

United States Senate

WASHINGTON, DC 20510

March 02, 2020

The Honorable Lynn A. Johnson
Assistant Secretary for Children and Families
Administration for Children and Families
U.S. Department of Health & Human Services
330 C Street, S.W.
Washington, D.C. 20201

Dear Assistant Secretary Johnson:

We write to request information about how the Office of Refugee Resettlement (ORR) disseminates data compiled about unaccompanied migrant children (UACs) who are in ORR custody. We are deeply disturbed by the allegations that confidential information disclosed by children to mental health professionals is distorted and used against these children to pursue deportation or prolonged detention.

In February 2020, the Washington Post reported that ORR shares confidential information obtained through private sessions between UACs and their therapists with U.S. Immigration and Customs Enforcement (ICE) officials. It appears that this information is then used by ICE and U.S. Department of Justice (DOJ) officials during asylum proceedings and court filings arguing against asylum.

ORR is required to act in the best interest of migrant children in their care, as determined by federal law and the Flores Settlement. We are concerned that ORR's reporting practices run counter to those obligations. Children must have the opportunity to openly share their experiences with their therapists and care providers. They must be able to do so without the fear that what they disclose will later influence their asylum applications. The practice of sharing confidential clinical notes discourages these children from confiding in their therapists and care providers to get the help they need. The American Psychological Association voiced similar concerns, stating that this information sharing violates several "broadly accepted mental health ethical privacy and disclosure standards" and "impedes the delivery of effective treatment of children who have experienced trauma."

In defense of ORR's reporting practice, Secretary Azar recently stated that ORR obtains consent from children before sharing their confidential notes. We believe this consent is meaningless, as young children are incapable of fully understanding the concept of consent. Further, we believe that these vulnerable, traumatized children are unaware of how ORR may share or manipulate this information and for what purposes.

To help us better understand how ORR fulfills its mission and meets its requirements to care for unaccompanied migrant children within its custody, please answer the following questions by March 20, 2020.

1. Section 5.8.4 of the ORR Policy Guide outlines requirements for ORR care providers to report significant incidents to the U.S. Department of Homeland Security (DHS). Who are considered care providers in this context and are therefore subject to the outlined reporting requirements?
 - a. Are clinicians and therapists working with UACs considered care providers?
 - b. Are other health professionals, including therapists, treating UACs off ORR grantee campuses subject to reporting?
2. Did the April 2018 Memorandum of Agreement among ORR, ICE, and Customs and Border Protection to share information about UACs change the way information obtained by care providers and therapists is shared among these agencies? If so, please describe the policy changes implemented by ORR.
3. Section 5.8.4 ORR Policy reporting requirements include submitting Serious Incident Reports (SIR) to describe gang-related activity, human smuggling, drug trafficking, and weapons trafficking. Are clinicians and therapists required to submit SIRs for these types of incidents based on their therapy notes and email them to the ICE/HSI Tip Line or otherwise inform ORR of these incidents when reported by UACs to them?
 - a. ORR Federal Field Specialists (FFS) are required to report reportable incidents to DHS, per ORR's Policy Guide. What are the different types of reportable incidents covered under this policy?
 - b. Are UACs, or their attorneys, informed that information shared with their therapists and care providers will be shared with other individuals and agencies? If so, who informs these children and their attorneys and how are they informed?
4. Section 5.6.2-3 of the ORR Policy Guide states that electronic records, including clinical notes, on UACs "are kept confidential and secure at all times and must be accessible to ORR upon request." Please describe in what circumstances ORR requests a care provider to share a UAC's case file, including clinical notes, as well as how that case file is shared (e.g., a copy of the case file contents) and kept confidential.
 - a. Does ICE request ORR to access and share UAC files? If so, what is the process for making and approving such a request?
 - b. Does ICE ever request care providers to share UAC files? If so, what is the process for making and approving such a request?
 - c. When care providers create addendums to existing SIRs, does ICE or DHS receive the updated information? If so, how is that information shared?
5. When Secretary Azar appeared before the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies on February 25,

2020, he explained that ORR discovered a problem in August 2019 with how therapists' notes were being shared with ICE. Please provide the 2016 guidance referenced by Secretary Azar in the hearing and describe how the problem was identified and resolved. What steps will be taken to ensure the problem does not arise in the future?

6. When UACs attain 18 years of age and no longer qualify for services provided by ORR, what steps does ORR take to transfer these individuals to ICE custody?
 - a. What information does ICE request from ORR about these individuals?
 - b. Are UAC case files, including clinical notes, shared with ICE as part of the transfer process?
 - c. Are SIRs provided to ICE, in addition to the initial notification ICE may have already received through the ICE/HSI Tip Line?

We thank you for looking into this serious matter and await your prompt response.

Sincerely,



Ron Wyden
United States Senator



Elizabeth Warren
United States Senator