



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



November 27, 2018

TO: Lynn Johnson
Assistant Secretary
Administration for Children and Families

FROM: /Daniel R. Levinson/
Inspector General

SUBJECT: The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff (A-12-19-20000)

This memorandum follows up on the Office of Inspector General's (OIG's) recent meetings with you and your staff at which we provided information about two significant vulnerabilities identified during our site visit to the influx care facility in Tornillo, Texas (Tornillo), a grantee of the Unaccompanied Alien Children (UAC) Program operated by the Office of Refugee Resettlement (ORR). First, we found that Tornillo is not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for staff working at Tornillo. Instead, Tornillo is using checks conducted by a private contractor that has access to less comprehensive data, thereby heightening the risk that an individual with a criminal history could have direct access to children in ORR care. Second, we found that Tornillo does not employ a sufficient number of staff clinicians to provide adequate mental health care for UAC. These issues warrant ORR's immediate attention because they could significantly compromise the safety and well-being of UAC. We understand that ORR has already begun working with Tornillo to remedy the background check issue. We will follow up to ensure ORR has sufficiently addressed both vulnerabilities.

BACKGROUND

OIG is currently conducting a review of efforts by ORR grantee facilities to ensure the health and safety of children in grantee facilities' care, including when the UAC program experiences a sudden change in the number and/or needs of children. OIG is focusing on the care and well-being of all children residing in ORR-funded facilities, including the subset of children separated from their parents at the border. As part of this effort, OIG (1) conducted site visits at 45 facilities; (2) interviewed facility management and personnel about a range of issues, including a number of issues related to child safety, such as the extent to which background checks are

performed according to Federal requirements and the ratio of staff to children; and (3) reviewed supporting documentation. OIG plans to release several reports covering ORR facilities' efforts, the challenges they face, and any identified vulnerabilities in facilities' efforts to protect and take care of children, including a full report on ORR facilities' compliance with required employee screening.

ORR, within the U.S. Department of Health and Human Services' (HHS's) Administration for Children and Families (ACF), manages the UAC program. The UAC program funds residential care providers placing UAC in temporary shelter care, staff secure facilities, secure facilities, residential treatment centers, and transitional and long-term foster care.¹ The UAC program also funds temporary emergency shelter care for UAC when there is an influx (i.e., an increase in the number of UAC coming into the United States) that exceeds the standard capabilities of ORR to process them in a timely way and to shelter them with existing resources.²

During an influx of UAC, ORR may lack sufficient capacity to place the children within its established licensed³ care provider network. In that situation, ORR arranges for influx care facilities to meet the need. An influx care facility provides temporary emergency shelter and services for UAC during an influx or emergency. Because of the temporary and emergency nature of influx care facilities, they may not be licensed or they may be exempt from licensing requirements. In addition, influx care facilities like Tornillo may be opened on federally owned or leased properties, in which case the facility is not subject to State or local licensing standards.⁴

Tornillo Influx Facility

Tornillo is an emergency influx care facility operated by BCFS Health and Human Services (BCFS HHS). Tornillo is located at the U.S. Customs and Border Protection's Texas Land Port of Entry (LPOE). Tornillo is not licensed to operate by the State of Texas and not subject to State or local licensing standards because it is on Federal property and because of its temporary and emergency nature. Tornillo is a semi-permanent structure, meaning it is devoid of permanent infrastructure, such as fixed facilities for housing, dining, and toileting, and all utilities. To provide for the UAC's basic needs, Tornillo uses soft-sided structures and portable sanitation, restroom, and laundry facilities. Tornillo provides medical, mental health, and

¹ When making placement determinations, ORR's goal is to provide the least restrictive setting that is in the best interests of the child, taking into consideration factors such as potential flight risk and danger to the child and others. ORR definitions for each type of facility can be found at Section 1.1 of the *Guide to Children Entering the United States Unaccompanied, Summary of Policies for Placement and Transfer of Unaccompanied Alien Children in ORR Care Provider Facilities*.

² Section 1.7 of the *Guide to Children Entering the United States Unaccompanied, Placement and Operations During an Influx* (ORR Policy Guide).

³ Care provider facilities must be licensed by the State unless otherwise noted by ORR policy.

⁴ ORR Policy Guide.

recreational care on-site for approximately 1,800 UAC, ages 13–17.⁵ UAC are transferred to Tornillo from existing ORR-funded shelters to free up beds in permanent facilities. Tornillo is one of two influx care facilities receiving funds from ORR.⁶

Tornillo became operational on June 14, 2018, and BCFS HHS received grant funds totaling \$15 million for a 30-day operation period. Since it opened, ORR has provided two separate month long extensions and provided additional grant funds totaling \$47 million to operate Tornillo. With the third, most recent extension, on September 14, 2018, ORR announced that up to \$368 million in additional grant funds would be awarded to BCFS HHS to expand bed capacity to 3,800 beds⁷ at Tornillo to keep the shelter operational through calendar year 2018. The need to continue the temporary operation at Tornillo is based on the number of UAC in ORR care.

Background Checks

ORR regulations and policy require that all care provider facilities complete background investigations on all staff, contractors, and volunteers before they are hired, to ensure the candidate is suitable to work with minors in a residential setting.⁸ These background checks must include, at a minimum, two separate types of checks: (1) an FBI fingerprint check of national and State criminal history repositories and (2) a child protective services check performed by the State, also known as the child abuse and neglect check (CA/N). Both checks must be updated at a minimum of every 5 years.⁹ While influx care facilities may be exempted from State and local licensing requirements, ORR policy requires all ORR facilities caring for UAC to meet the minimum background check requirements, including the FBI fingerprint check and CA/N check. All background checks and the care provider facility's review and conclusions

⁵ According to the HHS fact sheet released November 16, 2018, approximately 1,800 UAC comprised “80 percent male and 20 percent female.” The fact sheet also includes the types of services that UAC receive at Tornillo. Beyond medical, mental health, and recreational care, UAC are provided access to legal services and receive educational services from teachers under the oversight of an experienced senior public school administrator. HHS Fact Sheet, available online at <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Tornillo-LPOE-Fact-Sheet.pdf>. Accessed November 20, 2018.

⁶ The other influx facility is Homestead, located in Florida. Homestead receives UAC for initial placement from the Department of Homeland Security. Homestead provides medical, mental health evaluations and care, education, and recreational care to UAC. Both Tornillo and Homestead are on Federal property.

⁷ Of the 3,800 capacity for UAC, 1,400 of those beds are on reserve status for future use.

⁸ 45 CFR § 411.16(c).

⁹ Section 4.3.2 of the *Guide to Children Entering the United States Unaccompanied, Employee Background Investigations and Hiring Decisions* identifies ORR minimum standards for the scope of background checks, which include: (1) an FBI fingerprint check of national and State criminal history repositories, (2) a child protective services check with the staff's State(s) of U.S. residence for the last 5 years, and (3) background investigation updates at a minimum of every 5 years of the staff/contractor/volunteer's start date or last background investigation update. Care provider facilities may require the updated background investigation more frequently as necessary.

of the background checks must be documented and placed in the employee, contractor, or volunteer's personnel file.¹⁰

FBI Fingerprint Checks

The FBI fingerprint check¹¹ accesses criminal history record information across Federal, State, and local jurisdictions. The FBI fingerprint check must be completed in accordance with ORR's policies and State licensing requirements. ORR-licensed facilities can work with States to help them complete the FBI fingerprint check if State licensing requirements require or provide for a national criminal history fingerprint check. If a State does not require the FBI fingerprint check or an ORR facility is not licensed, the State may not facilitate the check, but the care provider facility must nonetheless complete the check using a public or private vendor.¹² ORR policy also provides that a care provider facility may contact HHS's Office of Security and Strategic Information,¹³ Division of Personnel Security, if the facility cannot find a public or private vendor to complete the necessary minimum background checks.

Child Abuse and Neglect Check

The CA/N check determines whether an individual has a record of substantiated maltreatment of a child. ORR requires care provider facilities to complete the check with the staff's State(s) of U.S. residence during the last 5 years. CA/N checks are performed by State authorities. Currently, there is no Federal or national repository to facilitate conducting these types of checks.

Although ORR policy requires that ORR-funded facilities conduct CA/N checks on their staff, ORR has the authority to waive or modify this requirement. Specifically, ORR regulations¹⁴ provide that the ORR Director may, using unreviewable discretion, waive or modify specific sections of the regulation for an emergency care provider facility for "good cause." According to ORR regulation, "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

¹⁰ Section 4.3.2 of the *Guide to Children Entering the United States Unaccompanied, Employee Background Investigations and Hiring Decisions*.

¹¹ FBI Website, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics>. Accessed October 17, 2018.

¹² Section 4.3.2 of the *Guide to Children Entering the United States Unaccompanied, Employee Background Investigations and Hiring Decisions*.

¹³ The Office of Security and Strategic Information manages Department-wide programs and provides oversight, policy direction, standards, and performance assessments in the areas of intelligence, counterintelligence, insider threat, cyber threat intelligence, information security, national personnel security, homeland security, and the safeguarding of classified information.

¹⁴ 45 CFR 411.10(c).

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.”

Staffing Ratios

As part of the UAC program, ORR-funded facilities must adhere to established staffing requirements and maintain certain staffing ratios.¹⁵ To fulfill program staffing requirements, facilities are required to have a staffing plan that must include staffing ratios in accordance with State licensing requirements and as required by ORR’s policies and procedures. 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 clinician is one of several key positions that the care provider must include in its staffing plan. The clinician conducts mental health assessments, provides ongoing individual and group counseling services, screens for human trafficking concerns, and provides crisis intervention services.¹⁶ At a minimum, the clinician must have a master’s degree in social work with 5 years of clinical experience or master’s degree in psychology, sociology, or other relevant behavioral science in which clinical experience is a program requirement, or a bachelor’s degree plus 5 years of clinical employment experience. The clinician must be licensed or eligible for licensure.

ORR requires care providers to supervise UAC in accordance with State licensing requirements. ORR funding opportunity announcements also stipulate that care providers maintain minimum staff-to-children ratios of:

- 1 on-duty staff for every 8 UAC during waking hours,
- 1 on-duty staff for every 16 UAC during sleeping hours,
- 1 case manager for every 8 UAC, and
- 1 clinician for every 12 UAC.

The ORR Policy Guide requires influx facilities to provide emergency clinical services for which specific staffing ratios are not explicitly required. The ORR Policy Guide does not require influx facilities to provide ongoing individual and group counseling services.¹⁷

¹⁵ ORR, *Standing Announcement for Residential (Shelter) Services for Unaccompanied Children*, HHS-2017-ACF-ORR-ZU-1132. This ORR funding opportunity announcement covers periods ending October 31, 2016, June 16, 2017, and June 15, 2018.

¹⁶ According to the approved budget, *BCFS Health and Human Services Emergency Management Division Emergency Influx Beds (Semi-Permanent Structures) Budget Narrative*, clinicians at Tornillo also facilitate UAC phone calls to sponsors.

¹⁷ Section 1.7.6 of the ORR Policy Guide.

FINDINGS

Tornillo Is Not Conducting Certain Background Checks for Staff

FBI Fingerprint Background Checks. We found that as of September 25, 2018, BCFS HHS was not conducting FBI fingerprint checks¹⁸ on its approximately 1,300 Tornillo staff (which include employees and contractors). We also found that ORR was unaware that fingerprint checks were not being conducted, based on discussions with ORR staff and senior management at Tornillo. According to the senior-most official at Tornillo, the State of Texas does not perform the FBI fingerprint checks because Tornillo is not licensed by the State. However, the Tornillo official stated that the facility uses a private vendor to perform other background checks of the staff.¹⁹

FBI fingerprint background checks provide a unique safeguard to UAC because the print of an individual is used to search for related criminal history. The FBI fingerprint check of national and State registries ensures positive identification by eliminating any errors that may arise under name-based checks.²⁰ Moreover, the FBI fingerprint background check determines whether an individual has a criminal history across all jurisdictions: Federal, State and local. In contrast, non-fingerprint background checks are typically completed by searching by names. BCFS HHS used non-fingerprint background checks for Tornillo staff as part of the pre-employment process. While the various background checks could identify some past criminal convictions or sexual offenses, these checks were not as extensive as the FBI fingerprint background checks. During subsequent communication, we learned that ORR is now working with BCFS HHS to ensure completion of FBI fingerprint background checks for Tornillo staff.

Child Abuse/Neglect Background Checks. We found that Tornillo was not conducting the required CA/N check. During our communications with ORR staff, we learned that ORR had granted Tornillo a waiver from conducting the CA/N check. The ORR Director had granted Tornillo a waiver of the CA/N checks in a memorandum dated June 12, 2018, two days before Tornillo began its operations. ORR's rationale for the waiver was based on two concerns: the urgent time constraints that the facility was under in order to be operational in a short time and that the State may be unwilling or unable to perform CA/N checks for a facility that was under

¹⁸ Unlike Tornillo, Homestead, also an unlicensed influx facility on Federal property, was conducting FBI fingerprint checks on its staff.

¹⁹ According to the documentation provided by management at Tornillo, background checks conducted for the Tornillo staff include, at a minimum, a State criminal background check including felonies and misdemeanors, a Federal name-based criminal background check, a Social Security number death master search, a multi-State sex offender registry check, and a Governmental Registries search. Background checks may also include motor vehicle records search, driver history check, and credentials verification for applicants whose position requires advanced education or credentials to meet minimum qualifications. None of these checks use fingerprints.

²⁰ Name-based checks can result in false positives and false negatives. False positives can occur when a person with a common name is associated with another person's records. False negatives can occur when a search misses a record because of errors in the record or in the information used to initiate the search. Using a fingerprint-based check ensures a prohibited individual will not be licensed or employed.

Federal jurisdiction. The memorandum further justified waiver of the CA/N checks on the basis of ORR’s assumption that staff at Tornillo had undergone FBI fingerprint background checks. However, as OIG has learned, that was not the case.

Tornillo Does Not Employ a Sufficient Number of Clinicians to Provide Adequate Mental Health Care for UAC

During our review, we found that as of October 3, 2018, Tornillo was operating with a 1:55 clinician-to-child ratio to provide mental health care for UAC, which represents an increase from the 1:36 clinician-to-child ratio reported to us for the period between May and July 2018. ORR generally requires care provider facilities to comply with a 1:12 clinician-to-child ratio. Influx facilities, however, generally are exempted from this requirement for regular mental health care and are only required to provide emergency clinical care. We note, however, ORR requires Homestead, the only other influx care facility, to comply with a 1:12 clinician-to-child ratio to provide ongoing mental health clinical services.

BCFS HHS’s approved budget for \$368 million in ORR grant funds to operate Tornillo through the remainder of calendar year 2018 allows for a 1:100 clinician-to-child ratio.²¹ According to the budget, the 1:100 ratio would allow for clinicians at Tornillo to provide mental health care 24 hours a day, 7 days a week. Although Tornillo has not reached its budgeted 1:100 clinician-to-child ratio, we are concerned that both the current staffing ratio and the ORR allowable budgeted staffing ratio are dangerously low. It is unclear how clinician staff at Tornillo could properly assess and respond to the UAC’s mental health needs 24 hours a day, 7 days a week, given the current and budgeted staffing ratios, particularly for a population believed to have experienced significant trauma.²²

The disproportionately high number of children to clinicians is especially worrisome in light of the continued increase in the number of children and length of stay at Tornillo. According to the Tornillo senior official, as of September 6, 2018, the number of UAC totaled 819. As of September 25, 2018, the number of UAC totaled 1,659, more than a 100 percent increase. Similarly, the average length of stay of UAC at Tornillo increased from about 20 days to 27 days as of October 9, 2018. We are concerned that upward trends in average length of stay could indicate that Tornillo is or will be functioning more like a shelter care facility, thereby moving away from its initial design as an emergency short-term-care facility. As such, it is imperative that ORR take steps to ensure that Tornillo adheres to comparable program requirements to keep UAC safe and provide access to the mental health care they may need. To achieve these results, ORR could move Tornillo away from the lower standard of only providing “emergency clinical

²¹ BCFS HHS’s approved budget, *BCFS Health and Human Services Emergency Management Division Emergency Influx Beds (Semi-Permanent Structures) Budget Narrative*, describes the types of services a clinician would provide at Tornillo but does not specify the type of clinician (e.g. social worker or counselor) that may be utilized to carry out these responsibilities.

²² U.S. Senate Committee on Judiciary “Oversight of Immigration Enforcement and Family Reunification Efforts,” July 31, 2018; [Statement of Jonathan White, Commander, U.S. Public Health Service Commissioned Corps, U.S. Department of Health and Human Services](#). Accessed October 2, 2018.

services” using a 1:100 clinician-to-child ratio, to the standard expected for all other facilities, including Homestead (1:12).

CONCLUDING OBSERVATIONS

OIG is committed to working with HHS and its Operating Divisions to ensure the health and safety of children, including the health and safety of UAC in HHS’s custody. This memorandum documents that OIG has alerted your office to serious safety and health vulnerabilities at Tornillo: the lack of FBI fingerprint background checks and the dangerously low number of clinicians serving children. Both issues warrant immediate attention because they pose substantial risks to children receiving care at this facility.

As soon as possible, but no later than 30 days of the date of this memorandum, please provide a written response apprising us of the actions taken to ensure (1) employees at Tornillo are receiving FBI fingerprint background check as required and (2) children’s safety and well-being with respect to the insufficient clinician-to-child staffing ratios at Tornillo. We will continue to follow these issues and look forward to receiving information on the corrective actions you have taken and will take.

Please send any correspondence to Amy Frontz, Assistant Inspector General for Audit Services, through email at Amy.Frontz@oig.hhs.gov. Should you have any questions, please do not hesitate to call me at 202-619-3148, or your staff may contact Amy Frontz at the email address above or by telephone at 202-619-1157. Please refer to report number (A-12-19-20000) in all correspondence.

cc:

Jonathan Hayes
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