



ADMINISTRATION FOR
CHILDREN & FAMILIES

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TO: Jonathan H. Hayes, Acting Director, Office of Refugee Resettlement

CC: Lynn A. Johnson, Assistant Secretary for Children and Families

FROM: [REDACTED], Deputy Director for Children's Programs, Office of Refugee Resettlement [REDACTED]

DATE: December 18, 2018

SUBJECT: Recommendation on ACF/ORR directive under Memorandum of Agreement § VI

I. ISSUE AND RECOMMENDATION

The Office of Refugee Resettlement (ORR) has observed an increase in the median length of care for unaccompanied alien children (UAC) since implementing the Memorandum of Agreement (MOA) in June 2018. This increase presents child welfare and operational considerations for ORR.

Before the MOA, ORR conducted robust non-biometric background checks on all sponsors and their household members. ORR obtained fingerprints and conducted biometric background checks on Category 1 sponsors and their adult household members when deemed appropriate. ORR obtained fingerprints and conducted biometric background checks on all Category 2 and 3 sponsors without exception, and obtained the same for such sponsors' adult household members when deemed appropriate.

After executing the MOA, ORR revised the provisions of the ORR Policy Guide regarding background checks. The revisions require all putative sponsors at all levels—and all of their adult household members—to provide fingerprints and undergo biometric ICE background checks.

As part of its continuing, ongoing review of the program and operations, the ORR staff evaluated whether the expanded background checks of adult household members under the MOA have yielded new information that has enabled ORR to identify child welfare risks that ORR would not have found under the prior policy. The ORR staff concluded that the expanded background checks have not yielded such additional information to identify child welfare risks from June 2018 to date.

At the same time, the ORR staff concluded that the current, increased median length of care has a correlation to the time required for all adult household members to finish submitting fingerprints to ORR. The ORR staff believes that the current, increased median length of care is at a level that may present child welfare considerations for some children. The ORR staff's opinion is based on their own child welfare training and experience, and the child welfare literature on congregate care.

The ORR senior staff's recommendation, after weighing these child welfare considerations, is that ORR issue a directive pursuant to MOA § VI to modify the ORR Policy Guide—and, by extension, the MOA—to enable ORR to complete individualized suitability assessment of sponsors without obtaining fingerprints from all adult household members in appropriate cases.

There are at least three reasons to accept this recommendation. First, the background checks that ORR will continue to conduct are robust and likely to identify any material risks to children. Second, the modification should enhance child welfare by reducing length of care. Third, the modification will increase individualized decision-making and operational flexibility in the field.¹

II. BACKGROUND AND DISCUSSION

Before the MOA, Category 1 sponsors and all of their adult household members underwent public background and sex offender background checks without exception. They underwent fingerprinting and biometric background checks if there was a documented risk to the safety of the UAC, the UAC was especially vulnerable, or the case was referred for a home study. Category 2 sponsors also underwent child abuse and neglect (CA/N) checks if the case was referred for a home study or a special concern was identified. Their household members underwent CA/N checks for special concerns as well.

The prior policy for Category 2 and 3 sponsors and their adult household members was different. Category 2 and 3 sponsors and all of their adult household members underwent public background and sex offender background checks without exception. Category 2 and 3 sponsors also underwent fingerprinting and biometric background checks without exception. But, their adult household members underwent fingerprinting and biometric background checks only if there was a documented risk to the safety of the UAC, the UAC was especially vulnerable, or the case was referred for a home study. Category 2 and 3 sponsors also underwent CA/N checks if the case was referred for a home study or a special concern was identified. Their household members underwent CA/N checks for special concerns as well.

Under the MOA, ORR obtains fingerprints of all potential sponsors and adult household members (as well as other personal identifying information), and provides them to ICE. ICE then conducts a biometric immigration and criminal background check and provides the results to ORR. The ICE immigration and criminal background checks are conducted as an additional child protection measure, on top of ORR's standard background check process.

Information obtained through expanded background checks of adult household members

The ORR staff evaluated the results of the biometric ICE background checks on adult household members since June 2018. For those checks that identified immigration or criminal history: approximately 80% identified immigration history; approximately 8% identified history related to driving under the influence; and approximately 8% identified history related to traffic violations. The remainder does not fit within a single category. In general, none of the history for adult household members was automatically disqualifying for sponsors under current ORR policy.

¹ In addition, the ORR senior staff's understanding is that U.S. Customs and Border Protection supports this operational directive and U.S. Immigrations and Customs Enforcement does not oppose it.

I have spoken with ORR senior staff, as well as members of the ORR field staff who use this information when making suitability determinations. In general, they are unaware of any cases in which the biometric ICE background checks yielded new information about adult household members that enabled ORR to identify new child welfare risks. The ICE biometric background checks have generally corroborated what ORR has learned through pre-existing methods.

The ORR field staff, however, has informed me that biometric ICE background checks of all categories of sponsors are helpful for suitability analyses because they confirm the sponsor's identity.

Increase in median length of care and related child welfare considerations

ORR has conducted a data analysis and found an increase in length of care for UAC discharged to Category 1 sponsors. Median length of care for a Category 1 discharged UAC was:

- 20 days from November 20, 2017 to January 5, 2018;
- 22 days from March 30, 2017 through June 6, 2018 respectively; and
- 51 days from June 7, 2018 through September 30, 2018.

UAC referred to ORR during the week of July 7, 2018 had a median length of care of 73 days.

This data is consistent with ORR's experience during MOA implementation. The volume of fingerprint subjects increased immediately after the initial implementation of the MOA in June 2018. HHS then dedicated more resources to digital fingerprint sites, which capture sponsors' and adult household members' fingerprints, and the Program Support Services (PSC), which process fingerprints.

Unfortunately, the length time which all adult household members take to submit their fingerprints to ORR has not decreased materially since implementation. There appears to be a correlation between that length of time and the current increased median length of care. The ORR staff's best programmatic judgment is that the length of time taken by adult household members is affecting ORR's completion of suitability analyses and, by extension, the median length of care.

The increase in the median length of care presents child welfare considerations for ORR. In ordinary cases, where a suitable sponsor is available and discharge presents no risks to the health or safety of the UAC or the public, ORR's experience is that the best practice in child welfare would be to discharge the UAC within 30 days of admission. In ordinary cases, ORR generally does not recommend keeping UAC in care for longer than 60 days². This is because family-based settings tend to produce better child welfare outcomes over longer periods of time.

ORR's approach is aligned with child welfare literature on congregate care. Over the last ten years, a consensus has emerged that children are better served in family-based settings. As a result, the number of children living in congregate care has decreased nationwide by 37 percent.³

² There are of course, many instances where a UAC remains in care beyond 60 days – or longer – because a suitable sponsor cannot be found.

³ Children's Bureau. "A National Look at the Use of Congregate Care in Child Welfare." May 13, 2015. Available at: https://www.acf.hhs.gov/sites/default/files/cb_cbcongregatecare_brief.pdf.

The Children's Bureau of ACF analyzed a number of data elements from the Adoption and Foster Care Analysis and Reporting System and found that children at risk for congregate care are more likely to have a mental health diagnosis or a behavioral problem.

ORR's current median length of care, as of November 30, 2018, is 90 days for all discharges and a reduction towards 30 days would be more consistent with best practices in child welfare.

III. SPECIFIC RECOMMENDATION ON ACF/ORR DIRECTIVE

The ORR senior staff recommends that ORR direct the ORR staff to modify the ORR Policy Guide—and, by extension, the MOA—to enable ORR to complete individualized suitability assessments of sponsors without obtaining fingerprints from all adult household members in appropriate cases.⁴

ORR would continue fingerprinting and biometric ICE background checks for all categories of sponsors. ORR staff would, however, have the discretion to conclude a suitability determination for a sponsor—and release the UAC to that sponsor—pending receipt of fingerprint background check results if other records are sufficient to confirm the sponsor's identity.

ORR would otherwise follow its prior policy on fingerprinting and background checks of sponsors and adult household members.

ORR would implement the operational directive immediately. In addition, during the next 45 days, the ORR staff would evaluate the current provisions of the ORR Policy Guide related to appeals of suitability determinations, and make any recommendations for further revisions as appropriate.

DECISION

Approved Disapproved More Information Required



Jonathan H. Hayes

12/18/2018

Date

⁴ The MOA contemplates this type of operational directive in § VI, which states that “[n]othing in this Agreement is intended to conflict with current law or regulation or the directives of DHS, CBP, ICE, HHS, or ORR. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.”

Attachments:

ORR-ICE-CBP MOA Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (April 13, 2018).

ORR Policy Guide, Section 2.5.1, Criteria for Background Checks (revised June 7, 2018). [current policy]

ORR Policy Guide, Section 2.5.1, Criteria for Background Checks (revised April 11, 2018). [previous policy]

MOA Impact on Category I UAC Length of Care and Sponsorship (November 26, 2018).

Citations to relevant child welfare literature on congregate care

Produced to Committee on Energy and Commerce Pursuant to Oversight Request,
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