State licensing requirements; if so, the facility may work through the State licensing agency to obtain the FBI check. If a State does not require the FBI fingerprint check or an ORR facility is not licensed, the facility must nonetheless complete the check using a public or private vendor.¹¹ At the time of our review, ORR policy allowed a facility to contact HHS’s Office of Security and Strategic Information, Division of Personnel Security, if the facility could not find a public or private vendor to complete the necessary minimum background checks.¹²
- *Child Protective Services (CPS) check.* A CPS check, also known as a child abuse and neglect (CA/N) check, determines whether an individual has been reported to have

⁷ 45 CFR § 411.16(a); *ORR Guide* § 4.3.2, Employee Background Investigations and Hiring Decisions. ORR has since updated its guidance with respect to hiring decisions to state that facilities may not hire anyone “who has engaged in, attempted to engage in, or has been civilly or administratively adjudicated to have engaged in sexual abuse, sexual harassment, intimate partner (domestic) violence, or any type of inappropriate sexual behavior” or “who, as an adult, perpetrated any crime involving a child, regardless of how long ago the incident occurred or any violent crime within the past 10 years.” *ORR Guide* § 4.3.4., Hiring Decisions (Revised 3/11/19).

⁸ 45 CFR § 411.16(c), (d).

⁹ 45 CFR § 411.16(c); *ORR Guide* § 4.3.2, Employee Background Investigations and Hiring Decisions. ORR has since updated its guidance. *ORR Guide* § 4.3.3, Employee Background Investigations (Revised 3/11/19) to provide additional information on the “prior to hire” requirement. That guidance is described later in this report.

¹⁰ <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/>. Accessed on June 28, 2019.

¹¹ *ORR Guide* § 4.3.2, Employee Background Investigations and Hiring Decisions.

¹² Current policy directs facilities to notify ORR’s Prevention and Sexual Abuse Coordinator in writing if they are unable to complete all the required background investigation components and ORR will work with the facilities to ensure that background checks are completed. *ORR Guide* § 4.3.3, Employee Background Investigations (Revised 1/14/19).

committed child abuse or neglect or has a record of substantiated maltreatment of a child, depending on the contents of a State's registry.¹³ Records are State-specific, and the check is performed by State officials. For each prospective employee who will have direct contact with children, a facility must obtain a CPS check of that individual's State(s) of U.S. residence during the last 5 years.¹⁴ Currently, there is no Federal or national repository to facilitate conducting these types of checks.

Both checks must be updated a minimum of every 5 years by the facility, unless State licensing requires the checks to be updated more frequently. The results of these checks must be retained in the employee's personnel file and provided to ORR upon request.¹⁵

In addition to the specific background queries above, ORR requires facilities to comply with all applicable State licensing requirements. Some States require additional background checks, such as a sex offender registry check or a State criminal history database check. These vary by State. See Appendix J for various State requirements.

Waivers of Background Investigation Requirements

ORR regulations authorize the ORR Director to waive or modify sections of the background investigation regulation for an influx facility for "good cause."

Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification.^[16]

Although ORR has authority to waive certain background investigation requirements in influx facilities, all non-influx facilities must meet the minimum background check requirements of the FBI fingerprint check and the CPS check.¹⁷ ORR does not have explicit authority to waive regulatory requirements in non-influx facilities.

¹³ Some States include all reports of child abuse or neglect, regardless of whether those reports are ultimately found to be substantiated.

¹⁴ *ORR Guide* § 4.3.2., Employee Background Investigations and Hiring Decisions.

¹⁵ 45 CFR § 411.16(c); (e).

¹⁶ 45 CFR § 411.10(c).

¹⁷ *ORR Guide* § 4.3.2, Employee Background Investigations and Hiring Decisions; Cooperative Agreement Between HHS and [Grantee Facility] § IV.C.2; Cooperative Agreement Between HHS/ACF/ORR and [Secure Grantee Facility] § IV.C.2.

Employee Qualifications

To fulfill program staffing requirements, facilities are required to have a staffing plan tailored to their size, scope, and type of services provided, among other factors.¹⁸ Care provider facilities must be staffed with qualified, bilingual professionals, paraprofessionals, and support staff to ensure the safety and well-being of UAC by providing appropriate level of care and supervision.

A case manager is one of several key positions that the care provider must include in its staffing plan. Case managers coordinate assessments of children and development of their individual service plans. They also screen for human trafficking concerns and facilitate timely release of children. Mental health clinicians are another key position. The mental health clinician conducts mental health assessments, provides ongoing individual and group counseling services, screens for human trafficking concerns, and provides crisis intervention services.

ORR imposes minimum qualifications for case managers and mental health clinicians. These address requirements for educational background and related experience.

- *Case Managers.* At a minimum, case managers must have a bachelor's degree in the behavioral sciences, human services, or social services fields. Child welfare experience, case management experience, or both is strongly recommended.¹⁹
- *Mental Health Clinicians.* At a minimum, mental health clinicians must have (a) a master's degree in social work with clinical experience in the degree program; (b) master's degree in psychology, sociology, or other relevant behavioral science for which direct clinical experience is a program requirement; or (c) a bachelor's degree plus 5 years' clinical employment experience. All mental health clinicians must be licensed or eligible for licensure.²⁰

Employee qualifications must be documented in their respective personnel files.²¹ The Funding Opportunity Announcements (FOA) that invite facilities to apply for ORR grants and the Cooperative Agreements entered into by the facilities stipulate that a facility must obtain ORR's approval before hiring a mental health clinician, and must obtain "explicit written approval" to

¹⁸ 45 CFR § 411.13(a).

¹⁹ Cooperative Agreement Between HHS and [Grantee Provider Care Facility]; § IV.C.7.

²⁰ *Id.*

²¹ The Cooperative Agreements (at § IV.C.8) require that facilities maintain a personnel file for each employee that "documents the employee's credentials, competencies and performance." The file must include, among other items, the employee's "educational records/diploma" and "professional licensure," if applicable.

hire a mental health clinician who does not meet ORR's minimum qualifications.²² Additionally, ORR may require a supervision plan and additional training for such a prospective employee. OIG is not aware of any written exceptions of employees' minimum qualifications authorized by ORR.

Staffing Ratios

ORR FOAs stipulate that care providers maintain staff-to-children ratios to ensure adequate supervision of and care for the children:

- case manager-to-child ratio of 1:8 for all ORR facilities; and
- mental health clinician-to-child ratio of 1:12 for all ORR facilities.

These minimum staffing ratios are repeated in the cooperative agreements between ORR and individual facilities (both secure and non-secure). However, the cooperative agreements permit ORR to waive the staffing ratios.²³

ORR Monitoring and Compliance

According to its policy, ORR conducts monitoring activities which include desk monitoring, routine site visit monitoring, and monitoring visits to provide oversight of a care provider's program. First, ORR project officers in headquarters assigned to specific facilities conduct oversight through desk monitoring, which includes regular reviews of records and reports. Desk monitoring also includes calls with care provider program directors and others to become knowledgeable about the infrastructure and management systems of the individual programs and to review data found in required documents and reports. Second, ORR contractor field specialists conduct routine site visits, which are day-long site visits at least once a month either announced or unannounced. These visits include observation of service delivery to determine how care provider teams are collaborating and the effectiveness of the case management system. Visits also include a review of records and procedures to determine whether care providers are in compliance with ORR guidelines. Finally, ORR project officers who are assigned exclusively to monitoring and overseeing compliance conduct week-long monitoring visits not less than every 2 years that include (1) the submission of written responses by facilities to questions about the facility operations; (2) a review of policies, procedures, case files,

²² ORR Standing Announcement for Residential (Shelter) Services for Unaccompanied Alien Children, page 7. https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_3.pdf; Cooperative Agreement Between HHS and [Grantee Facility] § IV.C.7.

²³ ORR Standing Announcement for Residential (Shelter) Services for Unaccompanied Alien Children, page 6. https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_3.pdf; Cooperative Agreement Between HHS and [Grantee Facility], § IV.C.1; Cooperative Agreement Between HHS and [Secure Grantee Facility], § IV.C.1.

employee personnel files, and reports; and (3) a physical inspection of the facility and interviews of employees, children, and others. Care providers found to be noncompliant with explicit ORR policies and procedures may be placed on a corrective action plan.²⁴

Additionally, ORR is required by regulation to conduct audits of facilities to ensure compliance with ORR regulations and policies related to sexual abuse and sexual harassment. The audits are conducted by an external contractor and include auditing compliance with background check requirements.²⁵

Related Office of Inspector General Work

Since responsibility for unaccompanied children was transferred to HHS by the Homeland Security Act of 2002, OIG has provided oversight of the UAC Program. OIG has examined various aspects of the UAC Program, including examining whether ORR grantees met safety standards for the care and release of children in their custody. See Appendix K for a complete list of previous OIG work related to the UAC Program.

Given the urgency and seriousness of the health and safety issues raised in 2018 at care provider facilities, OIG completed a large, multifaceted review of the UAC Program. The review gathered information from facilities across the country, including information from facility management, staff responsible for caring for the children, and ORR federal field specialists who help to oversee individual facilities. This report is focused on ORR-funded facilities' efforts to maintain appropriate levels of qualified, screened facility employees as part of their responsibility to ensure the safety and well-being of children in their care.

As part of the 2018 site-visit work, OIG has produced two reports to date and plans to release several more in 2019. Additional reports will address mental health care, reported challenges in maintaining a safe environment and addressing incidents of harm or abuse, and physical security at facilities.

OIG issued an early alert for this report to ACF on November 27, 2018.²⁶ The alert concerned two significant vulnerabilities identified during our site visit to the influx care facility in Tornillo, Texas (Tornillo). First, we found that Tornillo was not conducting required FBI fingerprint background checks for employees. Instead, Tornillo was using checks conducted by a private contractor with access to less comprehensive data, thereby heightening the risk that an individual with a disqualifying criminal history could have direct access to children in ORR care.

²⁴ *ORR Guide* § 5.5, ORR Monitoring and Compliance.

²⁵ 45 CFR Part 411, Subpart L; *ORR Guide* § 4.12, Compliance Audit (12/10/2018).

²⁶ *The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff* (A-12-19-20000). <https://oig.hhs.gov/oas/reports/region12/121920000.asp>.

Second, we found that Tornillo did not employ a sufficient number of mental health clinicians to provide adequate mental health care for children. These issues warranted ORR's immediate attention because they could significantly compromise the safety and well-being of children.²⁷ As of January 17, 2019, the Tornillo facility is no longer operational.

In January 2019, OIG found that the number of children separated from a parent by immigration officials at the United States border and placed in ORR care is unknown. HHS identified 2,737 separated children of class members in the lawsuit, *Ms. L v. Immigration and Customs Enforcement (ICE)*,²⁸ who were in ORR care as of June 26, 2018. Department officials estimated that thousands of additional children may have been separated from their parents by DHS, transferred to ORR care, and released through normal procedures during an increase in separations that began in 2017, before the accounting required by the *Ms. L* court. Some separations have continued since the court order.

HOW WE CONDUCTED THIS REVIEW

To execute a large, multifaceted review of the UAC Program, OIG conducted site visits to 45 of the 102 ORR-funded facilities in 10 States. All site visits lasted 2 or 3 days and occurred in August and September 2018, with the majority in August. We used a purposive selection process to achieve wide coverage of facilities participating in the UAC Program. We sought to visit a diverse set of facilities, which included a variety of facility types, sizes, populations in care, and geographic locations. We sought to ensure that the selection included facilities that operated as both shelter or specialty facilities, cared for children of varying ages, and cared for any separated children.

We conducted our fieldwork during a time when ORR was experiencing a surge of children into custody so that our results could benefit the UAC Program's preparation for future surges. By examining the challenges that facilities experienced during the summer of 2018, we sought to identify vulnerabilities and opportunities for ORR to assist facilities in addressing challenges that facilities experience when facing stressors like seasonal influxes and increasing numbers of younger children.

²⁷ According to ACF's response to our early alert, dated December 21, 2018, it began working with Tornillo in September 2018 to resolve the background check and clinical staffing issues identified in the alert. ACF stated that it requested that the Texas Department of Public Safety perform background checks for Tornillo employees, and it agreed to do so. In subsequent correspondence with OIG, ACF stated that as of January 11, 2019, the date the last child was transferred out of Tornillo, 1,537 of the 2,546 employees had their fingerprint background checks completed, and 26 employees were terminated because of the nature and disposition of the results.

²⁸ *Ms. L v ICE*, No. 18-0428 (S.D. Cal. Dec. 12, 2018) (Joint Status Report). For a link to the January OIG Report on numbers of separated children, see Appendix K.

Across the 45 ORR facilities,²⁹ we reviewed 1,050 employee files³⁰ during August and September 2018.³¹ To determine whether selected ORR facilities conducted required background checks for employees who had access to children and employed case managers and mental health clinicians who met minimum education qualifications, at each facility, we reviewed a sample of employee personnel files.³² These personnel files were generally for a selection of new employees who started between April 1, 2018, and August 1, 2018. We sought to determine whether the required background checks had been completed for employees who had access to children at these facilities.³³ Our review focused on the two ORR federally required background checks—the FBI fingerprint check and CPS check—and background checks required by State licensing rules. If the sampled employee was a case manager or mental health clinician, we assessed whether they met the minimum education qualifications. For mental health clinicians with a bachelor’s degree, we reviewed the employees’ files to ensure that they had 5 years of experience, however we did not assess the experience to ensure it qualified as “clinical”. Finally, we reviewed facilities’ staffing ratios for case managers and mental health clinicians as of May 1, June 1, and July 1, 2018, to determine adherence to staffing requirements.

In addition, we interviewed the program director, human resource supervisors and staff, or other knowledgeable officials that facility management had identified, to collect information on the challenges that facilities reported facing with respect to employee screening, hiring, and retention. We conducted qualitative analysis of the interview data to identify themes that emerged regarding challenges related to staffing. We sought to identify the most significant challenges impacting staffing as reported by facility staff, as well as how facilities sought to address the staffing challenges they encountered. The specific numbers of facilities noting a challenge are provided in the findings.

In the weeks following the site visits, OIG staff interviewed the 28 ORR federal field specialists who worked directly with each of the 45 selected facilities. These interviews covered any known challenges the facilities faced in hiring qualified staff and how the challenges impacted

²⁹ See Appendix B for a list of the ORR facilities we visited and their key characteristics.

³⁰ This included files for seven contractors who had access to children. ORR background check requirements apply to contractors as well as staff. 45 CFR § 411.16(d).

³¹ For one facility, the file review extended to October 2018.

³² Our sample sizes varied depending on the number of new hires at a given facility. In some instances, the number of employees reviewed may have included some who started prior to April 1, 2018, if the facility had limited hiring during the April-August 2018 timeframe.

³³ For purposes of our review, we used an employee’s start date at the facility when the date was readily available in the employee’s personnel file. When the employee’s start date could not be readily determined, we used the employee’s date of hire. However, we found that in general, the employee’s start date matched the employee’s date of hire. The employee’s start date is relevant to when an employee could have direct contact with a child prior to the facility receiving the results of the background checks.

the facilities' ability to meet the needs of the children, among other topics. We also reviewed relevant ORR policies and procedures and asked clarifying questions of ORR central office staff as needed. This was done to help pinpoint vulnerabilities for future improvements to the UAC Program. We did not conduct a comprehensive review of all employee screening, hiring, and retention activities or attempt to identify best practices.

This report summarizes information from our review of employee files and staffing ratios; interviews conducted by OIG of the facilities' program directors or others familiar with the screening and hiring process; and information obtained from HHS officials. We did not independently verify information provided by facility or HHS staff. We also did not follow up with facility employees to determine the root cause of the deficiencies we identified related to background checks.

We analyzed employee personnel files for evidence that background checks were completed prior to the employees' start date at the facility. Because this information could have implications for the safety of children in ORR care at those facilities, on January 29, 2019, we alerted ACF and ORR officials of our preliminary findings. During that briefing, we indicated to ACF and ORR officials that, according to these results, outreach and technical assistance to facilities to reiterate ORR policy and program requirements for background checks was warranted. In addition, we suggested that ORR work with the respective facilities to ensure that background checks are uniformly conducted, and that proper safeguards are put in place while the background check results are pending. In March 2019, the ORR Guide was amended to clarify the background check "prior to hire" requirement, which we discuss later in this report.

We conducted our work in accordance with relevant sections of the Office of Audit Services' Audit Policies and Procedures Manual (OAS Policy). OAS Policy requires that we perform the review to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations to our work. We believe that the information and data obtained and the analysis conducted provide a reasonable basis for any findings and conclusions in the report. See Appendix A for our detailed methodology.

FINDINGS

In general, facilities serving UAC met a range of background check requirements designed to keep individuals who may pose a risk to the safety and well-being of children from having direct access to children. However, a few facilities did not have documentation of the required FBI fingerprint or CPS check results, and some did not ensure that the out-of-State CPS checks were conducted. In addition, we found that over half the facilities had allowed employees to begin employment before receiving the results of either the FBI fingerprint check, the CPS check, or both. Although only a small number of employees in our review required a followup background check, we found that these checks were not completed or not completed in a timely way for more than a third of these employees. For facilities that required State-based background investigations, most completed the checks as required. However, at a few facilities

there was either no documentation that the check was completed or the check was not completed before the employees' start date.

From our review of employee qualifications, we found that most facilities hired mental health clinicians who met ORR education requirements; however, more than half the facilities hired case managers who did not meet the ORR education requirements. In addition, facilities reported difficulty maintaining required staffing ratios because of challenges experienced in screening, hiring, and retaining qualified employees.

In addition to the compliance-related issues, ORR granted six facilities waivers from conducting the CPS check for employees with direct access to children.

FACILITIES GENERALLY CONDUCTED REQUIRED BACKGROUND CHECKS

Background checks are a critical component of the screening process for employees who will work with children. Most facilities completed these checks as required; however, a few did not have documentation of the required FBI fingerprint or CPS check results and some did not ensure that the out-of-State CPS checks were conducted. See Appendix E for an overall summary of facilities that had one or more issues of noncompliance in the employee files related to background checks.

Most Facilities Conducted and Documented FBI Fingerprint Checks

Most of the 45 facilities we reviewed conducted and documented FBI fingerprint checks for their employees who had direct contact with children. In the 11 facilities³⁴ that did not, we found that 55 employee files, out of the 256 employee files reviewed, had no documentation of FBI fingerprint checks. Ten of these employees had worked with children for a year or more with no prior FBI criminal history check.

Thirty of these individuals were employed at Tornillo, a temporary influx care facility. Given the immediate threat to children raised by the number of employees that lacked FBI fingerprint checks, on November 27, 2018, OIG issued an early alert to ORR warning them of the lapse,³⁵ as previously mentioned. ORR took steps to bring Tornillo into compliance, but midway through its effort, on January 17, 2019, ORR closed Tornillo.

³⁴ Of the 1,955 employees at these 11 facilities, 608 employees started between April 1 and August 1, 2018. We reviewed a total of 256 employee files at these facilities. The number of employees reviewed may have included some that started before April 1, 2018, if the facility had limited hiring during the April to August 2018 timeframe.

³⁵ We notified ORR of the lapses at Tornillo in September 2018 and followed with a written Early Alert Memorandum on November 27, 2018. *The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff* (A-12-19-20000). Accessed at <https://oig.hhs.gov/oas/reports/region12/121920000.pdf>.

Our review disclosed another facility that had improperly exempted positions from the FBI fingerprint check requirement. This resulted in six employees whose positions involved direct contact with children not receiving an FBI criminal history check. In the remaining nine facilities, we found three employee files that included a request for an FBI fingerprint check but no documentation of any results. For other employee files, there was simply no documentation as to whether the FBI fingerprint check was requested.

Although our review found relatively few instances of noncompliance with the requirement for an FBI background check (outside of the now-shuttered Tornillo facility), the results are nonetheless troubling. Background checks on employees who have direct contact with children are critical to ensure the safety of vulnerable children in ORR-funded residential facilities. The importance of these national checks is well illustrated by the findings at Tornillo. Between the time that OIG issued its Early Alert and the time Tornillo closed, the facility had completed background checks on 1,537 of the 2,546 employees. Of the 1,537 employees, 26 were terminated because of the nature and disposition of the FBI background check results.

Additionally, 11 of the 45 facilities had 29 employees who required a followup FBI fingerprint check. Of the 29 employees, we identified 1 employee file that did not have the required followup check and 10 employee files without timely followup checks—either every 5 years as required by ORR, or more frequently if required by the State.

For more details on our findings concerning employees whose files showed no documentation of required FBI fingerprint-based criminal history checks, see Appendix F.

Most Facilities Conducted and Documented Child Protective Services Checks

Most of the 39 facilities³⁶ required to conduct CPS checks conducted and documented the checks for their employees that we reviewed who had direct contact with children. In 10 facilities,³⁷ however, we found that the files of 29 employees, of the 206 employees reviewed, lacked documentation of CPS check results.

- Two facilities did not conduct renewed CPS checks for previous employees who were rehired.
- Four facilities had requested CPS checks before each employee's start date but did not have documentation of the results in the files at the time of our onsite review. One

³⁶ Of the 45 facilities, 6 were granted waivers from ORR related to the CPS check. As such, employees at these facilities did not undergo this background check. The ORR waivers of the CPS check are discussed later in this report.

³⁷ Of the 1,297 employees at these 10 facilities, 194 employees started between April 1 and August 1, 2018. We reviewed a total of 206 employee files at these facilities. The number of employees reviewed may have included some who started before April 1, 2018, if the facility had limited hiring during the April to August 2018 timeframe.

facility cited large numbers of new employees and the associated burden on its human resources department, which was behind on its paperwork, as the reason the checks were not in the files.

- One facility did not conduct a renewed CPS check for a previous employee who was rehired, and the results of a CPS check had not been received for another employee.
- For the remaining three facilities, we were unable to determine the reason the checks were not completed.

One of the facilities accounted for 7 employees whose files did not contain documentation that the CPS checks and FBI fingerprint checks had been performed. We could not identify a reason why the facility neglected these background inquiries; during our interview, facility employees stated there were no challenges related to completing the screening or background checks for potential employees; however, during the interview facility employees did mention the length of time it takes to get background checks completed. Four additional facilities lacked documentation that both the FBI fingerprint check and CPS checks had been completed for certain employees.

Additionally, 11 of the 39 facilities had 29 employees who required a followup CPS check. Of the 29 employees, we identified 1 employee file that did not have the required followup check and 11 employee files without timely followup checks. For more details on our findings concerning employees whose files showed no documentation of required CPS checks, see Appendix F.

Some Facilities Did Not Conduct or Document Out-of-State Child Protective Services Checks

We identified 29 facilities³⁸ with employees who had lived in other States during the previous 5 years. We found 75 employee files for individuals who reported living in other State(s) during the covered period, but only 4 employee files contained documentation of the completed checks. The other employee files contained no documentation of out-of-State background checks (45 files)³⁹ or we were unable to determine whether the checks were conducted (26 files). One facility reported that it did not conduct out-of-state checks but relied on the FBI and the current State's CPS checks. However, these background checks do not include reviews of

³⁸ We note that at the time of our audit work, both secure and non-secure facilities were required to conduct out-of-state CPS checks for employees who had lived in other states during the previous 5 years. Since we completed our audit work, ORR amended its *Guide* to exempt secure facilities from personnel background and screening requirements contained in the *Guide*. *ORR Guide*, § 4.3, Personnel (Revised 1/14/19). Secure facilities must continue to follow DOJ Standards for hiring decisions set out in 28 CFR Part 115 (see footnote 5). The DOJ Standards require CPS checks of the registry only in the state where the facility is located. 28 CFR § 115.317(c)(2). The DOJ rules also require each secure facility to "make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse." 28 CFR § 115.317(c)(3).

³⁹ One facility provided documentation to support that its CPS checks were subsequently completed (3 files).

CPS information for prior States of residence. As such, the requirement was not being met in this facility.

Three facilities did not collect information on employees' prior States of residence. As such, for their 63 employees, we were unable to determine whether employees resided in other States during the previous 5 years.

For the six facilities granted an ORR waiver of the CPS check, the waivers were based, at least in part, on individual State rules that created barriers to receiving CPS checks for employees in ORR facilities. However, it is not clear that the waiver was meant to apply to other prior residences of employees in States that were willing to conduct CPS checks. We identified 30 employees of these six facilities with waivers who had lived in other States during the previous 5 years for whom no CPS check had been performed in any of these States.

Without documentation in the employee file to demonstrate that facilities conducted the CPS check in employees' prior States of residence, or by failing to conduct these checks, facilities could have placed at risk the health and safety of children in their care by hiring employees who had not been fully vetted.

OVER HALF THE FACILITIES ALLOWED EMPLOYEE(S) TO START WITHOUT FIRST RECEIVING BACKGROUND CHECK RESULTS

Although ORR requires background checks to be completed prior-to-hire, certain States permitted employees to begin working on a provisional basis before their background investigations had been completed. We found that facilities in those States sometimes aligned their pre-employment process with the State's rules and brought on employees while awaiting the results of their background checks. We identified 12 facilities that allowed provisional employment before receiving results of either the FBI fingerprint check, the CPS check, or both.

Of the 45 facilities we visited, 27 facilities⁴⁰ had employee files—totaling 98 of the 593 employees reviewed—where FBI fingerprint check results were received after the employee's start date. At the time of our review, most of these individuals (84) were employed for fewer than 90 days without the completed FBI check. Also, of the 98 employees, more than half (53) were working for facilities in states that permitted provisional employment while awaiting the required checks.

⁴⁰ Of the 3,873 employees at these 27 facilities, 850 employees started between April 1 and August 1, 2018. We reviewed a total of 593 employee files at these facilities. The number of employees reviewed may have included some that started before April 1, 2018, if the facility had limited hiring during the April–August 2018 timeframe.

Of the 39 facilities required to conduct CPS checks, 27 facilities⁴¹ had employee files—totaling 207 of the 572 employees reviewed—where CPS check results were received after the employee’s start date. At the time of our review, the majority of these individuals (199) were employed for fewer than 90 days without the completed CPS check. Also, of the 207 employees, more than half (129) were working for facilities in states that permitted provisional employment while awaiting the required checks.

We note that 23 facilities had employee files where both the FBI fingerprint check and CPS check results were received after the employee start date.

For those employees who started their employment before the results of their background checks were received, during our review we did not find any instances in which the results were disqualifying. We did identify one employee whose background check disclosed a sustained finding of neglectful supervision, which required a risk evaluation to determine whether this employee should remain at the facility. This employee was ultimately terminated; however, we do not know the basis for termination.

For more details on our findings concerning employees who were allowed to start employment without first receiving the required FBI fingerprint and CPS check results, see Appendix G.

OIG communicated its preliminary findings on this topic to HHS officials on January 29, 2019. Subsequently, ORR amended its Guide to clarify the prior-to-hire requirement. In a section added March 11, 2019,⁴² ORR explained that although a facility may extend a conditional offer of employment before receiving results of both the State and Federal background checks, the applicant’s start date must be after the facility receives the results of both inquiries. A facility may begin applicant training before receiving the results of both background checks, but only if the training is provided in a location that is completely separate from the facility where children reside and the facility documents that the training involves no direct contact with children. Facilities must submit the name of each potential employee who will have direct child contact to ORR for final approval; ORR will check to make sure the applicant has not been previously terminated by a facility for a substantiated allegation of sexual misconduct.⁴³ OIG commends ORR for moving quickly to issue clarifying guidance.

⁴¹ Of the 3,574 employees at these 27 facilities, 776 employees started between April 1 and August 1, 2018. We reviewed a total of 572 employee files at those facilities. The number of employees reviewed may have included some who started prior to April 1, 2018, if the facility had limited hiring during the April-August 2018 timeframe.

⁴² *ORR Guide* § 4.3.9 Questions and Answers (Added March 11, 2019).

⁴³ *ORR Guide* § 4.3.4, Hiring Decisions.

FACILITIES GENERALLY FOLLOWED STATE REQUIREMENTS FOR BACKGROUND CHECKS

In addition to ORR minimum background check requirements, certain States require employees to undergo State-based background investigations. Generally, facilities completed these checks for their employees as required. We found only a portion of employee files reviewed, 153 of 612 employee files, where there was either no documentation the State-based check was completed or the check was not completed before the employee's start date. For more details on our findings concerning facilities that had State background check issues, see Appendix H.

OVER HALF OF ALL FACILITIES HIRED CASE MANAGERS WHO DID NOT MEET MINIMUM EDUCATIONAL REQUIREMENTS, WHILE ALMOST ALL FACILITIES HIRED MENTAL HEALTH CLINICIANS WHO DID MEET MINIMUM REQUIREMENTS

With respect to case managers, OIG found that 31 facilities had hired case managers who did not meet the minimum qualifications. Specifically, of the 194 case managers included in our review, 67 individuals across 31 facilities did not meet the education requirement. Most of these case managers did have a bachelor's degree, but in a field of study other than those specified by ORR. However, four case managers did not have a bachelor's degree and seven case managers did not have educational records or a diploma in their employee files.

Almost all facilities hired mental health clinicians who met ORR educational requirements. Only four facilities hired mental health clinicians who did not meet these minimum qualifications. Specifically, 5 of the 173 mental health clinicians included in our review did not fulfill minimum educational qualifications. Of these, three mental health clinicians had a bachelor's degree, but their employee file did not support the required 5 years⁴⁴ of clinical experience.⁴⁵ OIG found only one mental health clinician with no relevant degree or experience and one mental health clinician whose employee file did not contain educational records or a diploma documenting a degree.

OIG is not aware of any written exceptions to employees' minimum qualifications authorized by ORR. However, ORR stated that it sometimes allows conditional employment for 60 to 90 days on a case-by-case basis, and any such exceptions would be informal—either granted orally or via email to the facilities. OIG requested a description of any waivers it granted, but ORR did not provide any.

⁴⁴ The three employee's files did not indicate 5 years of experience. As explained in the methodology, we only ascertained the number of years of experience for mental health clinicians, not whether that experience qualified as "clinical" experience.

⁴⁵ All three of these mental health clinicians were employed by two facilities in New York. These facilities had obtained a State-approved waiver that allowed non-profit entities to provide professional counseling services through individuals who do not meet the State's educational requirements for licensure. For one facility the waiver expired on April 30, 2018, and the other facility's waiver expired on June 30, 2018. Both dates were prior to our onsite visit at these facilities.

Although OIG did not assess whether case managers with bachelor's degrees in non-qualifying areas of study or mental health clinicians with bachelor's degrees performed their job duties less effectively, having case managers and mental health clinicians without the requisite education may heighten the risk of children not receiving effective case management and clinical services.

FACILITIES HAD DIFFICULTY MAINTAINING REQUIRED STAFFING RATIOS FOR MENTAL HEALTH CLINICIANS AND CASE MANAGERS

We found that facilities had difficulty maintaining required staffing ratios because of challenges in screening, hiring, and retaining qualified employees.⁴⁶ At the time of our visits in August and September 2018, 28 of the 45 facilities reported current staffing shortages for mental health clinicians or case managers. We requested staffing ratios for mental health clinicians and case managers from all 45 facilities for specific dates: May 1, June 1, and July 1, 2018. Of the 38 facilities that responded, 15 did not meet the ORR minimum mental health clinician-to-child ratio (1:12) for all 3 dates—with ratios ranging from 1:13 to 1:21.⁴⁷ Nine facilities did not meet the ORR minimum case manager-to-child ratio (1:8) for all three dates—with ratios ranging from 1:9 to 1:14. Seven facilities did not meet either ratio for all three dates. Having case managers and mental health clinicians with large caseloads that result in the facility exceeding the required ratio may place the children at risk of not receiving necessary case management and clinical services. See Appendix I for details on staffing ratios.

About Half the Facilities Reported Challenges in Screening Prospective Employees

Facilities reported challenges in screening prospective employees, which impacted the facilities' ability to maintain staffing ratios. Of the 45 facilities, 22 reported challenges completing the screening process or background checks for potential employees, with most (17 facilities) citing the length of time it takes to receive the results of background checks as the biggest challenge. Those facilities waited from 3 weeks to 3 months for background check results. Two facilities reported that potential employees were no longer interested in the position by the time the facility completed its screening process.

Twenty-four facilities reported experiencing challenges when screening applicants who had lived outside the United States. Most (16 facilities) cited difficulties validating applicants' education outside the United States as the biggest challenge.

Employees who have previously lived outside the United States present an issue relating to background investigations, as well. There is no requirement in Federal law to conduct foreign

⁴⁶ OIG is issuing a companion report that addresses, in part, difficulties facilities face in hiring and retaining youth care workers.

⁴⁷ The Tornillo facility was not included in the range, as Tornillo was an influx facility. Tornillo, which is now closed, reported maintaining a ratio of 1:36 for each of the requested dates.

criminal records checks for individuals who have lived outside the United States, even those working with vulnerable populations. Likewise, ORR does not require facilities to conduct background checks from applicants' other countries of residence. As a result, for those applicants who are recent arrivals to the United States, facilities would have little or no criminal history information available.⁴⁸ In our review, we identified 79 employees in 31 facilities who had lived outside the U.S. during the previous 5 years.⁴⁹

OIG recognizes the difficulties in obtaining criminal history checks from other countries for employees who resided outside the United States, as there is no centralized repository for this data. Moreover, each country has its own data protection laws and disclosure restrictions. Some will disclose information only to the subject and some will not disclose records to non-citizens. These are just examples of the obstacles to instituting international criminal records checks. Given these obstacles, OIG is not recommending that ORR institute a specific process for criminal background checks for individuals who have lived and worked outside the United States.

Over Half the Facilities Reported Challenges in Hiring and Retaining Employees

Facilities reported challenges in hiring and retaining employees, which impacted the facilities' ability to maintain staffing ratios. When asked which employee positions posed the greatest hiring challenge, 26 of the 45 facilities reported that it was in hiring mental health clinicians. Facilities most often attributed this to finding bilingual candidates and finding candidates who met the minimum qualifications.

Hiring challenges were not limited to mental health clinicians. Twelve facilities reported having the most difficulty hiring youth care workers. Facilities cited finding bilingual candidates as a common challenge. Other obstacles reported were the low wages offered at this position, with three facilities specifically identifying competition with other agencies as the obstacle, and the location of the facilities. Only one facility reported having the most difficulty hiring case managers, specifically in finding candidates who meet the education requirements. Facilities used online job postings and job fairs as the most common method of recruiting potential employees.

Of the 45 facilities, 28 reported challenges with retaining employees. The most common challenges reported were low wages and salaries, disagreeable hours, and competing job opportunities for applicants. To address the various challenges, facilities cited increasing pay or offering bonuses, holding employee appreciation events, and providing support to employees as the most common retention strategies.

⁴⁸ For example, one employee lived outside the United States until March 2018, when she moved to Texas and became employed at the facility on April 16, 2018. Her background information would extend only for the month before her employment.

⁴⁹ In one facility alone, 12 of its 30 employees reviewed had lived abroad during the 5-year window.

ORR GRANTED SIX FACILITIES WAIVERS FOR THE CHILD PROTECTIVE SERVICES CHECK

ORR granted waivers to six facilities, allowing them to hire employees without conducting CPS checks. These waivers were issued to the two influx facilities in operation at the time of our review and to four shelters that were not influx facilities.

The authority to waive background check requirements at influx facilities is clear; ORR regulations specifically permit a waiver “for good cause,” when “the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible and the Director [of ORR] determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification.”⁵⁰

There is no comparable regulation allowing ORR to waive background checks for shelter facilities, or any other non-influx facilities.

Substantively, ORR explained that the four shelter facilities were located in a State where the licensing agency refused to perform CPS checks and there was no other source for the information.⁵¹ Thus, a waiver was necessary. In lieu of a CPS check, ORR required that most of the waiver facilities have employees self-certify that they had no history of child abuse. At five of the six facilities (including one influx care facility), ORR required that the facilities obtain and maintain in each employee’s personnel file a certification from the employee that he or she had a clean child abuse and neglect history. According to employee lists provided to us before our site visits, these 5 facilities had 2,697 employees. At the sixth facility (the other influx care shelter), ORR did not require a self-certification or any other actions by the facility that would mitigate the risk of not conducting the CPS check for its 677 employees.

Reliance on employee self-certifications creates a vulnerability to the health and safety of children as there is no easy means to verify the assertions in a self-certification, which could easily include false information.⁵² Because this alternative offers less protection to children in

⁵⁰ 45 CFR § 411.10(c).

⁵¹ The four shelters were licensed as behavioral health residential facilities and the State did not require a CPS check for such facilities at the time of our review. Therefore, the State licensing agency refused to conduct the CPS checks for these shelters. Beginning September 1, 2019, the State will begin requiring CPS checks for facilities that contract with the Federal Government, only receive Federal monies, and provide direct services to children in a licensed behavioral health residential facility.

⁵² For example, we identified one employee who self-certified she had never been a subject of any child abuse and neglect investigations, substantiated or unsubstantiated, or arrested for a crime involving child abuse or neglect in any State. However, this employee’s State-wide criminal history check disclosed a third-degree felony for child neglect.

ORR care than would an independent check of State records, ORR should no longer grant waivers of policy that affect the safety of children.

We do note that on March 11, 2019, ORR amended its Guide relating to background checks. It now directs a facility to “notify ORR’s Prevention and Sexual Abuse Coordinator in writing if they are unable to complete all the required background investigation components and ORR will work with the facilities to ensure that background checks are completed.”⁵³

CONCLUSION

Although ORR faces a number of challenges in its efforts to ensure that staffing at its facilities meets the UAC Program requirements, in general, facilities serving UAC met a range of background check requirements designed to keep individuals who may pose a risk to the safety and well-being of children from having direct access to children. However, a few facilities did not have documentation of the required FBI fingerprint or CPS check results and some did not ensure that the out-of-State CPS checks were conducted. In addition, we found that over half the facilities had allowed employees to begin employment before receiving the results of either the FBI fingerprint check, the CPS check, or both. Although only a small number of employees in our review required a follow-up background check, we found that these checks were not completed or not completed in a timely way for more than a third of these employees. For facilities that required State-based background investigations, most completed the checks as required. However, at a few facilities there was either no documentation the check was completed or the check was not completed before the employees’ start date.

In addition, employees who have previously lived outside the United States present an issue relating to background investigations, since there is no requirement in federal law to conduct foreign criminal records checks for individuals who have lived outside the United States.

ORR requires that hired staff, at the minimum, have the relevant qualifications to work with children and be properly trained and licensed, as necessary. Facilities faced challenges adhering to ORR minimum education requirements, primarily for their case managers, though almost all facilities complied with the requirements for mental health clinicians. Facilities had difficulty maintaining the required staffing ratios for case managers and mental health clinicians because of facilities’ challenges in screening, hiring, and retaining qualified staff.

ORR granted a waiver for the CPS check at four shelter facilities even though it lacks explicit authority to do so.⁵⁴ In lieu of a CPS check, ORR required that these facilities have employees self-certify that they had no history of child abuse. ORR has since revised its policy and will work with facilities to ensure that all background checks are completed.

⁵³ ORR Guide, § 4.3.3, Employee Background Investigations (Revised March 11, 2019).

⁵⁴ There is no explicit authority for ORR to waive background check requirements for non-influx facilities--their regulatory waiver authority at 45 CFR § 411.10(c) extends only to “emergency care provider” (influx) facilities.

The failure of some facilities to ensure completion of required background checks in compliance with State and Federal regulations may have placed the health and safety of children at risk. In addition, facilities with case managers lacking the required education, and both case managers and mental health clinicians carrying large caseloads that result in the facility exceeding the required ratios may place the children at risk of not receiving necessary case management and clinical services.

Case managers are responsible for coordinating children's care and release. Insufficient case management services can result in extended lengths of stay in ORR facilities or placements with sponsors who have not been fully vetted. Mental health clinicians play a vital role in ensuring children receive the mental health services they need to adjust to their current living situation. Inadequate clinical services could have significant and long-term consequences for the children's well-being and development.

RECOMMENDATIONS

ORR must address the shortcomings we identified and better ensure that similar issues do not recur in the future. Enhanced monitoring and oversight by ORR, using its existing monitoring mechanisms, could help achieve these goals. Although, according to HHS officials, some of the challenges we identified are caused by factors outside the control of ACF – such as the cyclical nature of UAC influxes and the associated expansion and contraction of care provider facility capacity, variability in the content and processing time of background checks at the State level (ranging from 3 weeks to 3 months), and a general shortage of qualified, bilingual case managers and clinicians – it is important for ACF to assist facilities in addressing these challenges to the extent possible. As such, we recommend that ACF work with ORR in taking the following actions to comply with background check and staffing requirements.

Background Checks:

- Ensure that all facilities complete the required Federal and State background checks on current employees whose checks were not completed, and take action to ensure that these employees do not have direct access to children while the results of the checks are pending;
- Reiterate to facilities that ORR requires all background checks be completed prior to the employee's start date and access to children;
- Include a review of facilities' compliance with all background check requirements as a part of ORR's routine site visit monitoring;
- Require facilities to ensure CPS checks are completed for all employees who lived outside of their current State of residence in the past 5 years and where necessary, ORR should work with facilities to ensure that CPS checks are completed; and

- Explore how best to ensure that all facilities are not employing individuals who have committed disqualifying crimes outside the United States.

Staff Qualifications:

- Provide additional guidance to facilities so they can better ensure that case managers and mental health clinicians meet ORR's minimum required education qualifications; and
- Reiterate to all facilities the ORR policy requiring facilities to obtain ORR written approval prior to hiring a case manager or mental health clinician who does not meet minimum requirements and require a supervision plan or additional training for the potential employee as needed.

Staffing Ratios:

- Work with facilities to develop a process for facilities to report when case manager or mental health clinician staffing ratios are not met, so that ORR can use this information when making placement decisions and ensuring the children's needs are met.

Waivers:

- Rescind existing waivers to non-influx facilities for CPS checks and work with facilities to ensure CPS checks are completed for current and future employees.

ADMINISTRATION FOR CHILDREN AND FAMILIES RESPONSE

In written comments on our draft report, ACF concurred with our recommendations and outlined corrective actions it had taken or plans to take to address the findings identified in the report. For example, ORR will use its onsite monitoring and auditing process to ensure that employees have evidence of background checks in personnel files; those without the appropriate checks will not be allowed access to children until the facility provides documentation that the checks were completed. In addition, ACF reported that in April 2019, ORR updated its internal monitoring protocols to include a more detailed review of care providers' background investigation processes to ensure compliance with ORR requirements, including the completion of background checks on all staff, contractors, and volunteers who have access to children in the UAC Program. In May 2019, ACF reported that ORR rescinded all waivers to non-influx care providers for child abuse and neglect (CPS) checks and provides technical assistance to ensure that all background investigation components are completed, rather than providing waivers to non-influx providers. Further, ACF stated that ORR plans to explore screening practices for applicants who resided or were employed outside of the United States and to work with internal and external subject matter experts, including law

enforcement, in screening applicants for employment. In addition, ACF stated that ORR will work with care providers to ensure that case managers and mental health clinicians meet ORR's minimum education requirements and will reiterate the process for seeking written approval to hire those personnel who do not meet minimum requirements. Regarding staff-to-child ratios not being met, ACF stated that it would leverage its current process to identify providers that might fail to meet required ratios, so that ORR may make better placement decisions.

ACF's written comments are included in their entirety as Appendix M.

APPENDIX A: DETAILED METHODOLOGY

We conducted our work in accordance with all sections of Office of Audit Services Policy that are relevant to this review of employee hiring and screening practices at the 45 ORR facilities we visited. The OAS Policy requires that we perform the review to obtain sufficient and appropriate documentation to meet our stated objectives and to discuss any limitations to our work. We believe that the information and data obtained and the analysis conducted provide a reasonable basis for any findings and conclusions in the report.

Scope

To execute a large, multifaceted review of the UAC Program, OIG conducted site visits to 45 of the 102 ORR-funded facilities in operation across the country. All site visits lasted 2 or 3 days and occurred in August and September 2018, with the majority in August. We visited facilities to identify challenges they experienced with the hiring process and their potential to affect the health and well-being of children in ORR care.

We conducted our fieldwork during a time when ORR was experiencing a surge of children into custody so that our results could benefit the UAC Program's preparation for future surges. By examining the challenges facilities experienced in the summer of 2018, we sought to identify vulnerabilities and opportunities for ORR to assist facilities in addressing challenges facilities experienced when facing stressors like seasonal influxes and increasing numbers of younger children. This timing also allowed us to address challenges related to hiring and screening employees who have regular contact with children.

Our findings focus on instances when facilities failed to meet ORR program requirements or State licensing requirements, and challenges related to facility staffing. Our review primarily describes ORR facilities' hiring efforts through early August 2018, and we requested additional follow-up information from HHS officials and facilities as needed. This review did not identify activities that facilities found to be most effective or best practices for recruiting, screening, hiring, and retaining qualified employees. Rather, we focused our review on identifying challenges in an effort to help ORR pinpoint vulnerabilities for future improvement of the UAC Program.

Selection of Facilities

We used a purposive selection process to achieve wide coverage of facilities participating in the UAC Program. In order to ensure a diverse set of facilities, our selection included facilities that:

- varied in size,
- operated in different geographic locations,
- operated as shelters or as specialty facilities,
- cared for children of varying ages, and
- cared for any separated children.

The 45 visited sites included facilities that cared for 72 percent of the children in ORR custody at the time of our review. We visited 19 of the largest facilities in ORR's network. Of the facilities that we visited, about two-thirds (28) were shelter facilities, the most common type of facility in ORR's network. We also visited every residential treatment center (2), staff secure (9), secure (2), and influx (2) facility in ORR's network at the time. Most facilities (29 of the 45) cared only for teenagers, but we also visited 16 facilities that cared for younger children. Additionally, 37 facilities that we visited reported that they had cared for at least one child who had been separated from their parents after entering the United States. See Appendix B for more information about the facilities we visited.

Facility Site Visits

Multidisciplinary teams of OIG staff conducted each site visit. Each team consisted of at least one evaluator, auditor, investigator, and attorney. These teams were trained in advance regarding their responsibilities specific to this fieldwork. Onsite activities included, among other things, interviewing key facility staff members, examining facility employee records, and conducting a structured assessments of facility premises.

This report focused on ORR-funded facilities' efforts to maintain appropriate levels of qualified, screened facility employees as part of their responsibility to ensure the safety and well-being of children in their care, and relies primarily on:

- review of employee personnel files;
- discussions with the program director, human resource supervisors and staff, or other knowledgeable officials that facility management had identified; and
- analysis of staffing ratios for case managers and mental health clinicians.

Employee File Review

During our site visits, OIG staff reviewed a sample of personnel files of 1,050 employees to determine whether the required background checks had been conducted on employees with access to children at these facilities, including the key positions of youth care workers, case managers, and mental health clinicians. These files were generally a selection of new employees who started between April 1, 2018, and August 1, 2018, however our sample sizes varied depending on the number of new hires at a given facility. In some instances, we also reviewed employees who started before April 1, 2018, if the ORR facility had limited hiring during the April-August timeframe. We conducted analyses to identify facilities that failed to meet background check requirements.

Facility Personnel Interviews

During our site visits, we used a standardized interview protocol to interview program directors, human resource supervisors and staff, or other knowledgeable officials that facility

management identified. The protocol included a variety of questions intended to gain an understanding of the challenges that facilities faced with employee screening, hiring, and retention. We conducted analyses of the interviews to identify facilities' challenges in recruiting, screening, hiring, and retaining employees.

Staffing Ratios Analysis

We requested staffing ratios for case managers and mental health clinicians from all 45 facilities for 3 specific dates: May 1, June 1, and July 1, 2018. Thirty-eight facilities provided the requested information. We examined these reported ratios to determine where facilities met ORR's required staffing ratio of 1:8 for case managers and 1:12 for mental health clinicians. We also interviewed program directors, executive assistants, or human resources staff to collect information on staffing shortages and the challenges facilities faced hiring and retaining case managers, mental health clinicians, and other staff.

Federal Field Specialists Interviews

In the weeks following the site visits, OIG staff interviewed the 28 ORR federal field specialists who worked directly with each of the 45 selected facilities. During these interviews, we gathered information and insights from the ORR federal field specialists about facilities' challenges in hiring qualified staff and how the challenges impacted the facilities' ability to meet the needs of the children, among other topics.

Followup With Government Officials

We submitted a number of questions to ACF officials, ORR officials, and ORR staff from September 2018 through March 2019 to clarify ORR policy and gain insights about the guidance that HHS had provided to facilities on background check and staffing requirements. In addition, we met with ACF and ORR officials and alerted them that our preliminary analysis of employee personnel files indicated that facilities were not following ORR policy on background checks for potential employees. OIG provided ORR with facility-specific data underlying these findings for any appropriate action.

Review of Policy and Background Check Requirements

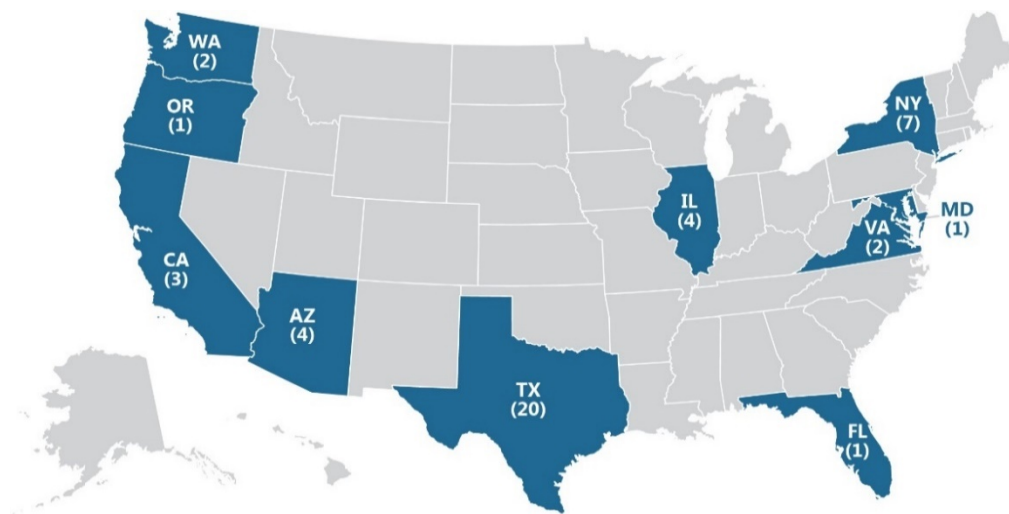
We reviewed ORR policy on background checks, mental health clinician and case manager qualifications, and staffing ratios for case managers and mental health clinicians at facilities. Additionally, we analyzed State background check requirements for each of the States with facilities we visited. We created a checklist for our employee file review based on ORR policy and State requirements for background checks. We did not review employee files for CPS checks in facilities that received a waiver from ORR for completing that check.

Limitations

We did not independently verify information provided by HHS or facility employees. The facilities we visited and the employee files we reviewed were purposively selected and do not necessarily represent the experiences of all facilities.

APPENDIX B: CARE PROVIDER FACILITIES VISITED BY OIG

During August and September 2018, OIG staff conducted site visits to 45 facilities across 10 States.



Number and Type of Facilities Visited

28	Shelter	Most common type of residential care facility; provides housing, food, medical care, mental health and educational services, and recreational activities.
9	Staff Secure	Provides close supervision to children who exhibit disruptive behavior, are a flight risk, or display gang affiliation. This includes the only therapeutic staff secure facility that ORR funded at the time of our site visit that provides a combination of close supervision and intensive support and clinical services (e.g., in-depth counseling).
2	Secure	Provides care for children who pose a danger to self or others, or who have been charged with a crime.
2	Residential Treatment Center	Provides children who need more intensive mental health treatment with sub-acute therapeutic care through a structured 24-hour-a-day program and services that are highly customized to individual needs.
2	Influx	Provides children with temporary emergency shelter and services; used when ORR experiences an influx of children.
2	Transitional Foster Care	Provides short-term foster care for children under age 13, siblings, pregnant and parenting teens, or those with special needs; services provided in the community.

Source: OIG analysis of ORR and facility data, 2019.

Facilities Visited

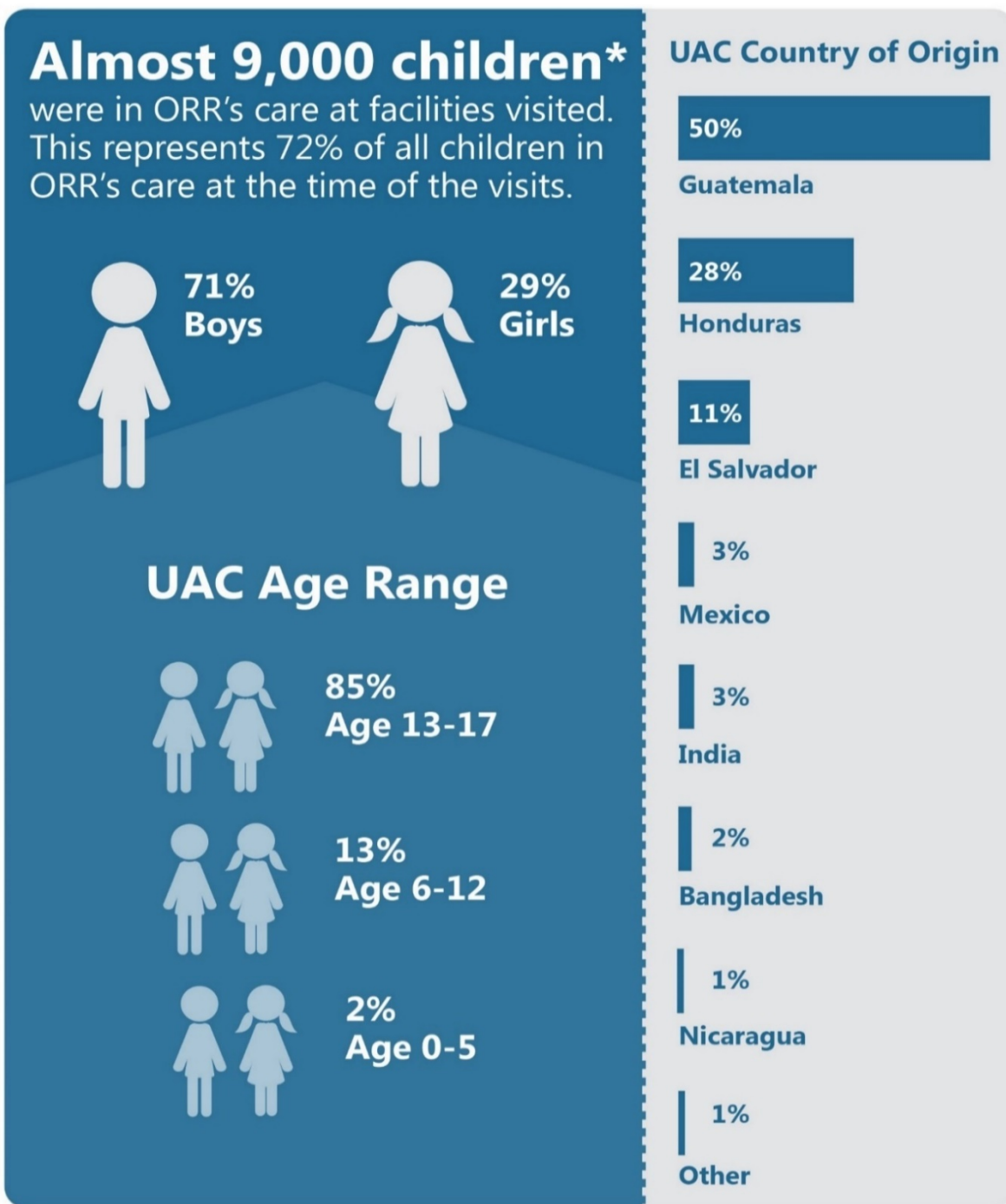
The table below lists and describes the 45 facilities that OIG visited.

Facility Name	Facility Type	Number of Children in Care*	Licensed to Care for Younger Children**	Cared for Separated Children***
Arizona (4)				
SWK Campbell	Shelter	126	•	•
SWK Casa Phoenix	Shelter	385		•
SWK Estrella	Shelter	295	•	•
SWK Hacienda del Sol	Shelter	139	•	•
California (3)				
BCFS Fairfield	Staff Secure	11		
SWK Pleasant Hill	Shelter	26		•
Yolo County	Secure	19		
Florida (1)				
Homestead	Influx	1,347		•
Illinois (4)				
Heartland CRC IRC	Shelter	193	•	•
Heartland Casa Guadalupe	Shelter	47	•	•
Heartland IYC	Staff Secure	6		
Heartland SCiy	Shelter	5		•
Maryland (1)				
Board of Child Care	Shelter	42	•	•
New York (7)				
Abbott House	Shelter	51	•	•
Cayuga Centers	Transitional Foster Care	609	•	•
Children's Village	Shelter	167		•
Children's Village	Staff Secure	26		
MercyFirst	Residential Treatment	9		•
Leake and Watts/ Rising Ground	Shelter	47		•
Lincoln Hall	Shelter	184		•
(Continued on next page)				

Facility Name	Facility Type	Number of Children in Care*	Licensed to Care for Younger Children**	Cared for Separated Children***
Oregon (1)				
Morrison Paso	Staff	11		
Texas (20)				
BCFS Baytown	Shelter	216	•	•
BCFS Harlingen	Shelter	576	•	•
BCFS Raymondville	Shelter	50	•	•
BCFS San Antonio	Shelter	110	•	•
BCFS San Antonio	Staff Secure	26		
BCFS San Antonio	Transitional Foster Care	119	•	•
BCFS Tornillo	Influx	665		•
Shiloh Treatment Center	Residential Treatment	23		•
SWK Antigua	Shelter	276		•
SWK Casa Houston	Shelter	71		•
SWK Montezuma	Shelter	209		•
SWK Casa Padre	Shelter	1,398		•
SWK Casa Quetzal	Shelter	246		•
SWK Casita del Valle	Shelter	84	•	•
SWK Combes	Shelter	73	•	•
SWK Mesa	Staff Secure	7		
SWK El Presidente	Shelter	372	•	•
SWK Nueva Esperanza	Shelter	290		•
SWK Processing Center	Staff Secure	16		
SWK Rio Grande	Shelter	225		•
Virginia (2)				
Shenandoah Valley Juvenile Center	Secure	20		•
Youth for Tomorrow	Shelter	111		•
Washington (2)				
Friends of Youth	Staff Secure	11		•
Selma Carson	Staff Secure	14		•

Source: OIG analysis of ORR and HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) data, 2019. *Data on the number of children in care was as of August 30, 2018. **Younger children include those who were 9 years old and under. ***We obtained from ORR and ASPR data on separated children that were part of the *Ms. L v. ICE* lawsuit. Our analysis identified 37 of the 45 facilities has children covered by the lawsuit.

Children's Demographics at Facilities Visited



Source: OIG analysis of ORR and facility data, 2019. *According to ORR data, on August 30, 2018, 12,409 children were in ORR care. Of those, 8,953 children were at the facilities that OIG visited; the percentages of boys and girls are based on this number. The percentages on age range and country of origin are based on data collected directly from the facilities that we visited. We reviewed age and country of origin data that facilities provided to OIG. Because some facilities provided data for a point-in-time (i.e., specific date) while other facilities provided data over a specific timeframe (i.e., 3-month period), the total number of children between these two data points differs. Age range is based on data from 5,835 children; country of origin is based on data from 7,081 children. Because of rounding, the total percentage for country of origin does not add up to 100 percent.

APPENDIX C: DESCRIPTION OF KEY STAFF POSITIONS

Below are job descriptions of individuals involved in the care and placement of children in facilities.⁵⁵

Program Directors. Program directors are senior facility staff who manage facility staff and oversee facility operations.

Medical Coordinators. Medical coordinators arrange care from external providers, coordinate other services related to children's medical and mental health care, and manage medication.

Mental Health Clinicians. Mental health clinicians are employed at every facility and are responsible for providing in-house mental health care for children in the facility. They conduct mental health assessments, provide counseling services, provide crisis intervention services, and recommend care from external providers. Lead mental health clinicians coordinate clinical services, train new mental health clinicians, and supervise staff.

Case Managers. Case managers coordinate assessments of children, individual service plans, and efforts to release children to sponsors. They also ensure that all services are documented in children's case files.

Youth Care Workers. Youth care workers provide around-the-clock monitoring of children. Youth care workers have direct and frequent contact with children and the staff primarily responsible for their supervision.

ORR Federal Field Specialists. Federal field specialists are ORR employees who serve as local ORR liaisons to one or more facilities within a region. They are responsible for providing guidance and technical assistance to facilities and approving or denying children's transfer and release.

⁵⁵ Position descriptions are summarized from the *ORR Guide* and the Cooperative Agreement between ORR and [Grantee].

APPENDIX D: NONSTATISTICAL SAMPLE SELECTION OF EMPLOYEES

Facility	Number of Employees	Number of Employees Hired From April 1, Through August 1, 2018	Sample Size	Number of Case Managers in Sample	Number of Mental Health Clinicians in Sample
1	677	296	30	6	6
2	55	15	20	6	2
3	312	75	30	6	5
4	36	4	15	2	3
5	683	176	30	6	6
6	78	3	20	4	2
7	162	16	20	4	3
8	78	0	15	2	4
9	73	13	30	9	3
10	82	19	18	2	1
11	352	124	21	4	3
12	165	19	20	3	3
13	42	5	15	3	4
14	24	3	16	1	3
15	75	13	17	3	3
16	160	13	20	3	3
17	27	3	14	2	2
18	42	0	15	4	2
19	1,489	706	30	6	7
20	275	23	30	5	5
21	83	8	20	3	3
22	41	0	20	4	3
23	138	21	20	6	2
24	33	5	15	2	1
25	102	12	20	3	2
26	83	4	20	4	4
27	180	36	30	6	6
28	111	24	34	6	4
29	287	57	30	7	6
30	223	62	20	4	3
31	1,550	690	39	10	7
32	467	80	29	6	6
33	274	47	30	6	6
34	134	20	31	4	4
35	134	55	20	3	3
36	131	117	20	4	4

(Continued on next page)

Facility	Number of Employees	Number of Employees Hired From April 1 Through August 1, 2018	Sample Size	Number of Case Managers in Sample	Number of Mental Health Clinicians in Sample
37	385	64	30	6	7
38	176	39	30	6	6
39	78	25	20	3	3
40	51	30	30	5	6
41	47	3	15	2	3
42	139	39	20	3	3
43	245	77	30	6	6
44	103	4	20	0	3
45	166	19	31	4	2
Total	10,248	3,064	1,050	194	173

APPENDIX E: SUMMARY OF FACILITIES' NONCOMPLIANCE WITH BACKGROUND CHECK REQUIREMENTS

Facility Number	Initial Checks				Followup Checks				Out of State CPS Checks	State Check Issues	Facilities With Issues Identified	Facilities With No Issues Identified
	No Documentation		After Start Date		No Documentation		After Start Date					
	FBI	CPS	FBI	CPS	FBI	CPS	FBI	CPS				
1*	•										•	
2	•									•	•	
3												•
4±				•			•	•			•	
5			•	•							•	
6±												•
7		•	•	•						•	•	
8±			•				•	•			•	
9±			•				•	•	•	•	•	
10		•		•					•		•	
11	•		•	•					•	•	•	
12			•	•						•	•	
13			•	•						•	•	
14±	•	•	•	•	•	•			•	•	•	
15		•	•	•						•	•	
16		•	•	•						•	•	
17			•	•					•	•	•	
18			•	•						•	•	
19*												•
20		•		•						•	•	
21			•	•					•	•	•	
22	•		•	•						•	•	
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24	•	•	•	•					•	•	•	
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26±			•	•			•	•		•	•	
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42±			•	•					•		•	
43	•	•							•		•	
44	•	•	•	•						•	•	
45			•	•						•	•	
	11	10	27	27	1	1	5	6	23	24	41	4

* Facility was granted a waiver from ORR related to the CPS check

± Our sample selection of employees at this facility included, employees that required followup background checks.

APPENDIX F: FACILITIES GENERALLY CONDUCTED REQUIRED BACKGROUND CHECKS

FBI Fingerprint Checks

At 11 of 45 facilities, we found 55 employee files that contained no documentation of the required FBI fingerprint check results. The Tornillo facility accounted for 30 of those files. The other 10 facilities had from 1 to 7 employee files with no documentation of the required FBI fingerprint check results.

At the time of our review, we used employees' start dates to determine that employees without documentation of FBI fingerprint check results had been employed from 14 to 1,017 days. The majority (35) of the employees were employed 91 to 365 days; 21 of these were from the Tornillo facility. The remaining employees with no FBI fingerprint results at Tornillo were in the 31- to 90-day range (4 employees) and 1- to 2-year range (5 employees). See Table 1 for the various positions these employees held and the range of time they were employed without documentation of the FBI fingerprint check being conducted.

Table 1: Employee Positions With No Documentation of FBI Fingerprint Checks

Position	1–30 Days	31–90 Days	91–365 Days	1–2 Years	Over 2 Years	Total Employees
Youth Care Worker	0	4	17	1	1	23
Case Manager	0	2	8	0	0	10
Mental Health Clinician	1	0	3	5	1	10
Facility*	0	1	4	0	0	5
Administrative†	0	1	2	1	0	4
Education‡	1	1	0	0	0	2
Medical	0	0	1	0	0	1
Total Employees	2	9	35	7	2	55
* Facility positions include security, maintenance, food service, and similar positions. † Administrative positions include foster home developers, intake aides, program directors, administrative assistants, and similar positions. ‡ Education positions include teachers, teacher aides, and paraprofessional educators.						

Child Protective Services Checks

Of the 39 facilities⁵⁶ required to conduct CPS checks, 10 facilities employed 29 individuals whose files contained no documentation of the required CPS check results.

At the time of our review, we used employees' start dates to determine that 29 employees had worked in the facility from 28 to 940 days without CPS check results. See Table 2 for the various positions that employees held and the range of time they had been employed without documentation of the CPS check being conducted.

Table 2: Employee Positions With No Documentation of Child Protective Services Checks

Position	1–30 Days	31–90 Days	91–365 Days	1–2 Years	Over 2 Years	Total Employees
Youth Care Worker	3	7	2	1	0	13
Case Manager	0	2	5	0	0	7
Mental Health Clinician	0	0	3	1	0	4
Facility*	0	1	0	0	0	1
Administrative†	0	0	1	1	0	2
Education‡	0	0	1	1	0	2
Total Employees	3	10	12	3	1	29
* Facility positions include security, maintenance, food service, and similar positions. † Administrative positions include foster home developers, intake aides, program directors, administrative assistants, and similar positions. ‡ Education positions include teachers, teacher aides, and paraprofessional educators.						

⁵⁶ Of the 45 facilities, 6 were granted a waiver from ORR related to the CPS check. As such, employees at these facilities did not undergo this background check. The ORR waivers of the CPS check are discussed earlier in this report.

APPENDIX G: OVER HALF THE FACILITIES ALLOWED EMPLOYEE(S) TO START WITHOUT FIRST RECEIVING BACKGROUND CHECK RESULTS

FBI Fingerprint Check Results

In 27 of 45 facilities, 98 employee files contained documentation of the required FBI fingerprint check results, but, the results were not received prior to the employee start date.

At the time of our review, we used employees' start dates to determine that those without FBI fingerprint check results had worked in the facility from 1 to 2,635 days, with the majority falling within the 1- to 30-day timeframe. At one facility, 13 of the 15 employees' FBI fingerprint check results were not received before the employees' start date. Nine of the employees were youth care workers. Other positions at this facility included a case manager, a mental health clinician, and two teacher aides. (These employees' CPS check results were also received after the employee start dates.) See Table 3 for the various positions that employees held and the range of time they were employed before the facility received the FBI fingerprint results.

Table 3: FBI Fingerprint Checks Results Not Received Before Employee Start Dates

Position	1–30 Days	31–90 Days	91–365 Days	1–2 Years	Over 2 Years	Total Employees
Youth Care Worker	28	7	4	0	0	39
Case Manager	6	3	1	2	1	13
Mental Health Clinician	14	1	2	1	1	19
Facility*	4	1	0	0	0	5
Administrative†	5	4	1	0	0	10
Education‡	7	1	0	1	0	9
Transportation	3	0	0	0	0	3
Total Employees	67	17	8	4	2	98

* Facility positions include security, maintenance, food service, and similar positions.

† Administrative positions include foster home developers, intake aides, program directors, administrative assistants, and similar positions.

‡ Education positions include teachers, teacher aides, and paraprofessional educators.

Child Protective Services Check Results

Of the 39 facilities required to conduct CPS checks, 27 facilities, comprising 207 employee files, contained documentation of the required CPS check results; however, the results were not received before the employee start dates.

At the time of our review, we used employees' start dates, to determine that 207 employees had worked in the facility from 1 to 2,619 days, with the majority falling within the 1- to 30-day timeframe without CPS check results. At one facility, 19 of the 20 employees' CPS results were not received before the employee start date; 12 of those employees were youth care workers. At another facility, 15 of 20 employees' CPS checks were not received before their employee start dates; 10 of those employees were youth care workers. See Table 4 for the various positions that employees held and the range of time they had been employed before the facility received their CPS check results.

Table 4: Employee Positions With CPS Check Results Not Received Before Start Date

Position	1–30 Days	31–90 Days	91–365 Days	1–2 Years	Over 2 Years	Total Employees
Youth Care Worker	77	24	1	0	1	103
Case Manager	24	4	1	0	1	30
Mental Health Clinician	22	6	1	1	1	31
Facility*	2	4	0	0	0	6
Administrative†	10	5	1	0	0	16
Education‡	14	4	0	0	0	18
Transportation	3	0	0	0	0	3
Total Employees	152	47	4	1	3	207
* Facility positions include security, maintenance, food service, and similar positions.						
† Administrative positions include foster home developers, intake aides, program directors, administrative assistants, and similar positions.						
‡ Education positions include teachers, teacher aides, and paraprofessional educators.						

APPENDIX H: FACILITIES GENERALLY FOLLOWED STATE BACKGROUND CHECK REQUIREMENTS

With the exception of influx care providers, facilities must be licensed in their respective States and must comply with any additional background investigation requirements imposed by those licensure agencies. We reviewed these State licensing requirements for the 10 States our selected facilities were in and identified 3 types of State background investigation requirements: the criminal records check, the sex offender registry check, and the registry of substantiated category one⁵⁷ cases of abuse and neglect. See Table 5 for the number of employee files we found that did not comply with State background checks and ORR prior-to-hire requirements.

Facilities located in three States had documentation in employee files that the State criminal records check had been completed; however, for several employee, these checks were not completed before the employees' start dates. For facilities in the other five States, we identified employee files that either contained no documentation that this check was completed, or the check was not completed before the employee's start date. For example, in State 1 of Table 5, of 119 employees, 6 employee files had no documentation of State criminal records check and 3 employees' checks were not completed before the employees' start dates.

⁵⁷ This registry check exists under New York licensing rules. Category one cases involve serious physical abuse, sexual abuse, or other serious conduct by custodians. Subjects of category one findings are maintained on a staff exclusion list, barring them from future employment with vulnerable persons in New York.

Table 5: Number of Employee Files Not Compliant With State Background Checks and ORR Requirements

			State Criminal History Check		Sex Offender Registry Check		Registry of Substantiated Category One Cases of Abuse and Neglect	
	Number of Employees Requiring Checks	Number of Files With Error(s)	No Documentation	After Start Date	No Documentation	After Start Date	No Documentation	After Start Date
State 1*	119	9	6	3	-	-	-	-
State 2	50	3	1	2	-	-	-	-
State 3	66	45	0	16	6	37	-	-
State 4	146	55	5	27	-	-	1	25
State 5	20	19	0	19	-	-	-	-
State 6	129	8	2	6	-	-	-	-
State 7	51	1	0	1	-	-	-	-
State 8	31	13	1	12	-	-	-	-
	612	153	15	86	6	37	1	25

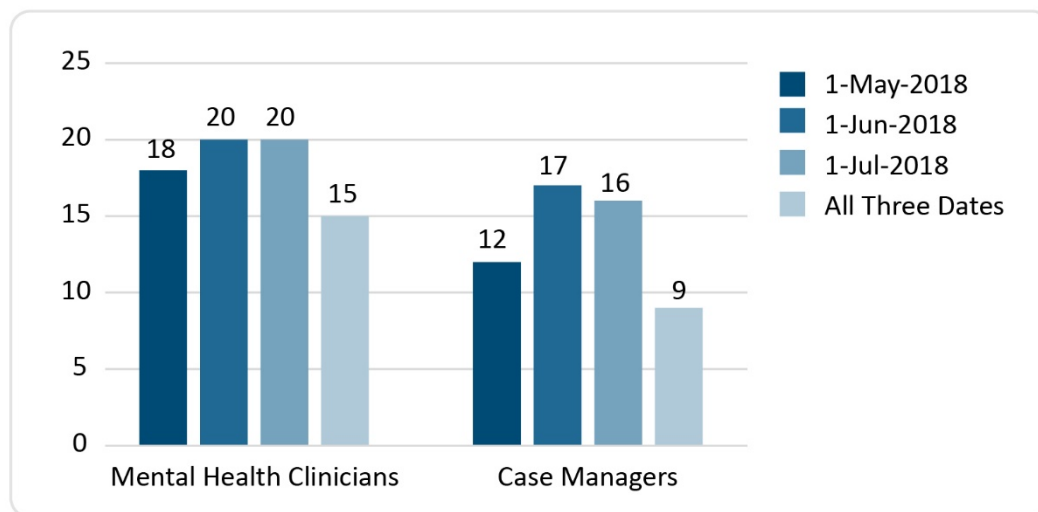
* We have omitted the names of individual States in the above table to avoid potentially identifying individual employees in States with only 1 or 2 facilities. We have provided this state-specific information, including number of facilities, directly to ACF for any appropriate action.

APPENDIX I: FACILITIES HAD DIFFICULTY MAINTAINING REQUIRED STAFFING RATIOS FOR MENTAL HEALTH CLINICIANS AND CASE MANAGERS

At the time of our site visits in August and September 2018, 41 of the 45 facilities reported current staffing shortages, while 35 reported staffing shortages in the prior year. Facilities typically experienced staffing shortages in the positions of mental health clinician, case manager, and youth care worker. At the time of our visit, 15 facilities reported additional staffing shortages in administrative, education, and management positions. Facilities reported increasing workloads of their existing staff to maintain program requirements.

In addition, we requested that facilities provide mental health clinician and case manager ratios as of May 1, 2018, June 1, 2018, and July 1, 2018. Thirty-eight facilities responded to that request. See Figure 1 for the number of facilities that reported not meeting ORR staffing ratios on those days.

Figure 1: Number of Facilities That Did Not Meet ORR-Required Staffing Ratios



See Table 6 on the following page for detailed ratios for the 15 facilities that reported not meeting ORR-required staffing ratios for its mental health clinicians and the 9 facilities that reported not meeting ORR-required staffing ratios for its case managers for all three dates—May 1, 2018, June 1, 2018, and July 1, 2018.

**Table 6: Ratios for Facilities That Did Not Meet ORR-Required
Staffing Ratios on All Three Dates**

Facility	Mental Health Clinician-to-Child Ratio (1:12)			Case Manager-to-Child Ratio (1:8)		
	05/01/2018	06/01/2018	07/01/2018	05/01/2018	06/01/2018	07/01/2018
1	1:36	1:36	1:36			
5	1:14	1:17	1:14	1:9	1:11	1:9
6				1:9	1:10	1:10
7	1:15	1:13	1:14			
9	1:15	1:17	1:15	1:13	1:14	1:12
12	1:14	1:14	1:14	1:9	1:9	1:9
20	1:17	1:17	1:17			
23	1:15	1:13	1:13			
27	1:15	1:15	1:13			
29	1:17	1:17	1:17	1:9	1:9	1:9
30	1:15	1:16	1:14	1:11	1:11	1:9
31	1:18	1:21	1:21	1:9	1:12	1:12
32	1:21	1:19	1:17	1:9	1:10	1:10
37				1:9	1:9	1:9
38	1:18	1:17	1:18			
40	1:13	1:15	1:19			
43	1:13	1:16	1:21			

APPENDIX J: STATE AND CONTRACT REQUIREMENTS (EXCERPTED)⁵⁸

ARIZONA

State Legislature, Title 36, Chapter 4, Article 2

§ 36-425.03 Children's behavioral health programs; personnel fingerprinting requirements; exemptions; definitions.

A. Except as provided in subsections B, C and D of this section, children's behavioral health program personnel, including volunteers, shall submit the form prescribed in subsection D of this section to the employer and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3, 1 or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.

CALIFORNIA

Manual of Policies and Procedures, Title 22, Division 6, Chapter 1, General Licensing Requirements

§ 80019 Criminal Record Clearance

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1522(b) and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.
- (c) Prior to the Department issuing a license, the applicant, administrator and any adult other than a client, residing in the facility shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code section 1522(a)(4).
- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1522 shall prior to working, residing or volunteering in a licensed facility:
 - (1) Obtain a California clearance or a criminal record exemption as required by the department.

§ 80019.2 Child Abuse Central Index

- (a) Prior to issuing a license to care for children, the Department shall conduct a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code Section 1522.1 and Penal Code Section 11170(b)(3). The Department shall check the CACI for the applicant(s), and all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1522(b) and shall approve or deny a facility license, employment, residence or presence in the facility based on the results of the review.

⁵⁸ The Appendix represents provisions in effect during our site visits. Not every listed provision is applicable to every type of facility. The listed provisions do not include every background check requirement applied in each State, but rather only checks of Federal and State registries and databases and selected related requirements.

- (1) The applicant shall submit the Child Abuse Central Index check (LIC 198A [3/99] which is incorporated by reference, for State licensed facilities and LIC 198 [4/99] which is incorporated by reference, for county licensed facilities) for all individuals required to be checked, directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 80019(c).
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80091(e) or Section 80019.1(f).

ILLINOIS

Administrative Code, Title 89, Part 404 Licensing Standards for Child Care Institutions and Maternity Centers

§ 404.24 Background Checks

- a) The governing body shall ensure that all prospective and current employees submit to fingerprinting (when required), authorize a background check and otherwise meet the requirements of 89 Ill. Adm. Code 385 (Background Checks).
- b) As a condition of issuance or renewal of a license by the Department, the institution shall require persons subject to background checks to furnish information on any offenses (other than a minor traffic violation) for which they have been convicted in accordance with the standards set forth in the Department's rule 89 Ill. Adm. Code 385.
- c) An employee may begin work while awaiting the results of the background check. Such employees shall not be left alone with children until the results of the initial background check have been received.

§ 404.2 Definitions

"Background check" means:

- a criminal history check via fingerprints of persons age 18 and over that are submitted to the Illinois State Police and Federal Bureau of Investigation (FBI) for comparison to their criminal history records, as appropriate; and
- a check of the Statewide Automated Child Welfare Information System (SACWIS) and other State child protection systems, as appropriate, to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and
- a check of the Illinois Sex Offender Registry.

MARYLAND

Code of Maryland Regulations

14.31.06.05(A). Personnel Administration

- (4) A licensee may not appoint as an employee, a member of the board of directors, or a volunteer with unsupervised access to children any individual who:
- (a) Refuses to submit to:

- (i) A criminal background check in accordance with State law, including Family Law Article, §§5-560—5-568, Annotated Code of Maryland; or
- (ii) A Child Protective Services clearance;

14.31.06.05(D)(7) Ensure that requests for a criminal background check in accordance with COMAR 12.15.02 and Child Protective Services clearances have been submitted for each prospective employee before the employee begins work at the program.

NEW YORK

Codes Rules and Regulations

18 CRR-NY 442.18(e) *Personnel practices.*

(3) Review of applicants.

(i) Each program under this section is required to check applicants for employment and volunteer positions as well as contractors and consultants, with the Register of Substantiated Category One Cases of Abuse or Neglect ("staff exclusion list") maintained by the Justice Center for the Protection of Persons with Special Needs pursuant to section 495 of the Social Services Law, before determining whether to hire or otherwise allow any person to be an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient; or before approving an applicant for a license, certificate, permit or other approval to provide care to a service recipient.

(ii) If an applicant is not listed on the staff exclusion list, then a database check must be completed in accordance with section 424-a of the Social Services Law and this section.

(iii) Each program under this section is required by section 553 of the Executive Law, and subdivision 1 of section 378-a of the Social Services Law, to obtain criminal history background checks for certain prospective employees or volunteers who will have the potential for substantial, unsupervised or unrestricted physical contact with children or vulnerable persons through the Justice Center, as authorized by article 20 of the Executive Law.

(4) Statewide Central Register of Child Abuse and Maltreatment Review shall be as follows:

If after an applicant or volunteer is determined to not be listed on the Staff Exclusion List maintained by the VPCR as required in paragraph (3) of this subdivision, then with regard to any person who is actively being considered for employment or to any individual or any person who is employed by an individual, corporation, partnership or association which provides goods or services to the agency who has or will have the potential for regular and substantial contact with children being cared for by the agency, the agency must inquire of the department whether any such person is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment. In addition, the agency may inquire whether any current employee or any person who is being considered for use as a volunteer or for a position as a consultant and who has or will have the potential for regular and substantial contact with children who are being cared for by the agency is the subject of

an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment. An inquiry regarding any current employee may be made only once in any six-month period.

14 CRR-NY 550.5 Submission of fingerprints by providers of services.

- (a) The Justice Center shall perform a criminal history record check regarding any prospective operator, employee, or volunteer of a provider of services which is required to comply with section 31.35 of the Mental Hygiene Law. For purposes of this Part, the inclusion of a national criminal history background check shall apply to all prospective operators, employees, or volunteers whose applications are submitted to the Justice Center for a criminal history background check on or after March 12, 2007.
- (b) Any provider of services subject to compliance with this Part which is issued an operating certificate on or after April 1, 2005 shall require a criminal history record check of natural persons with an ownership interest in such providers, provided, however, that for purposes of this Part, the inclusion of a national criminal history background check of natural persons with such an ownership interest shall apply to all providers of service issued an operating certificate on or after March 12, 2007. Any change in the ownership interest of any provider on or after April 1, 2005, for which a new natural person becomes or joins as an operator shall require a criminal history record check of such new natural person or persons, which shall be performed in concert with the prior approval process established in section 551.6 of this Title, or the application process established in section 87.3 of this Title, as applicable. For purposes of this Part, the inclusion of a national criminal history background check of new or additional natural person operators shall apply to all such changes in ownership proposed on or after March 12, 2007.
- (c) Criminal history record reviews required in accordance with this Part shall apply only to persons who are prospective employees or volunteers, as defined in this Part, as identified by the provider of services.
- (d) The Justice Center shall supply every provider of services that is subject to the provisions of this Part with information identifying the designated fingerprinting entities that may be utilized to facilitate compliance with this Part.
- (e) Fingerprint submission process.
 - (1) Prior to requesting a criminal background check for any prospective employee or volunteer, as defined in section 550.4 of this Part, a provider of services subject to this Part shall check the Justice Center's Register of Substantiated Category One Cases of Abuse or Neglect. If the applicant's name appears on the register, the provider of services shall not process the application. If the applicant's name does not appear on the register, the provider of services may proceed with the fingerprint submission process in accordance with the provisions of this section.
 - (2) As part of a provider of services' initial application for a license to provide mental health services in accordance with article 31 of the Mental Hygiene Law, its authorized person(s) shall be responsible for furnishing the Justice Center with the fingerprints of the prospective operator of the provider, as well as those of any

prospective employee or volunteer of the provider of services, as defined in section 550.4 of this Part.

- (3) As part of a provider of services' renewal of a license to provide mental health services in accordance with article 31 of the Mental Hygiene Law, its authorized person(s) shall be responsible for furnishing the Justice Center with fingerprints of any operator who joined the organization subsequent to April 1, 2005 and who previously did not have a criminal history record check performed.
- (4) Every provider of services subject to this Part shall be responsible for obtaining a set of fingerprints for each prospective employee or volunteer of the provider of services, as defined in section 550.4 of this Part, and its authorized person(s) shall submit same to the Justice Center for a criminal background check.

OREGON

State Administrative Rules

OAR 413-215-0061 Licensing Umbrella Rules: Personnel

- (1) Staff requirements and hiring. To ensure that the child-caring agency uses only staff and volunteers who do not jeopardize the health, safety, or welfare of children, a child-caring agency and its contractors must meet all of the following requirements:
 - (a) Comply with the Department's background check rules at OAR 407-007-0200 to 407-007-0370
- (3) Personnel Files. The child-caring agency and its contractors must have a personnel file for each employee that is maintained for a minimum of two years after the termination date of each employee and includes all of the following:
 - (c) Documentation that a background check was completed as required in OAR 407-007-0200 to 407-007-0370.

OAR 407-007-0010 Definitions

- (2) Abuse check means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of determining whether an individual has potential disqualifying abuse.
- (9) Background check means a criminal records check and an abuse check.
- (14) Criminal records check means obtaining and reviewing criminal records and includes any or all of the following:
 - (a) An Oregon criminal records check where criminal offender information is obtained from Oregon State Police (OSP).
 - (b) A national criminal records check where criminal records are obtained from the FBI through the use of fingerprint cards sent to OSP and other identifying information.
 - (c) A State-specific criminal records check where criminal records are obtained...in a State or jurisdiction outside Oregon.

OAR 407-007-0220 Background Check Required

- (1) Background Check Unit (BCU) shall conduct criminal records checks on all Subject Individuals through LEDS⁵⁹ maintained by the OSP.
- (2) If a national criminal records check is necessary, OSP shall provide BCU results of national criminal records checks conducted pursuant to ORS 181A.195, including fingerprint identification, through the FBI.
- (3) BCU shall conduct abuse checks using available abuse investigation reports and associated documents.

TEXAS

Department of Family and Protective Services Licensing – Background Check Rules

*§ 745.615. On whom must I request background checks?*⁶⁰

- (a) You must request a name-based criminal history check and DFPS⁶¹ central registry check for:
 - (1) The director, owner, and operator of the operation;
 - (2) Each person employed at the operation;
 - (3) Each prospective employee at the operation.
- (b) In addition to any other background check required by this section, you must request fingerprint-based criminal history checks on the following:
 - (1) If you are a permit holder or applicant for a permit, for a child-placing agency, general residential operation, independent foster home, child-care center, before or after-school program, or school-age program, you must request a fingerprint-based criminal history check for each person who is required to have a name-based background check under subsection (a)(1)–(6) of this section; and
 - (2) If you are a permit holder, or applicant for a permit, for any operation type, you must request a fingerprint-based criminal history check for each person whose name is submitted for a background check under subsection (a) of this section if:
 - (A) The person has lived in another State any time during the five-year period prior to the date you submit an initial background check; or
 - (B) The person moved out-of-State at any time between the date on which you submitted your last background check and the date your next renewal background check for that person is due; or
 - (C) At the time your initial or renewal background check is due, you have reason to suspect other criminal history exists in another State.

⁵⁹ Law Enforcement Data System.

⁶⁰ Any applicant hired after January 7, 2018, who required an FBI fingerprint check no longer required a name-based criminal history check.

⁶¹ Department of Family and Protective Services.

§ 745.625. When must I submit a request for an initial or renewal background check?

- (b) You must request a renewal background check for each person required to have a background check under § 745.615 of this title, which is due no later than two years from the date of your most recently requested initial or renewal background check on that person.

§ 745.626. How soon after I request a background check on a person can that person provide direct care or have direct access to a child?

- (a) You must have received the person's DPS and Central Registry name-based check results prior to allowing the person to provide direct care or have direct access to children in care.
- (b) If a fingerprint-based check is required, you must receive the results of the fingerprint check prior to allowing the person to provide direct care or have direct access to a child in care, unless:
 - (1) Your operation is experiencing a staff shortage; and
 - (2) The results of the name-based DPS and Central Registry checks do not preclude the person's presence at the operation while children are in care.

VIRGINIA

Code of Virginia

63.2 -1726. Background check required; children's residential facilities.

- A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual . . . to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. . . . The results of the criminal history background check must be received prior to permitting an applicant to work with children.

Virginia Administrative Code

6VAC35-101-170. Employee and Volunteer Background Checks.

- A. Except as provided in subsection B of this section, all persons who (i) accept a position of employment at, (ii) volunteer on a regular basis and will be alone with a resident in the performance of their duties, or (iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of that person's duties shall undergo the following background checks in accordance with § 63.2-1726 of the Code of Virginia to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents:

1. A reference check;
 2. A criminal history record check;
 3. Fingerprint checks with the Virginia State Police and Federal Bureau of Investigation (FBI);
 4. A central registry check with Child Protective Services; and
 5. A driving record check if applicable to the individual's job duties.
- B. To minimize vacancy time, when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:
1. All of the other applicable components of subsection A of this section have been completed;
 2. The applicant is given written notice that continued employment is contingent on the fingerprint check results required by subdivision A 3 of this section; and
 3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed until such time as all the requirements of this section are completed.
- C. Documentation of compliance with this section shall be retained in the individual's personnel record as provided in 6VAC35-101-310 (personnel records).

WASHINGTON

Minimum Licensing Requirements for Group Care Facilities

WAC 110-145-1325 / What is required to apply for a group care facility license?

- (2) You must submit a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC.
- (3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.
- (4) You must ensure that agency volunteers or interns that have lived outside of Washington State during any portion of the previous three years complete a FBI fingerprint check.
- (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until you are notified by children's administration that a background check was completed that qualifies the individual to have unsupervised access. If you have both a license issued by the Division of Licensed Resources and a contract with the department you must adhere to the most stringent background check requirement.

WAC 110-145-1330 / How does the department determine my suitability to become a licensed provider or an employee, intern, or volunteer of a licensed provider?

- (1) The department determines your suitability as a licensed provider after receiving your application, background authorization(s) for those listed in WAC 388-145-1325(2), and all required documentation outlined in this chapter.

- (2) The department determines the suitability of a licensee, employee, intern, or volunteer after receiving their background authorization referenced in subsection (1) above.
- (3) You, your employees, interns, and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being and long-term stability.
- (4) You, your employees, interns, and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

WAC 110-145-1400 | Can employees, subcontractors and volunteers be disqualified from having access to the children in my facility?

- (1) The department must disqualify prospective and current employees, volunteers, interns, and subcontractors if they do not meet the regulations of chapter 388-145 WAC or cannot have unsupervised access to children because of their background check as outlined in chapter 388-06A WAC.
- (4) The department will notify the licensee if a prospective or current employee, intern, volunteer, or subcontractor is disqualified from having unsupervised access to children. Hiring a person disqualified by Department of Social Health Services (DSHS) or continuing to allow unsupervised access to children by a person disqualified by DSHS could also lead to denial, suspension, or revocation to your license issued under this chapter.

FLORIDA

Relevant Provisions From Contract Between ACF's Contracting Office and the Parent Company of Influx Facility Located in Florida

Mobilized Staff Security Checks and Protocols

7003T-Base § C.2(B)

The Contractor shall require all staff mobilized hereunder to provide a clear comprehensive criminal background check including fingerprint checks cleared by the FBI. To achieve the latter, the awarded Contractor shall apply to programs such as the Florida Volunteers and Employees Criminal History System program, through Florida Department of Law Enforcement. Staff must pass a comprehensive criminal background check including a fingerprint check cleared by the FBI.

Mobilized General Task Requirements

7003T-Base § C.2(B)

The contractor shall ensure that all personnel mobilized hereunder sign statements, before working with the UAC, acknowledging that: 1) staff affirms and attest under penalty of perjury as an affiliate of the HHS Emergency Shelter Contract that staff has never been the subject of any Child Abuse and Neglect investigations, substantiated or unsubstantiated, and/or arrested for a crime involving child abuse and/or neglect in any state; and is

currently not involved in any criminal or civil proceedings pending a disposition, nor been found guilty or entered a plea of nolo contendere or guilty to any offenses relating to child abuse, child neglect, or exploitation of children and/or the failure to report such abuse; 2) staff is mandated to report suspected child abuse and neglect. The latter must include the following statement: "Failure to report these incidents could be grounds for termination." The Contractor is required to maintain the signed acknowledgments for up to two (2) years after the expiration of the contract. The COR may request copies of these acknowledgements for all staff or a randomly selected sample of staff.

Mobilized Staff Training

7003T-Base § C.2(B)

The Contractor shall submit a Staff Status List to the COR. This list shall be provided weekly or as directed by the COR, and shall include, at a minimum: the number of staff hired per required position; name and position of staff who completed the training provided by Training and Technical Assistance Provider; name and position of staff who completed the training provided by the Transportation Service Provider; name and position of staff that have clear background criminal and fingerprint checks (see more details below); and the upcoming shift schedule. No staff shall commence working with UAC or be input into a shift schedule if they have not received all trainings required and have not received a clear criminal background check.

APPENDIX K: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Southwest Key Programs Did Not Always Comply With Health and Safety Requirements for the Unaccompanied Alien Children Program</i>	A-06-17-07005	8/15/2019
<i>Southwest Key Did Not Have Adequate Controls in Place To Secure Personally Identifiable Information Under the Unaccompanied Alien Children Program</i>	A-18-18-06001	8/15/2019
<i>The Children's Village, Inc., an Administration for Children and Families Grantee, Did Not Always Comply With Applicable Federal and State Policies and Requirements</i>	A-02-16-02013	4/26/2019
<i>Lincoln Hall Boys' Haven, an Administration for Children and Families Grantee, Did Not Always Comply With Applicable Federal and State Policies and Requirements</i>	A-02-16-02007	2/11/2019
<i>Separated Children Placed in Office of Refugee Resettlement Care</i>	OEI-BL-18-00511	1/17/2019
<i>BCFS Health and Human Services Did Not Always Comply With Federal and State Requirements Related to the Health and Safety of Unaccompanied Alien Children</i>	A-06-17-07007	12/6/2018
<i>The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff</i>	A-12-19-20000	11/27/2018
<i>Florence Crittenton Services of Orange County, Inc., Did Not Always Claim Expenditures in Accordance With Federal Requirements</i>	A-09-17-01002	10/15/2018
<i>Heartland Human Care Services, Inc., Generally Met Safety Standards, but Claimed Unallowable Rental Costs</i>	A-05-16-00038	9/24/2018
<i>Florence Crittenton Services of Orange County, Inc., Did Not Always Meet Applicable Safety Standards Related to Unaccompanied Alien Children</i>	A-09-16-01005	6/18/2018
<i>BCFS Health and Human Services Did Not Always Comply With Federal Requirements Related to Less-Than-Arm's-Length Leases</i>	A-06-16-07007	2/20/2018
<i>Office of Refugee Resettlement Unaccompanied Alien Children Grantee Review – His House</i>	A-04-16-03566	12/04/2017

<i>HHS's Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children</i>	<u>OEI-09-16-00260</u>	7/31/2017
<i>Division of Unaccompanied Children's Services: Efforts to Serve Children</i>	<u>OEI-07-06-00290</u>	3/7/2008

APPENDIX L: ACKNOWLEDGMENTS

Sylvie Witten, Nancy Bibb, Maritza Hawrey, and Lauren Mackin served as the analytical team for this review. Key advisors included Laura Canfield, Diana Merelman, Abigail Cummings, and Blaine Collins, with support from Lyndsay Patty and Seta Hovagimian.

We would also like to acknowledge other significant contributors without whom this effort would not have been successful. Each OIG component contributed, including the Immediate Office, the Office of Audit Services, the Office of Counsel to the Inspector General, the Office of Evaluation and Inspections, the Office of Investigations, and the Office of Management and Policy. Contributions included planning and conducting fieldwork, data and administrative support, and report production and distribution.

This report was prepared under the direction of Carla Lewis, Director, Office of Grants and Internal Activities Audits.

APPENDIX M: ADMINISTRATION FOR CHILDREN AND FAMILIES RESPONSE



ADMINISTRATION FOR CHILDREN & FAMILIES

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034
Washington, D.C. 20201 | www.acf.hhs.gov

August 19, 2019

Joanne M. Chiedi
Acting Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Chiedi:

The Administration for Children and Families (ACF) appreciates the opportunity to respond to the Office of Inspector General (OIG) report entitled, *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks But Faced Challenges in Hiring, Screening, and Retaining Employees (A-12-19-20001)*.

ACF is committed to ensuring that the applicant screening and hiring processes identify any staff or contractor with a background that disqualifies him or her from working with unaccompanied alien children (UAC) in the Office of Refugee Resettlement's (ORR) care. ACF welcomes OIG's report and concurs with the recommendations as we work together to further strengthen those applicant screening and hiring processes.

For this report, OIG "conducted [its] fieldwork during a time when ORR was experiencing a surge of children into custody"—namely, August through September 2018. A-12-19-20001, at 8. To meet the demands of that surge, ORR rapidly increased the number of staff and contractors. A-12-19-20001, at 21. But those efforts faced a number of challenges that were beyond ORR's control. For example, there was no central database of child abuse and neglect records; States can take anywhere from 3 weeks to 3 months to process background check requests; and there is a general shortage of qualified, bilingual case managers and clinicians.

Despite those external challenges, ACF has already taken steps to address many of the concerns that OIG has identified. As noted in the report, ORR issued a revised personnel policy on January 14, 2019, and ORR issued further clarifications on March 11, 2019. *See A-12-19-20001*, at 15 ("OIG commends ORR for moving quickly to issue clarifying guidance."). Those revisions add further safeguards to the applicant screening and hiring processes. Specifically, the revised policy:

- Requires care providers to notify ORR if they are unable to complete any required component of the background investigation process so that ORR can assist providers with completing that component;

- Requires care providers to request final approval from ORR for all applicants with direct access to children to ensure that no applicant has been terminated for sexual abuse or harassment;
- Emphasizes that care providers may not provide applicants with start dates until after receiving the results of background check results; and
- Expands the universe of disqualifying crimes to include any kind of inappropriate sexual behavior, any crime involving a child, or any violent crime perpetrated in the last ten years.¹

ORR maintains a robust internal monitoring and compliance program. Under that program, care provider facilities undergo multiple levels of review to ensure compliance with all policies and procedures, including those pertaining to employee screening. See A-12-19-20001, at 6–7. Specifically, ORR employs a three-pronged monitoring regime consisting of (1) remote, monthly check-ins with the UAC care provider’s Project Officer; (2) monthly, day-long visits that include a review of facility records in order to assess compliance with ORR policies, including background check and other staffing requirements; and (3) intensive, week-long biennial site inspections that include a review of personnel files and State licensing requirements. Facilities that are determined to be deficient in any respect are required to provide corrective action plans, and ORR closely monitors implementation of those plans in subsequent monitoring.²

ORR also utilizes an external auditor to ensure compliance with policies and procedures, including staff and contractor background check requirements. See A-12-19-20001, at 7 (“The audits are conducted by an external contractor and include auditing compliance with background check requirements.”).

The measures set forth above reflect steps ACF has already taken that address the challenges identified in the report. The following are ACF’s specific responses to each of OIG’s recommendations:

Recommendation 1: Ensure that all facilities complete the required Federal and State background checks on current employees whose checks were not completed, and take action to ensure that these employees do not have direct access to children while the results of the checks are pending.

Response: ACF concurs with this recommendation.

ORR is committed to ensuring that only staff, contractors, and volunteers who have passed background checks have access to UAC. ORR will use its onsite monitoring and auditing

¹ Specifically, ORR has updated its guidance with respect to hiring decisions. Under the updated guidance, facilities may not hire anyone “who has engaged in, attempted to engage in, or has been civilly or administratively adjudicated to have engaged in sexual abuse, sexual harassment, intimate partner (domestic) violence, or any type of inappropriate sexual behavior” or “who, as an adult, perpetrated any crime involving a child, regardless of how long ago the incident occurred or any violent crime within the past 10 years.” ORR Policy Guide § 4.3.4, Hiring Decisions (Revised 3/11/19).

² See ORR Policy Guide § 5.5.1.

processes to ensure that care providers have completed the required background checks. And ORR can provide documentation of the results. Those who do not have documentation of completed background checks in their personnel file will not have access to UAC until the care provider facility is able to provide documentation of completed FBI fingerprint and State child abuse and neglect records (CA/N or CPS) checks.

Recommendation 2: Reiterate to facilities that ORR requires all background checks be completed prior to the employee's start date and access to children.

Response: ACF concurs with this recommendation.

In January 2019, ORR provided a webinar to all care providers shortly after publishing the revisions to § 4.3 of the ORR Policy Guide, which addresses personnel issues and background checks. During this training, ORR reiterated that all background checks, including both the FBI fingerprint and CA/N checks, must be completed before a staff member can have access to children. ORR revised § 4.3 of the ORR Policy Guide on March 11, 2019, by adding a "Questions and Answers" section expressly clarifying that care providers cannot provide a start date to an applicant before receiving the results of both components of the background investigation. Orientation and mandatory trainings also cannot begin until after the care provider has received the results of both background checks.

The policy allows a care provider to begin training before receiving the results of both components of the background check *only* if the training occurs in facilities that are not occupied by UAC. Care providers must provide documentation to their ORR Project Officer showing that those training facilities do not provide direct access to UAC.

Additionally, ORR conducts monthly calls to address issues related to sexual abuse prevention. ORR has reiterated this policy and provided technical assistance on several monthly calls with care providers. ORR plans to periodically reiterate the policy regarding background checks on these monthly calls. ORR's Prevention of Sexual Abuse team also provides on-site training and will reiterate this policy during these in-person trainings with care provider leadership.

Recommendation 3: Include a review of facilities' compliance with all background check requirements as a part of ORR's routine site visit monitoring.

Response: ACF concurs with this recommendation.

ORR monitoring is an ongoing, multi-layered process that provides consistent oversight of a care provider's program, including program design, management, services, safety and security, child protection, case management, personnel management, stakeholder relations, and fiscal management. As part of an onsite monitoring visit, ORR reviews personnel files for a number of required documents, including background checks results. In April 2019, ORR updated its internal monitoring protocols to include reviewing a larger sample size of personnel files in order to provide a better picture of a care provider's compliance with ORR requirements, including background check requirements.

ORR has updated its monitoring protocols to include a more detailed review of care providers' background investigation processes to ensure compliance with ORR's requirements. The

updates will help ensure that background checks are completed on all staff, contractors, and volunteers who have access to UAC.

In addition to routine site visit monitoring conducted by ORR staff, ORR is required by regulation to establish an external process to audit care providers.³ The audits are an additional measure for determining a care provider's compliance with standards in ORR's Interim Final Rule for Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children and ORR policies and procedures during the preceding 12 months. Audits began in January 2019. ORR expects that all care providers will be audited by December 2019.⁴ After December 2019, care providers will be audited every three years.

Auditors review personnel files to ensure that care providers are complying with background check requirements. Auditors also ask care provider staff about the background check system during interviews to ensure that care providers are completing background checks on all staff, contractors, and volunteers with direct access to children.

Recommendation 4: Require facilities to ensure CPS checks are completed for all employees who lived outside of their current State of residence in the past 5 years and where necessary, ORR should work with facilities to ensure that CPS checks are completed.

Response: ACF concurs with this recommendation.

Interstate CA/N checks can be particularly challenging. As the report notes, "Records are State-specific, and the check is performed by State officials." A-12-19-20001, at 4. But some States do not share information in their CA/N registry with other States. And some State officials experience delayed responses, or a lack of response, when they request information from other States. ACF is working to identify ways to facilitate the implementation of federally required CA/N checks by conducting outreach and issuing a joint letter to State CA/N registry officials.

ORR policy requires all care providers to complete CA/N checks for staff's State(s) of U.S. residence for the last five years. ORR's policy also requires that care providers notify ORR's Prevention of Sexual Abuse Coordinator in writing if the provider is unable to complete any component of the background investigation, which includes CA/N checks for the last five years in each State of residence. Upon notification, ORR will assist the care provider by, for example, engaging with State officials to resolve the issue or identifying an alternative route to run the check. ORR also will provide additional guidance to care providers regarding appropriate documentation of interstate CA/N checks.

Recommendation 5: Explore how best to ensure that all facilities are not employing individuals who have committed disqualifying crimes outside the United States.

Response: ACF concurs with this recommendation.

³ See 45 CFR Part 411 Subpart L.

⁴ Long term foster care providers, secure care providers, and influx care facilities are exempted from audits. See 45 CFR 411.10. Secure facilities are subject to the audit process described in the U.S. Department of Justice's National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115.

Currently, care providers have little information about whether an applicant committed a disqualifying crime outside the United States. The required FBI and CA/N background investigations only check national registries. Care providers are required to ask applicants who may have direct contact with children about previous misconduct in written applications or interviews.⁵ Material omissions regarding such misconduct or the provision of materially false information by the applicant are grounds for termination or withdrawal of an offer of employment, as appropriate.⁶ However, as the report notes, “there is no easy means to verify the assertions in a self-certification, which could easily include false information.” A-12-19-20001, at 19.

Additionally, care providers must make their best efforts to contact applicants’ prior employers, including those employers not based in the United States. While checking references, care providers must ask past employers about any substantiated allegations of sexual abuse and sexual harassment. Care providers also must ask if the applicant resigned during a pending investigation of alleged sexual abuse or sexual harassment.⁷

ORR plans to explore screening practices for applicants who resided or were employed outside of the United States. ORR will identify and work with internal HHS and external subject matter experts in screening applicants for employment with children and other vulnerable persons and law enforcement, including staff from the Centers for Disease Control and Prevention (CDC), the U.S. Department of Justice (DOJ), and the U.S. Department of Homeland Security (DHS). ORR used screening guidelines from both CDC and DOJ in updating § 4.3 of the ORR Policy Guide. Additionally, ORR is exploring opportunities to work with sexual abuse prevention experts at DOJ and DHS. Both DOJ and DHS have similar background check requirements for staff, contractors, and volunteers in their respective regulations implementing the Prison Rape Elimination Act.⁸ ORR is committed to ensuring that care provider staff have the appropriate background for working with children in a residential setting.

Recommendation 6: Provide additional guidance to facilities so they can better ensure that case managers and mental health clinicians meet ORR’s minimum required education qualifications.

Response: ACF concurs with this recommendation.

As the report recognizes, “most facilities hired mental health clinicians who met ORR education requirements,” although “many facilities hired case managers who did not.” A-12-19-20001, Report in Brief. ORR is committed to providing the best available services to the UAC in ORR

⁵ See 45 CFR § 411.16(b).

⁶ See 45 CFR § 411.16(g).

⁷ See 45 CFR § 411.16(b), ORR Policy Guide § 4.3.2.

⁸ Section 1101(c) of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4) amended the Prison Rape Elimination Act to include a provision directing the Secretaries of the Departments of Health and Human Services and Homeland Security to publish final rules adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of UAC and detention facilities that maintain custody of aliens detained for a violation of U.S. immigration law, respectively. See 34 U.S.C. §§ 30307(c)–(d).

care. ORR will work with care providers to ensure that case managers and mental health clinicians meet ORR's minimum education requirements. In some geographic areas, there is a shortage of qualified mental health clinicians and case managers who meet all of ORR's educational requirements—particularly those with the necessary language skills and willingness to work in remote locations. In those situations, ORR will evaluate, on a case-by-case basis, whether the individual can still provide the same or better services based on prior experience and training.⁹

Recommendation 7: Reiterate to all facilities the ORR policy requiring facilities to obtain ORR written approval prior to hiring a case manager or mental health clinician who does not meet minimum requirements and require a supervision plan or additional training for the potential employee as needed.

Response: ACF concurs with this recommendation.

ORR reviews and approves key personnel hires proposed by care providers. This includes a review of each proposed staff member's qualifications for positions such as program director, lead clinician, clinician, and lead case manager. As part of this process, ORR will reiterate the educational requirements for non-key personnel. ORR also will reiterate the process for seeking written approval to hire those who do not meet minimum requirements.

Recommendation 8: Work with facilities to develop a process for facilities to report when case manager or mental health clinician staffing ratios are not met, so that ORR can use this information when making placement decisions and ensuring UAC needs are met.

Response: ACF concurs with this recommendation.

Care providers provide updated staff contact information to ORR on a recurring basis. ORR can leverage this process to identify care providers whose vacancies may result in an inability to meet required staff-to-child ratios. ORR Project Officers must have monthly conference calls with each of their assigned programs. Standing agenda items for these calls include a discussion of staffing levels, including a summary of any open positions, how the vacancies may affect ratios, and a plan for resolution.

Recommendation 9: Rescind existing waivers to non-influx facilities for CPS checks and work with facilities to ensure CPS checks are completed for current and future employees.

Response: ACF concurs with this recommendation.

ORR rescinded all waivers to non-influx care providers for CA/N checks on May 23, 2019. Care providers must notify ORR's Prevention of Sexual Abuse Coordinator if they cannot complete required background investigation components. ORR provides technical assistance to ensure that all background investigation components are completed, rather than providing waivers to

⁹ ORR's Cooperative Agreements allow for exceptions to the minimum qualifications with ORR's explicit written approval prior to hire. ORR may require supervision plans and additional training. See IV.C.7.

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non-influx care providers. For example, when a non-influx care provider requested a waiver for an applicant pending a lengthy interstate CA/N check, ORR declined to provide the waiver.

Again, thank you for the opportunity to review this report. ACF takes its responsibilities to ensure the safety and well-being of the UAC in ORR care seriously. We look forward to continuing to improve the applicant screening and hiring processes. Please direct any follow-up inquiries on this response to Scott Logan, Office of Legislative Affairs and Budget, at (202) 401-4529.

Sincerely,



Lynn A. Johnson
Assistant Secretary
for Children and Families