

No More Business as Usual: Ending Taxpayer-Funded Abuse of Unaccompanied Migrant Children

As the numbers of unaccompanied migrant children crossing the US-Mexico border swells, the Biden Administration is working to move children out of overcrowded detention facilities and into longer term state-licensed shelters. But before they start signing new contracts with shelter providers, the Administration should take a hard look at how the system is working. In Texas, migrant children have been and likely are being abused in dozens of federally funded, state-licensed residential facilities.

The record of the abuse taking place in Texas is available in a publicly accessible database maintained by the state agency responsible for regulating the facilities. The data show that the federal agency charged with protecting and caring for migrant children is paying tens of millions of taxpayer dollars to vendors with documented histories of child abuse.

The Administration has the authority and information it needs to order simple, straightforward changes to the contracting process for child detention facilities. This report shows what's at stake if instead they decide to stick with business as usual.

This report describes the violations at 38 of the 41 facilities, which are documented in a publicly available database maintained by the state's licensing agency. Of the nearly 1,000 violations identified in this report, nearly 30 percent fall in the highest risk category, and include descriptions showing clearly that the

violations pose threats to children's health and safety: for example, inappropriate touching of multiple teenage females by a male medical technician.

Data from Texas' facility-specific compliance history database demonstrates that the U.S. government's lack of oversight in both the awarding and monitoring of contracts *has already* contributed to children suffering abuse at the hands of detention facility operators in Texas. This dereliction of oversight responsibilities means that American taxpayer dollars have been—and, very likely, are currently—supporting the abuse of children who are under federal care.

The solutions are simple and inexpensive: requiring a facility's violation history to be part of the application process; requesting that the state report any new or continuing violations directly to ORR; requiring a simple check by ORR employees of available information as part of the contracting process; and providing clear and effective sanctions for facilities that conceal information.

The first step should be an executive order that directs ORR to identify and root out providers with unresolved licensing violations in their states, and to ensure that ORR does not rely on self-reported compliance histories in future grantmaking. Second, Congress should ensure that ORR has the legal and financial tools necessary to hold federal contractors accountable if they harm children, including the authority to claw back grants that were made based on incomplete compliance histories. Third, the administration should appoint a task force to recommend alternative strategies for caring for unaccompanied children.

Background

Each year, thousands of children arrive at the United States border without an adult caretaker and without documentation allowing their immediate legal entry into the country. These children are considered unaccompanied alien minors ("UAC" or "unaccompanied children"). They are taken into federal custody, and become temporarily wards of the state while they await reunion with adult family members already lawfully present in the U.S., or deportation back to their country of origin. While they await disposition of their request for asylum, the federal

Office of Refugee Resettlement (“ORR”) places these unaccompanied children in federally-funded—but state-licensed— foster care facilities.

These facilities are referred to as detention centers, and their use has been the subject of intense conflict and increasing opposition since 2015, when there was a sudden increase in the numbers of unaccompanied children arriving in the U.S. from Central America. Advocates have alleged that serious harm is done to children housed in detention centers, and have urged both the Obama and Trump administrations to close the facilities. Lawmakers at the state and federal levels alike have deplored the use of detention centers, but closing all centers would create a new set of problems, since ORR would have to implement a different strategy for housing unaccompanied children awaiting asylum or deportation. An immediate solution to protect children already in U.S. custody, while Congress and the executive branch work to bolster the U.S. asylum system, is both urgently needed and easily within reach.

Against this backdrop, and at the request of the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the U.S. House Committee on Appropriations, in September 2020, the U.S. Government Accountability Office (“GAO”) issued a report, ***Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities***, based on its performance audit of ORR’s contracting processes. The report confirmed Congress’ concerns that ORR’s contracting practices were insufficient to prevent harm to children in the agency’s care.

In particular, the GAO report highlighted ORR’s remarkably informal process for vetting grant applicants and monitoring grantee compliance with core grant requirements. The vetting process includes requirements for facilities to disclose their compliance histories; however, the compliance histories are self-reported, and the report concludes that nearly 75 percent of facilities provide no compliance history information in their applications. Even more remarkable, ORR does not appear to verify compliance history information with state licensing agencies—nor do state licensing agencies that monitor ORR-funded facilities take it upon themselves to communicate and share with ORR the monitoring or compliance histories of detention centers under their jurisdiction.

The GAO concluded that “lapses” in detention centers’ adhering to, and state regulators’ enforcing of, state licensing requirements *could* result in harm to or suffering of children. Their report recommended executive actions that ORR could take to reduce the risk of harm to children. However, GAO analysts chose not to use facility-specific information from state licensing agencies to demonstrate concrete evidence of licensing violations leading to unsafe or inappropriate care for children. Consequently, the GAO report lacks specifics regarding the ongoing, dire situations present in several detention centers, and the documented harm to children that has already occurred. Likewise, its report lacks urgency regarding the need for immediate remedies and future safeguards.

There are 41 state-licensed facilities in Texas known to have contracts with ORR to run detention centers and other forms of foster care for unaccompanied children. From January 2015 to September 2020, regulators with the Texas Department of Family and Protective Services (DFPS) documented 983 licensing violations in the 41 facilities; in that same time period, ORR placed thousands of unaccompanied children in those facilities, and children continue to be placed in those facilities as of this report’s publication.¹

Processing and Care of Unaccompanied Migrant Children

Policies related to the entry of non-citizens into the United States are the province of the federal government, and enforcing those policies generally falls to federal agencies. However, in the case of unaccompanied children, states play a key role in the federal government’s implementation of its policies, because they are responsible for licensing and regulation of residential facilities. In Texas, the agency charged with regulating detention centers is the Texas Department of Family and Protective Services (DFPS). This agency is responsible for regulating day care centers, foster care facilities, nursing homes, and other congregate care facilities.

Detention centers in Texas operate in an environment where the federal judicial system has already found the regulation and provision of residential care for

¹ U.S. Department of Health & Human Services. (December 4, 2020). *Unaccompanied Alien Children Program* [Fact Sheet]. <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>. See also Edgar Walters, Ryan Murphy and Darla Cameron, “The number of migrant children in Texas dropped dramatically in 2019,” *The Texas Tribune*, updated December 20, 2019, <https://apps.texastribune.org/features/2018/texas-migrant-children-shelters/>.

children to be unacceptable.² Moreover, the state agency responsible for regulating detention facilities has demonstrated a lack of capacity to regulate even facilities housing exclusively U.S. citizen children. Yet even so, DFPS investigators documented at least a thousand licensing violations at the 41 licensed detention centers between 2015 and 2020.³

Unaccompanied children are defined within the Homeland Security Act of 2002 (“HSA”) as children who are under the age of 18 with no legal status and have no parent or legal guardian in the U.S. or no parent or legal guardian that is available to provide them care and physical custody.⁴ The processing, transfer, and care of unaccompanied children is divided between several different federal agencies and is mandated by the HSA, the Trafficking Victims Protection Reauthorization Act (“TVPRA”) of 2008, and the Flores Settlement Agreement (“Flores”).⁵

Until 2003, the responsibility of caring for unaccompanied children was carried out by the former Immigration and Naturalization Service (“INS”). HSA split the roles for processing and treatment of unaccompanied children between the Department of Homeland Security (“DHS”) and the U.S. Department of Health and Human Services (“HHS”) ORR. Although DHS does not manage the care of unaccompanied children, it is still responsible for their apprehension, transfer, and repatriation. ORR manages the coordination and implementation of the care and placement of unaccompanied children.⁶ Additionally, ORR is responsible for reunifying the children with their parents, maintaining and publishing a list of legal services available to unaccompanied children, and collecting statistical information on unaccompanied children.⁷ Under current law, within 72 hours after a determination is made that a child in the custody of the federal government is

² M.D. v. Abbott, 152 F. Supp. 3d 684 (S.D. Tex. 2015).

³ This number is almost certainly too low, because the online database is incomplete and is missing the compliance history for 3 of the 41 facilities, and more violations have likely occurred since the publication of this report.

⁴ Act of Nov. 25, 2002, Pub. L. No. 107-296, 116 Stat. 2205, https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf.

⁵ Congressional Research Service (CRS), “Unaccompanied Alien Children: An Overview, R43599, Updated October 9, 2019, <https://fas.org/sgp/crs/homsec/R43599.pdf>, p. 5. See also https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf.

⁶ 6 U.S.C. § 279.

⁷ CRS, Unaccompanied, 2019, pp. 4-5.

unaccompanied, the unaccompanied child generally must be transferred to ORR custody.⁸

When unaccompanied children arrive at or between ports of entry, officials with U.S. Customs and Border Protection (“CBP”) (an agency of DHS) must screen the children for signs of human trafficking or persecution. To ensure that CBP agents are properly screening unaccompanied children, and to address concerns that children were “not adequately being screened,” Congress included special provisions for unaccompanied children in the TVPRA.⁹ Despite statutory requirements included in the TVPRA, CBP agents have reportedly made inconsistent screening decisions, preventing unaccompanied children from being eligible for protection or relief.¹⁰

Initial processing for unaccompanied children is dependent on whether the child arrived from a contiguous or non-contiguous country. Under the TVPRA, unaccompanied children who arrive from a contiguous country, being Mexico or Canada, and apprehended by CBP must be screened within 48 hours. CBP must determine if an unaccompanied child meets the following:

- The child has not been a victim of a severe form of trafficking and there is no evidence that a child is at risk of being trafficked upon their return to their country of origin or last habitual residence;
- The child does not have a fear of returning to their country of origin or last habitual residence; and
- The child is able to make an independent decision to withdraw their application to be admitted into the U.S.¹¹

⁸ 8 U.S.C. § 1232(b)(3).

⁹ William Wilberforce Trafficking Victims Reauthorization Act of 2008, Pub. L. No. 110- 457, 122 Stat. 5044 (2008), <https://www.govinfo.gov/content/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also American Immigration Council (AIC), “A Guide to Children Arriving at the Border: Laws, Policies and Responses, Special Report, June 2015, <https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses>, p. 5.

¹⁰ U.S. Government Accountability Office (GAO), “Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody,” GAO-15-521, July 2015, <https://www.gao.gov/assets/680/671393.pdf>, pp. 22-36.

¹¹ 3 Pub. L. No. 110-457, 122 Stat. 5074, § 235, <https://www.govinfo.gov/content/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also <https://www.state.gov/william-wilberforce-trafficking-victims-protection-reauthorization-act-of-2008/>.

If a CBP agent finds that a child from a contiguous country meets those four conditions, then the child can be repatriated back to their country of origin or of last habitual residence. During the repatriation process, the Secretary of State must negotiate agreements with the contiguous countries to protect unaccompanied children and ensure their safety.¹² If the CBP agent determines that the child does not meet the conditions, the child is transferred to the custody and care of ORR and placed into standard removal proceedings. All unaccompanied children arriving from a non-contiguous country are placed into standard removal proceedings and transferred to the custody and care of ORR. Immigration and Customs Enforcement (“ICE”) is the DHS agency that is responsible for transporting any unaccompanied children to ORR.¹³

The following table summarizes the agencies and their roles in the processing, custody, and care of unaccompanied children:¹⁴

Agency	Role
ORR	Responsible for the care and custody of unaccompanied children while they wait for an immigration hearing
CBP	DHS agency that handles the apprehension, transfer, and repatriation of unaccompanied children
ICE	DHS agency that is responsible for transporting any unaccompanied children to ORR
U.S. Citizenship and Immigration Services (“USCIS”)	DHS agency responsible for initial adjudication of asylum applications

¹² Bipartisan Policy Center, “Bipartisan Policy Primer,” July 21, 2014, <https://bipartisanpolicy.org/blog/unaccompanied-alien-children-primer/>. See also CRS, Unaccompanied, 2019, p. 5.

¹³ CRS, Unaccompanied, 2019, pp. 5-6.

¹⁴ CRS, Unaccompanied, 2019, pp. 5-6.

	filed by unaccompanied children after they have been placed in removal proceedings
Executive Office for Immigration Review (“EOIR”)	U. S. Department of Justice (“DOJ”) agency that conducts immigration removal proceedings and determines if the unaccompanied child may be allowed to remain in the U.S. or must be deported

In the decades prior to the enactment of the HSA, concerns surrounding the treatment of unaccompanied children in INS care sparked a series of lawsuits, resulting in the 1997 agreement known as the Flores Settlement Agreement.¹⁵ Flores established the standard for the treatment of all minors held in custody of immigration officials. Among other things, Flores established that the government is required to implement standards relating to the care and treatment of children in immigration detention.

To provide care and placement for unaccompanied children, ORR makes contracts with residential care providers (“grantees”), typically through 3-year grant agreements. Most unaccompanied children in ORR custody are cared for in congregate facilities, but some are cared for in other settings, including, but not limited to, individually licensed foster homes. Consistent with common federal contracting processes, ORR solicits providers through grant announcements that detail the requirements successful applicants must meet.

According to the GAO report, “ORR facilities generally must be licensed by a state licensing agency to provide residential, group, or foster care services for dependent children.”¹⁶ State licensing agencies generally monitor facilities to ensure they comply with the state’s minimum standards of care. States establish their own licensing requirements and monitoring activities, including the frequency of monitoring, and a variety of state agencies may license and monitor

¹⁵ See https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf
¹⁶ GAO, Actions Needed, 2020, p. 8.

ORR-funded facilities,¹⁷ meaning that children in federal custody may receive different standards of care depending what state they happen to be in. According to the GAO, two of the most significant issues with the grant announcements are the obscurity of what state licensing information is required, and the unreliable reporting on the part of applicants.¹⁸

ORR-Funded Facilities for Unaccompanied Children in Texas

Texas law categorizes all residential child-care facilities into two operation types: General Residential Operation Center (“GRO”) and Child Placing Agency (“CPA”).

General Residential Operation. A GRO is a child-care facility that provides care for more than 12 children up to the age of 18 for 24 hours a day. This includes facilities commonly referred to as children’s homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.¹⁹ Some GRO’s are classified as an emergency care facility, known as an Emergency Care GRO. These facilities are designed to offer and provide short-term care to children who are in “an emergency constituting an immediate danger to the physical health or safety of the child or the child’s offspring.”²⁰

Child placing agency. A CPA is a “licensed residential child-care operation that may verify and regulate its own homes subject to [Texas Department of Family and Protective Services] (“DFPS”) minimum standards,” and includes a person or organization other than the parents of a child who “plan for the placement of or places a child in a child care-care operation or adoptive home.”²¹ While the State retains legal responsibility for each child in its conservatorship, Texas relies

¹⁷ ORR refers to these as Standing Announcements or Funding Opportunity Announcements. See also U.S. Government Accountability Office (GAO), “Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities,” GAO-20-609, September 2020, <https://www.gao.gov/assets/710/709402.pdf>, pp. 5-8.

¹⁸ GAO, Actions Needed, 2020, pp. 11-18.

¹⁹ Texas Department of Family and Protective Services (DFPS), “Foster and Licensed Facility Resource Guide,” updated March 2020, pp. 10-11. See also DFPS “Child Care Investigations Handbook,” accessed September 3, 2020, https://www.dfps.state.tx.us/handbooks/CCI/Files/LPPH_px_Definitions_of_Terms.asp.

²⁰ Texas Health and Human Services Commission (THHS), “State of Texas Child Care Licensing Minimum Standards for General Residential Operations,” June 1, 2020, p. 15, <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/protective-services/ccl/m-in-standards/chapter-748-gro.pdf>.

²¹ DFPS “Child Care Investigations Handbook,” accessed September 3, 2020.

heavily on private child placing agencies who contract with the State to provide foster care for these children.

Finding Compliance Information in Texas' Publicly Available Database

In 2019, Texas HHS reported a total of 41 state-licensed facilities contracted with ORR.²² This information became available at the request of the Texas House Committee on Homeland Security & Public Safety and Texas House Committee on International Relations & Economic Development. At a joint hearing of the two committees on July 12, 2019, the Texas Health and Human Services Commission ("Texas HHS") provided legislators with a list of the 41 licensed facilities known to have a contract with the federal Office of Refugee Resettlement ("ORR") to house unaccompanied children. The list opened the door to third-party analysis of detention center data that had not been possible before: once the facilities known to have unaccompanied minors could be segregated out from the hundreds of other state-level foster care facilities for U.S. citizen children only, the facility's unique operation number could be used to look up violations for which the facility has been cited on the state's publicly available database.

Only 38 of the 41 facilities that DFPS identified in 2019 are found on the Texas HHS database (see Figure 1). As of 2019, Southwest Key closed two locations, Southwest Key in Conroe and Southwest Key-Combes in Harlingen.²³ Additionally, we were unable to locate International Foster Care in Fort Worth on the Texas HHS database, although as of November 2019 it was reported to have had 5 children in its custody.²⁴

Figure 1: Searchable Database

²² Karen Ray and David Kostroun, *Joint House Committees on Homeland Security & Public Safety and International Relations & Economic Development*, Presented by Texas HHS at Joint House Committees on Homeland Security & Public Safety and International Relations & Economic Development, July 12, 2019, Washington, D.C.

²³ Fernando Del Valle, "Southwest Key to close Combes migrant children shelter," *The Monitor*, August 7, 2019, <https://www.themonitor.com/2019/08/07/southwest-key-close-combes-migrant-children-shelter/>. See also Walters, Number of migrant children in Texas, 2019.

²⁴ Walters, Number of migrant children in Texas, 2019.

The screenshot shows the Texas Health and Human Services website. At the top, there is a navigation menu with links for Child Investigations, Child Services, Adoption & Foster Care, Prevention Services, Adult Protection, and Doing Business with DFPS. The Texas Health and Human Services logo is on the left, and a search bar is on the right. Below the navigation is a blue banner with the text "Search for Residential (24 hour) Operation". Underneath the banner, there is a breadcrumb trail: "DFPS Home > Child Care > Search Texas Child Care > This Page".

The main content area is titled "Child Care Licensing" and includes a sidebar with links for "PARENTS" (Information for Parents, Search Texas Child Care) and "PROVIDERS" (Information for Providers, Licensed Administrators, Provider Login & Background Checks). The main text area contains the following information:

Choosing quality care is important, no matter which kind of provider you decide upon. Please select from the following options to best assist you with your search needs. You may click on the question mark image (?) to view the Frequently Asked Questions (FAQ) page.

Search for Child-Care Operation

The results of this search will be dependent on the information provided by operations. Child-Care operations in the application stage will not be included in the results.

Enter one or more search criteria. Enter additional search criteria to narrow search results.


The search form includes the following fields:

- Operation Type ? : No Preference
- Programs Provided: No Preference
- Operation Name: southwest key
- Issuance Type ? : No Preference

Using the list of facilities provided to the Texas Legislature by Texas HHS, each facility's compliance history can be found in the searchable database. After selecting the correct facility, the website will be directed to an 'Operation Details' page (see Figure 2). Located on this page is the total number of deficiencies listed under the 'Five Year Compliance Summary.' Clicking on the total number of deficiencies will direct the browser to another page (see Figure 3) where the compliance history can be viewed in further detail. Currently, it is not possible to distinguish domestic children from unaccompanied children from the publicly available compliance histories.

Figure 2: Operation Details Page

[I am](#) ▾ [Child Investigations](#) ▾ [Child Services](#) ▾ [Adoption & Foster Care](#) ▾ [Prevention Services](#) ▾ [Adult Protection](#) ▾ [Doing Business with DFPS](#) ▾


TEXAS
 Health and Human Services

Coronavirus Resources | En Español

Search is not available on this page.

[Report Abuse](#)

[f](#) [t](#) [v](#) [e](#)

Child Care Search Result Details

[DFPS Home](#) > [Child Care](#) > [Search Texas Child Care](#) > This Page

[f](#) [t](#) [v](#) [e](#)

Child Care Licensing

PARENTS

- [Information for Parents](#)
- [Search Texas Child Care](#)

PROVIDERS

- [Information for Providers](#)
- [Licensed Administrators](#)
- [Provider Login & Background Checks](#)

Operation Details

You may click on the question mark image (?) to view the [Frequently Asked Questions \(FAQ\)](#) page.

Operation Number:	1625728
Operation Type:	General Residential Operation
Program Provided:	Child Care Services Only
Operation/Caregiver Name:	Southwest Key - Casa Quetzal
Location Address:	7407 INTERSTATE 45 N HOUSTON, TX 77076
Mailing Address:	7407 INTERSTATE 45 N HOUSTON, TX 77076
Phone Number:	832-844-2251
County:	HARRIS
Website Address:	www.swkey.org
Email Address:	
Administrator/Director Name:	Santiago Inchaurregui
Programmatic Services:	Child Care
Treatment Services:	
Type of Issuance: ?	Full Permit
Issuance Date:	10/19/2016
Permit Renewal Due By Date:	10/19/2020
Conditions on Permit: ?	No
Days of Operation:	N/A
Total Capacity:	236
.....	..

Texas utilizes “minimum standards” for compliance of child care operations. These minimum standards are weighted based on risk to children. The weights are: high, medium-high, medium, medium-low, and low. The weights reflect the risk to children presented if a *rule* is violated. However, “the assigned weights do not change based on the scope or severity of a *specific* deficiency.”²⁵ The weight of a specific deficiency is determined by the licensing official performing the inspection, meaning personal judgement plays a role in the determination.²⁶ The justification for the assignment of weights in some cases is obscure: for example there are instances where both inappropriate contact with a child and a broken drawer handle on a chest of drawers have been characterized as medium-high risks. Nevertheless, the scope and severity of each deficiency reflects the evaluation of a trained DFPS employee. The only publicly available details regarding any given deficiency are provided through a “deficiency and correction narrative” (see Figure 5).

A facility’s deficiency is a failure to comply with a standard, rule, law, specific term of the permit or condition of evaluation, probation, or suspension.²⁷ According to DFPS, licensing inspections are done at least once a year, but are conducted more frequently if the facility has a significant number of deficiencies,

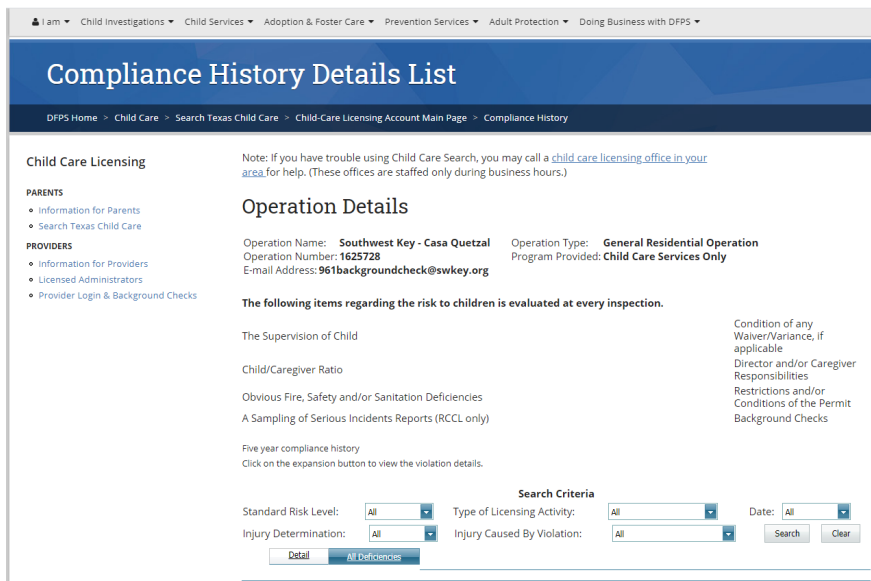
²⁵ THHS, Minimum Standards, June 1, 2020, v.

²⁶ THHS, Minimum Standards, June 1, 2020, v.

²⁷ THHS, Minimum Standards, June 1, 2020, v.

repeat deficiencies, or fail to make corrections timely.²⁸ Inspection types fall under four categories: assessments, self-reported incidents, monitoring inspections, and reports.

Figure 3: Compliance History Example



Compliance History Violations

Since 2015, across all 38 of the 41 ORR-funded facilities for which data are publicly available, the total number of reported deficiencies is 983.²⁹ CPA Lutheran Social Services, located in Corpus Christi, has the highest number of total deficiencies, but many of these violations occurred in placements with foster care families. GRO facility Southwest Key - Casa Sunzal, located in Houston, has the lowest number of total deficiencies.

Figure 4: Facilities Compliance History (2015 - 2020)

Operation	Operation Center	Center	Operation Type	Total	Total Number
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²⁸ THHS, “Reports/Inspections/Enforcement Actions, accessed December 26, 2020, <https://hhs.texas.gov/services/safety/child-care/frequently-asked-questions-about-texas-child-care/reports-inspections-enforcement-actions>; See also http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/ppFacilityDetails.asp?ptype=RC&fid=1244127.

²⁹ This number was last updated on 09/10/2020. Deficiencies appear to be removed when they no longer fall within a five year time-frame. Therefore, not all deficiencies from 2015 were captured. Some deficiencies captured within the dataset may also have been removed.

Number		Location		Number of Violations	of Variances ³⁰
25-25-27	Lutheran Social Services	Corpus Christi	CPA	82	0
1648917	Southwest Key - Casa Padre	Brownsville	GRO	66	0
817874	St. Peter - St Joseph Children's Home Emergency Shelter	San Antonio	GRO	61	0
1531881	Southwest Key - Nueva Esperanza	Brownsville	GRO	52	0
1517766	Southwest Key - El Presidente	Brownsville	GRO	51	0
859541	Lutheran Social Services of the South, Inc dba Bokenkamp	Corpus Christi	GRO-Emergency Care Services Only	42	6
256141	BCFS Health and Human Services - Emergency Shelter	San Antonio	GRO-Emergency Care Services Only	41	53
878119	BCFS Health and Human Services-Emergency Shelter	Harlingen	GRO-Emergency Care Services Only	40	11
204485	Seton Home	San Antonio	GRO	40	0
1625728	Southwest Key - Casa Quetzal	Houston	GRO	37	0
1514002	Southwest Key -	San Benito	GRO	35	0

³⁰ Variances are state-authorized exceptions to the minimum standards. In other words, these would be violations, but the provider has asked for, and received from the state, permission to have a different rule apply to them for a specific facility. For example, the square footage of a room might not be large enough for the number of occupants.

	Casa Rio Grande				
1514498	Southwest Key-Casa Antigua	San Benito	GRO	34	0
255892	Southwest Key - La Esperanza	Brownsville	GRO	32	0
31-31	Catholic Charities Of The Archdiocese Of Galveston -Houston	Houston	CPA	32	4
68030-220	BCFS HEALTH AND HUMAN SERVICES	San Antonio	CPA	29	21
1240186	Southwest Key-Casa Blanca	San Antonio	GRO	26	0
1628947	Southwest Key - Casa Montezuma	Channelview	GRO	26	0
837781	St. Michael's Home for Children	Houston	GRO-Child Care Services Only	24	1
1460646	Southwest Key - Casa Houston	Houston	GRO	23	0
517689	Shiloh Treatment Center	Manvel	GRO	20	0
25-25-20	Lutheran Social Services	El Paso	CPA	20	0
1545604	Lutheran Social Services of the South Inc DBA New Hope	McAllen	GRO-Emergency Care Services Only	19	3
1677945	CHSI San Benito Shelter	San Benito	GRO	18	0

254719	Southwest Key	Houston	GRO	18	0
1677842	CHSI Norma Linda Shelter	Los Fresnos	GRO	16	0
1681114	BCFS Health and Human Services, Emergency Shelter - Driscoll	Driscoll	GRO-Emergency Care Services Only	14	140
1516462	BCFS- Health and Human Services- Emergency Shelter	San Antonio	GRO-Emergency Care Services Only	12	19
1432066	Southwest Key Programs Inc.- Casa Franklin	El Paso	GRO-Child Care Services Only	11	4
521962	Southwest Key - Shelter Care Program	Cantuillo	GRO	10	0
1677841	CHSI Los Fresnos Shelter	Los Fresnos	GRO	9	0
1442846	BCFS Health and Human Services-Emergency Services	Baytown	GRO-Emergency Care Services Only	7	65
877195	St. Michaels Home for Children II	Houston	GRO	7	0
844893-2469	St. Peter - St. Joseph	San Antonio	CPA	7	0
2229	BCFS Health and Human Services - Basic Care	San Antonio	GRO-Multiple Services	6	1
1514373	BCFS Health and	Raymondville	GRO-Emergency	5	78

	Human Services-Emergency Shelter		y Care Services Only		
1010346	Southwest Key - Casita Del Valle	Clint	GRO	5	0
1101906	Assessment Center of Tarrant County	Fort Worth	GRO	4	0
1681306	Southwest Key-Casa Sunzal	Houston	GRO	2	0
847171	Southwest Key	Conroe	GRO	Unavailable	Unavailable
880883	Southwest Key - Combes	Harlingen	GRO	Unavailable	Unavailable
1159846-6911	International Foster Care	Fort Worth	CPA	Unavailable	Unavailable

Of the total 983 deficiencies, nearly 30 percent are assessed as a high-risk deficiency. Many of the high-risk violations involve cases of inappropriate or aggressive physical contact; inappropriate/physical relationships; inappropriate or aggressive verbal language used; and negligent child care.

One example of inappropriate physical contact was reported at the Southwest Key-Casa Antigua. The report indicated that four females ranging from ages from 15 to 17 were inappropriately touched by a male medical technician.³¹ An example of “harsh and cruel discipline” used on a child was reported at a Southwest Key facility where, according to the report, a staff member inappropriately restrained a resident and subjected that resident to “harsh and cruel discipline.”³²

³¹ There is a significant amount of information regarding the correction narrative and an indication that compliance was both met and verified regarding this particular violation; See also Appendix A.

³² The reported violation only includes this vague narrative of the discipline. We note that there was no correction narrative or any indication that compliance was met or verified regarding this violation; See also Appendix A.

At the Shiloh Treatment Center—a center with a well-documented history of child abuse—at least six examples of aggressive physical contact with a child/children were reported in one monitoring report. In one of the incidents, “staff intentionally and knowingly placed their arms around a child's neck, obstructing their airway and causing the child to feel suffocated for a length of no less than two minutes.” In another incident reported at the same time, “Staff placed their arms around a child's neck; obstructing their airway and causing the child to be unable to vocalize distress.” Yet another incident reported on that same date involved a child sustaining physical injuries to their face, neck, and abdomen as a result of a restraint.³³

An additional 41 percent of deficiencies are assessed as medium-high risk. Examples of a medium-high deficiency include an expired fire inspection, drawers in several children’s rooms that had broken or missing handles, and a staff member engaging in inappropriate contact with a child in care. Notably, all physical encounters or instances of a staff member crossing boundaries were labeled as high deficiencies.

Nearly 400 of the deficiencies categorized as high or medium-high do not include correction narratives, any indication that compliance to correct the violation was met, or include the date compliance was verified.³⁴ For example, on June 24, 2014 at Southwest Key-Casa Rio Grande, there was a report of a child being violated when a staff member of the operation engaged in an inappropriate relationship with the child. However, a correction deadline for the violation was not given until March 28, 2016. We note that this particular incident does not include a correction narrative or any indication that compliance was met.³⁵

Deficiencies assessed as medium represent about 20 percent of the total 983 deficiencies while medium-low to low are only about 9 percent of the total 983

³³ Alex Johnson, “Judge orders many migrant children removed from Texas facility said to use psychotropic drugs,” NBC News, July 30, 2018, <https://www.nbcnews.com/news/us-news/judge-orders-most-migrant-children-removed-texas-facility-uses-psychotropic-n895966>. See also, Philip Jankowski, “Court: Texas could face daily \$75,000 fine if it doesn’t comply with foster care orders,” Austin American-Statesman, December 21, 2020, <https://www.statesman.com/story/news/2020/12/21/texas-could-face-daily-75-k-fine-after-found-contempt-court/3983643001/>; see also *M.D. v. Abbott*, 152 F. Supp. 3d 684, 803 (2015).

³⁴ See Appendix A.

³⁵ See Appendix A.

deficiencies. Deficiencies assessed as medium include severe weather drills that have gone uncompleted for more than two years; staff failing to ensure a group of children were appropriately supervised; and children in care being told that their case may be delayed if reports were made. Deficiencies assessed as medium-low or low include a staff member making arrangements with a child's biological relative to send money to the child and then keeping the money; children's records not showing a dental examination scheduled within 30 days of placement; and children not provided with cold water and sufficient water pressure to take a shower.

Figure 5: Deficiency and Correction Narrative

The screenshot displays the 'Compliance History Details List' interface. The main content area shows 'Operation Details' for 'Southwest Key - Casa Que' with operation number 1625728. A 'Narrative' pop-up window is open, showing a deficiency narrative and a correction narrative. The deficiency narrative states: 'Technical Assistance Given: Yes. Deficiency Narrative: Several of the employees allowed to transport children do not have a current driver's license in their file.' The correction narrative states: 'Correction Result: Compliance met. Correction Narrative: Compliance verified on 03/13/2019. EFFECTIVE IMMEDIATELY: To prevent delays in reviewing and accessing active employees DLs, a binder has been created to contain and archive a copy of all active employees. This binder will be organized alphabetically and will be updated in a weekly basis along with the employees Master List. Executive Assistant and Administrative Assistants have been instructed to perform a weekly update of the Employee Master List in combination with the binder to keep all active staff driver licenses easily accessible. Licensing Standard was also reviewed during a brief meeting that took place on 2/28/2019.' The search criteria at the bottom include 'Standard Risk Level: All', 'Type of Licensing Activity: Monitoring Inspections', and 'Date: All'.

Beyond specific licensing violations, federal officials have raised concerns in the past that the very structure of detention centers may not be suited to providing mandated standards of care for unaccompanied children. Under the TVPRA, an unaccompanied child who is transferred into the care of ORR is to be placed in the “least restrictive setting that is in the best interest of the child.”³⁶ However, GROs frequently fail to meet the requirement of “the least restrictive setting.” GROs can house more than 100 children in one facility, and institutionalized settings are highly discouraged in the provision of foster care.³⁷

³⁶ §§235(a)-235(d) of TVPRA; 8 U.S.C. §1232(c)(2).

³⁷ M.D. v. Abbott, 152 F. Supp. 3d 684 (S.D. Tex. 2015).

The HHS Office of Inspector General (“OIG”) raised particular concerns about GROs, reporting in 2018 that facilities such as those operated by Southwest Key and BCFS did not always comply with health and safety requirements.³⁸ OIG also reported that “ORR’s incident reporting system lacks designated fields to capture information that ORR can use to oversee facilities and to protect the minors in ORR care. Important information about facilities’ actions are not systematically collected to help ORR determine whether facilities responded appropriately to incidents.”³⁹

The 2020 GAO Report

The United States House of Representatives Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Committee on Appropriations asked the Government Accountability Office (“GAO”) to “examine ORR’s grant making process and oversight of its grantees.” From May 2019 to September 2020, the GAO conducted a performance audit.⁴⁰ In September of 2020, the GAO issued a report based on its performance audit entitled **Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities**. The report identified several areas the ORR needed to improve related to its grant making process and its oversight of its grant recipients including: 1) application requirements concerning licensing eligibility and the disclosure of citations and allegations related to violations of appropriate care for children; 2) communication and information sharing with state agencies regarding citations and allegations, including but not limited to child abuse and sexual abuse; and 3) monitoring and oversight of grantees and ORR-funded facilities to ensure the continual well-being of children in ORR funded facilities.⁴¹

³⁸ Department of Health and Human Services (HHS) and Office of Inspector General (OIG), *BCFS Health and Human Services Did Not Always Comply With Federal and State Requirements Related to the Health and Safety of Unaccompanied Alien Children*, A-06-17-07007, December 2018, <https://oig.hhs.gov/oas/reports/region6/61707007.pdf>; HHS and OIG, *Southwest Key Programs Did Not Always Comply With Health and Safety Requirements for the Unaccompanied Alien Children Program*, A-06-17-07005, August 2019; <https://oig.hhs.gov/oas/reports/region6/61707005.pdf>.

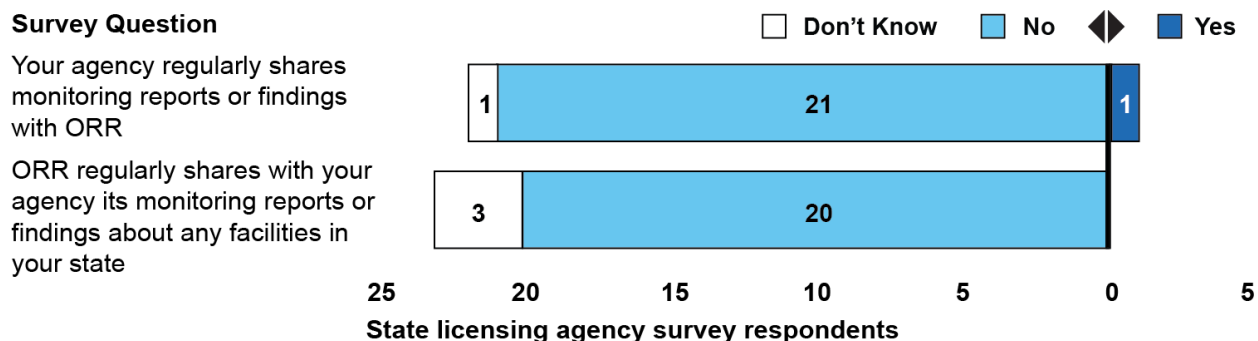
³⁹ HHS and OIG, *The Office of Refugee Resettlement’s Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody*, OEI-09-18-00430, June 2020, <https://oig.hhs.gov/oei/reports/oei-09-18-00430.pdf>.

⁴⁰ GAO, *Actions Needed*, 2020, pp. 2-3.

⁴¹ GAO, *Actions Needed*, 2020, “What GAO Found.”

GAO indicated that the level of due diligence performed by ORR is unclear when the latter is reviewing the accuracy and completeness of monitoring reports and grant applications with regards to licensing citations, allegations, and concerns. Contrary to GAO’s findings, ORR claims it reviews state licensing websites for information and spoke of its “well-established” relationships with state licensing agencies to obtain information it could not ascertain online.⁴² However, the GAO concluded that state licensing agencies monitor ORR-funded facilities, but the vast majority do not share that information with ORR (See Figure 7).⁴³

Figure 6: Key Survey Responses on Information-Sharing with the ORR by the 23 State Agencies that Licensed ORR Funded Facilities in Fall 2019⁴⁴



Source: GAO survey of state agencies that license ORR-funded providers, conducted October 2019 – January 2020. | GAO-20-609

ORR grant announcements state that applicants must report “any and all documented state licensing allegations/concerns,” but GAO found that applicants often submitted “inconsistent information.”⁴⁵ While this could be a result of ambiguous guidelines for information required on grant applications, in fiscal years 2018 and 2019, the GAO reviewed 58 grant applications and only 15 referenced any licensing citations, allegations, or concerns (See Figure 8).⁴⁶ Yet, ORR officials insisted that all facilities receive state licensing citations from time to time, contradicting the lack of citations disclosed by the remaining 43 applications and the information reported herein on ORR-funded facilities in

⁴² GAO, Actions Needed, 2020, p. 16.

⁴³ GAO, Actions Needed, 2020, “What GAO Found.”

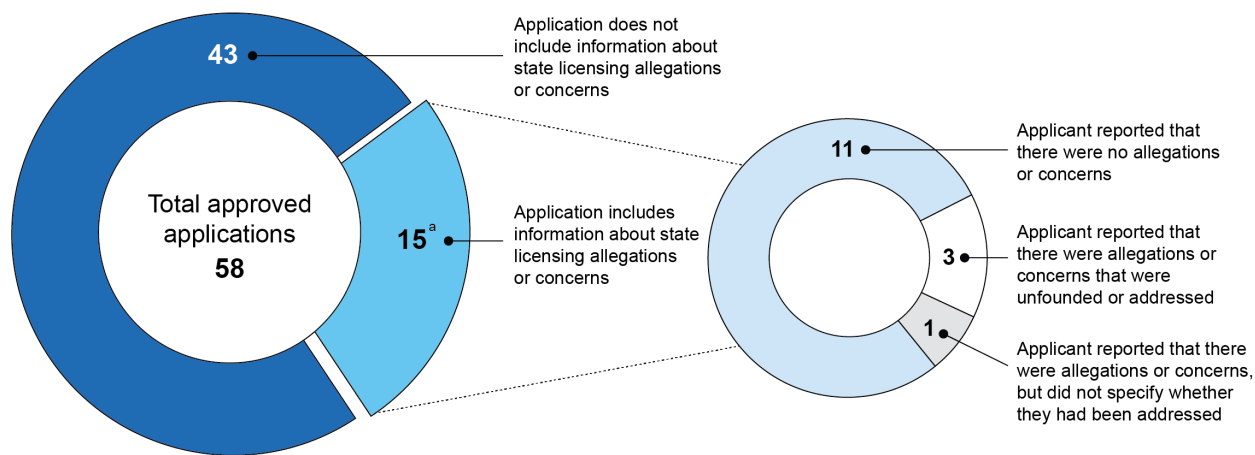
⁴⁴ GAO, Actions Needed, 2020, “What GAO Found.”

⁴⁵ GAO, Actions Needed, 2020, p. 11.

⁴⁶ GAO, Actions Needed, 2020, pp. 13-15.

Texas.⁴⁷ ORR officials also stated the intent of the ambiguous requirements was for the applicants to disclose all infractions, allegations, and concerns, regardless of timeframe or location. Unfortunately, it appears to have resulted in the opposite, with applicants choosing not to disclose their state licensing violations, allegations and concerns.

Figure 7: State Licensing Allegations and Concerns Reported in Applications for ORR Grants to care for UACs, Fiscal Years 2018 and 2019⁴⁸



Source: GAO analysis of applications for ORR grants. | GAO-20-609

Additionally, ORR has failed to adequately verify the information submitted in grant applications. For example, Shiloh Treatment Centers in Manvel, Texas, formerly named Daystar Residential, Inc., was shut down by DFPS in 2011 as a foster care facility for domestic children in the state foster care system after three children were killed there and hundreds of others suffered abuse.⁴⁹ Yet, by 2014, this same facility had reorganized as Shiloh Treatment Centers and was awarded \$5 million by ORR to care for unaccompanied children from foreign countries.⁵⁰ In 2018, a federal judge ordered many migrant children removed from

⁴⁷ GAO, Actions Needed, 2020, p. 14; See also Figure 4 and Appendix A.

⁴⁸ GAO, Actions Needed, 2020, p. 15.

⁴⁹ Terri Langford, "Closure of center for troubled kids follows years of woes," Houston Chronicle, Updated August 1, 2011,

<https://www.chron.com/news/houston-texas/article/Closure-of-center-for-troubled-kids-follows-years-1687768.php>.

See also Will Evans, Lance Williams and Matt Smith, "Feds sent immigrant kids to dangerous Texas youth facility, despite serious warning signs," Texas Tribune, August 8, 2018,

<https://www.texastribune.org/2018/08/08/feds-sent-immigrant-kids-dangerous-texas-facility-despite-warning-sign/>.

⁵⁰ Samantha Ptashkin, "Manvel facility could house undocumented children," Local 2 Houston, July 24, 2012,

<https://www.click2houston.com/news/2014/07/25/manvel-facility-could-house-undocumented-children/>.

the facility for its history of abusing children, including using psychotropic drugs on them.⁵¹ By 2018, Shiloh Treatment Centers was the recipient of at least \$33 million in grant money in order to care for immigrant youths.⁵² At present, it still operates as an ORR-funded facility, as described in more detail in Figure 4 above and Appendix A below, and it still receives citations for abusing children.⁵³

ORR's lack of due diligence and failure to verify the accuracy and completeness of grant applications regarding licensing citations, allegations, and concerns is not limited to Shiloh Treatment Centers or facilities located in Texas. For example, a December 2020 United States Senate Committee on Homeland Security and Governmental Affairs report determined that at least \$32 million dollars had been granted to vendors for proposed facilities that were never opened because the vendors failed to secure approval for the facilities in their respective states. According to the Senate Committee report, ORR had not recovered the funds granted to those vendors as of the report's release.⁵⁴

Findings and Recommendations

The GAO report recommended 8 executive actions ORR could take to improve the obscurity of its grant announcements; communication with state licensing agencies; and oversight of the grant recipients.⁵⁵ While HHS agreed with GAO report's recommendations, there is no evidence to suggest that ORR has implemented any of the recommendations, nor did our reviewers find a timeline or schedule for planned future implementation. All eight recommendations remain "open" on the GAO website as of the publication of this report.⁵⁶

⁵¹ Johnson, Psychotropic Drugs, NBC News, July 30, 2018.

⁵² Evans, Williams, and Smith, Feds Sent Immigrant Kids, Texas Tribune, August 8, 2018.

⁵³ See Figure 4. See also Appendix A.

⁵⁴ United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report, Oversight of HHS Shelter Grants for Unaccompanied Alien Children, December 2020,

<https://www.hsgac.senate.gov/imo/media/doc/2020-12-08%20PSI%20Staff%20Report%20-%20Oversight%20of%20HHS%20Shelter%20Grants%20for%20UACs.pdf>

⁵⁵ GAO, Actions Needed, 2020, pp. 41-45.

⁵⁶ GAO, "Recommendations Database," accessed January 17, 2021,

https://www.gao.gov/mobile/recommendations/search?rec_type=all_open&q=actions+needed+to+improve+grant&field=title_t#results.

Details of the 983 violations from Texas demonstrate plainly the urgent need for ORR to implement the GAO's recommendations.⁵⁷ GAO determined, and HHS/ORR recognized, the need for ORR to improve the clarity of disclosure requirements, oversight of grantees receiving ORR funds, and communication with state licensing agencies.⁵⁸ The risk to children of ORR's negligence is not a theoretical future possibility: the Texas data demonstrate that ORR's lack of oversight *has already* contributed to children suffering abuse at the hands of ORR grant recipients.

To prevent any further harm to children, the Biden administration should issue an executive order that directs ORR, within a specific timeframe, to present a plan that includes measurable milestones to address the GAO's recommendations:

1. In its grant announcements, ORR should clarify the information and documentation applicants are required to submit as part of their application regarding state licensing status, eligibility, and any allegations or concerns the state has regarding their license;
2. ORR should develop and implement a process to verify accuracy and completeness of the information and documentation grant applicants are providing;
3. ORR should ensure the grant review process includes a document review of an applicants' past performance;
4. For their quarterly performance reports, ORR should clarify the information grantees are required to report on state licensing citations;
5. ORR should train its project officers to clearly understand that grantees must report state licensing citations within 24 hours of receiving the citation and include them in their quarterly performance reports;
6. ORR should work with state agencies that license ORR-funded facilities to develop a plan for mutual information sharing;
7. ORR should provide a current point of contact for each state agency that licenses grantees to facilitate information sharing; and
8. ORR should develop a plan to meet its goals of auditing each facility's compliance with preventing and responding to sexual assault; on-site monitoring visits to each facility at least every 2 years; and reporting any

⁵⁷ GAO, *Actions Needed*, 2020, pp. 41-45.

⁵⁸ GAO, *Actions Needed*, 2020, "What GAO Found."

non-compliance to the facility within 30 days of the site visit.

ORR must overhaul its current reporting requirements and establish streamlined communication with state licensing agencies to prevent the child abuse that occurs at facilities such as the violations at Southwest Key-Casa Rio Grande. Amending the current reporting requirements for state violations will also improve efficiency and thoroughness for evaluating compliance with procedures and grant applications for ORR-funded facilities. Further, the overhauling of the reporting requirements of the ORR-funded facilities must include the following:

- Mandated/uniform correction deadline dates based on the category of violation.
- State licensing agencies must distinguish whether a reported violation occurred to an unaccompanied child or domestic child.
- All reported violations must include a detailed correction narrative.
- All reported violations must state if compliance was met. If compliance was met, the report must state the date the compliance was verified.

In addition to improving the review of information disclosed on grant applications, ORR must prevent other centers, like Shiloh, with histories of documented abuse from operating. The following guidelines must be implemented:

- Establish clear guidelines for the information and documentation required to be submitted with the grant application.
- Applicants do not face ambiguity regarding disclosure requirements in the application process, nor claim confidentiality or discretion regarding information they disclose. All applicants must be forthcoming about their history of citations, violations, allegations, and licensing concerns.
- Information disclosed by applicants should be independently verified by ORR through direct reporting from each state licensing agency.
- Establish penalties for applicants that fail to disclose citations, violations, allegations, and licensing concerns.

Congress should ensure that ORR has the legal and financial tools necessary to hold federal contractors accountable if they harm children, including the authority

to claw back grants that were made based on incomplete compliance histories. These children are in our care, and we should not be paying to place them in facilities that continue to harm them, year in and year out. Congress should direct ORR to terminate existing grants and to pursue recovery of funds for providers who received grants based on incomplete compliance history information, when knowledge of the complete history would have resulted in ORR's rejection of the applicant.

Congress also should ensure that ORR's contract provisions do not have the effect of quashing providers' public policy concerns. Congress should require ORR to permit providers to exercise their judgement with respect to the media, and to provide accessibility and transparency with respect to information, programs, and facilities, while maintaining the privacy and security of detainees.

Finally, the Biden administration should appoint a task force to recommend alternative strategies for caring for unaccompanied children. The task force should consult with "on-the-ground" entities. The faith communities; school districts; local governments; and health and human services providers all have the expertise to work with federal officials to develop and implement location-specific, sustainable solutions to accommodate unaccompanied children.

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Texas Impact Foundation, February 2021.