



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



October 11, 2016

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Re: OSC File No. DI-15-5203

Dear Ms. Lerner:

I am responding to the email sent on September 8, 2016, by Catherine McMullen, Chief of the Disclosure Unit in the Office of Special Counsel (OSC), to the Office of Counsel in the Office of Inspector General (OIG), U.S. Department of Health and Human Services (HHS). This letter describes OIG's oversight activities regarding the care and safety of unaccompanied children. It also provides some of the additional information your office requested in its email. We greatly appreciate the working relationship OSC staff has developed with OIG staff in addressing the issues raised by the whistleblower. We have strived to respond thoroughly and accurately to the referral while respecting the whistleblower's anonymity.

Ensuring the safety of unaccompanied children in the custody of the Office of Refugee Resettlement (ORR) is a critical goal and one which OIG shares with OSC. Unaccompanied children represent one of HHS's most vulnerable beneficiary populations and, consequently, are an important focus of OIG's efforts. In our July 22, 2016, letter to you we described our ongoing and planned work in this area. I want to emphasize that this work will assess ORR's compliance with background check requirements and its activities to ensure the safety of children after placement with sponsors.

Specifically, OIG's Office of Audit Services is conducting an audit of ORR grantees tasked with placing unaccompanied children with sponsors. This work will include reviewing a sample of case files at ORR-funded care providers across the country to determine whether each grantee followed ORR policies and procedures by, for example, looking at whether the appropriate background check was conducted in the vetting of sponsors for the placement of unaccompanied children. One of these audits focuses specifically on fiscal year (FY) 2014, while the other audits focus on FY 2015. If we uncover evidence that a child is in danger or a grantee has committed fraud, we will make the appropriate referral for follow-up action. Our Office of

Evaluation and Inspections is conducting a review of ORR's post-placement activities. This work will include the results of interviews with both Department of Homeland Security (DHS) and ORR officials about post-placement roles and responsibilities. A report is currently being drafted; we expect to issue it to ORR in the next few months, with final publication in early 2017. In addition, the Office of Investigations continues to conduct investigative activities when OIG receives allegations within our jurisdiction regarding crimes against these children. Together, this work will provide an agency-wide view into where ORR is succeeding—and where it must improve—in ensuring the safe care and placement of unaccompanied children. It also reflects the best strategy for OIG to identify systemic vulnerabilities that put children in danger, without having to rely on data obtained from a source outside of OIG's jurisdictional reach.

You asked a number of questions in your September 8 email. I am in a position to provide answers to several of them.

Does DHS work with ORR to conduct criminal background checks of sponsors?

ORR policy requires all potential sponsors to have a background check. Most sponsors are parents or legal guardians. According to ORR policy, most parents and legal guardians do not undergo a fingerprint-based background check, but they do undergo a background check conducted by the ORR grantee based on public records. All nonparents (and, in limited circumstances, certain parents and legal guardians) are subject to fingerprint-based background checks. For the fingerprint checks, ORR does not conduct them in coordination with DHS. ORR has a Memorandum of Understanding with HHS's Office of Security and Strategic Information (OSSI) to run the fingerprints through the Federal Bureau of Investigation (FBI), conduct immigration checks, and complete Child Protective Service checks. The fingerprint-based check includes a check of the FBI's national criminal history and State repository records. The FBI criminal background and State repository check provides immigration arrests by immigration authorities, such as an illegal entry, and criminal arrests, such as DUI and assault. The case manager and ORR consider the results of the OSSI check when determining whether to release a child to a sponsor. Additional information about the various kinds of background checks is provided in Appendix A of our February 22, 2016, report to Secretary Burwell.

Does ORR comply with its policies regarding sponsor fingerprint checks?

Our review of the whistleblower's data reported in our February 22, 2016, report showed two instances of sponsors who were required to receive a fingerprint check. Both of these sponsors were found to have received a fingerprint check per policy.

Provide an explanation on how we identified the 25 instances in which unaccompanied children appeared to have been placed with sponsors convicted of a serious charge.

We previously provided information on our methodology in our February 22, 2016, report to Secretary Burwell and in our supplemental report to your office, dated May 6, 2016, copies of

which are attached. The August 2015 referral instructed HHS to investigate the following allegation:

ORR federal field specialists failed to properly oversee the evaluation and screening of UAC sponsors for criminal history before releasing unaccompanied children into their custody. The UAC remain in the custody of sponsors, 400 of whom have significant criminal records unrelated to immigration violations.

The referral went on to break down the occurrences of the “significant criminal records” to include assault, battery, child neglect, contributing to the delinquency of a minor, domestic violence, homicide, and lewd or lascivious conduct with minors. As we have previously explained, the data on this spreadsheet had been sorted in a manner that made the data unusable. Finally, in October 2015 the whistleblower provided us with a spreadsheet with data that we could use, which we conveyed to OSC would serve as the basis for our review. The 25 unaccompanied children chosen from the usable spreadsheet were not selected through statistical sampling. Instead, these were the only files remaining after we applied the same logic to the final spreadsheet as OSC applied to the whistleblower’s original data, which excluded immigration-related offenses and focused on “significant criminal records.” Although we have described this process in detail in prior communications, the table below provides an overview of the explanation.

| | Whistleblower’s original data, referred by OSC in 8/2015 (OIG unable to use) | Whistleblower’s final data reviewed by OIG, received by OIG on 10/15/2015 |
|---|--|---|
| Total Rows | 32,765 | 13,505 |
| Rows showing any crime | (estimated by OSC): 3,700 | 13,480 |
| Subtract rows showing immigration-related crime | (estimated by OSC): - 3,300 | -13,454 |
| Difference = Rows with “more serious crimes,” per whistleblower’s analysis | (estimated by OSC): = 400 | =25 (+1 duplicate excluded) |
| From these rows, the number of UC released by ORR to sponsors | Spreadsheet unusable | 6 |
| From these rows, the number of UC released by ORR to a sponsor with a criminal charge | Spreadsheet unusable | 1 |

To summarize, the number of children we identified from the whistleblower’s data who were placed with a sponsor with a criminal charge is 1, and that sponsor was charged with a theft of a low-cost food item and subsequently fined.

We question whether additional work predicated on the whistleblower’s evidence would disclose systemic vulnerabilities in the Unaccompanied Children’s Services program and ORR’s efforts to place children in appropriate care. We believe the most effective way to provide oversight of

ORR's custody and care of unaccompanied children is for OIG to continue with the comprehensive and forward-looking strategy we have adopted. The oversight activities described above reflect these priorities.

We have attached all of the formal communications with your office to which we have referred in this response. If you have any further questions about the work we have done in response to your request, please contact me at (202) 619-3189.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Taitsman".

Julie K. Taitsman, M.D., J.D.
Chief Medical Officer

cc: Sylvia M. Burwell
Secretary, Health and Human Services

Attachments