

Monitoring and Compliance for ORR Care Provider Facilities

**OMB Information Collection Request
0970 - 0564**

Attachment A - Summary of Public Comments and ORR Responses

May 2023

Submitted By:
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

ORR expresses its appreciation to the public for the thoughtful and detailed comments in response to this information collection request. In addition to comments specific to the information collection, several of the comments received relate to underlying policy and are outside the scope of the purpose for which comments on the information collection were solicited. As specified in 5 C.F.R. s. 1320.8(d), these purposes are: whether the form and the information it collects are necessary for what the agency is trying to accomplish through the form and whether the information collected will have practical utility; to evaluate the paperwork burden of filling out the form and whether the agency's estimate of the burden was correct; the usefulness of the information being collected on the form; and, minimizing the form completion burden. Although many of the comments summarized below are outside of the scope for this specific information collection, ORR extends its thanks to the public and will consider these comments in our future work.

1. One commenter, representing a federal child advocacy organization, expressed concerns that the unlicensed facility forms will not be able to sufficiently mitigate risks that have arisen with the delicensing of ORR facilities in Texas and Florida. The commenter noted that state licensing agencies provide a system for monitoring facilities' compliance through inspections, rapid investigations of violations and mistreatment, and corrective action. The commenter also noted that states have built-in expertise and infrastructure to effectuate compliance with licensing standards independent of ORR. The commenter stated that the forms fail to address elimination of these protection and oversight mechanisms provided by state licensing agencies.

ORR Response: ORR appreciates and shares the commenters concern over the removal of important oversight protections caused by the delicensing of ORR facilities in Texas and Florida. ORR notes that quarterly site visits for unlicensed facilities (and the corresponding forms) are not meant to wholly replace state licensing oversight. Rather, they serve as an interim step to help mitigate the loss of state oversight while ORR works toward establishing a more permanent solution.

ORR has determined that the most effective response to the delicensing of ORR facilities is for the Department of Health and Human Services, through the Administration for Children and Families (ACF), to develop federal licensing standards for its care provider facilities under certain circumstances. ORR's proposed rulemaking was announced in the [Fall Unified Agenda](#).

ORR will propose that federal licensure be carried out by the proposed Office of Residential Licensure for Unaccompanied Children (ORLUC), to sit within ACF but independent of ORR. That office would oversee the issuance of licensing standards, implement monitoring, and oversee associated processes including federal license revocations.

2. A commenter, representing a federal child advocacy organization, noted that unlicensed facility forms do not include questions to address a facility's compliance with state-specific licensing requirements and questioned how ORR plans to ensure compliance by unlicensed facilities with state licensing standards.

ORR Response: ORR thanks the commenter for their feedback. As noted in the response above, quarterly site visits for unlicensed facilities are an interim step to help mitigate the loss of state oversight. These site visits are not meant to monitor for state-specific licensing requirements. In addition, ORR notes that each state naturally has expertise in their respective licensing standards by virtue of both creating and monitoring for those standards. ORR does not have

corresponding expertise because historically it has been able to rely on states to perform more detailed monitoring while ORR provides a more general, high-level monitoring for compliance with state licensing standards and concentrates its more detailed monitoring efforts on compliance with federal requirements. Therefore, ORR determined that the most effective solution is to develop federal licensing standards (see [Fall Unified Agenda](#) for more information) that may be used for care provider programs located in states that are unwilling to license ORR facilities.

3. One commenter, representing a federal child advocacy organization, recommended that ORR ensure that monitoring visits and any other mechanisms to ensure accountability and oversight are conducted at influx care facilities, which by definition are unlicensed.

ORR Response: This comment relates to ORR monitoring policies and not the information collection itself. Nevertheless, ORR appreciates the commenter’s remarks and affirms that monitoring visits and other oversight activities are conducted for influx care facilities (ICFs). For any unlicensed ICF in operation for more than three consecutive months, ORR will conduct a minimum of one comprehensive monitoring visit during the first three months of operation, with quarterly monitoring visits thereafter (see [UC Policy Guide Section 7.10](#)). The comprehensive monitoring visit taking place within the first three months of operation includes all the monitoring visit activities outlined in [UC Policy Guide Section 5.5.1](#). ICF are also subject to all other monitoring activities in Section 5.5.1 (desk monitoring, routines site visits, and site visits for a specific purpose or investigation) and ORR’s corrective action policies (see [UC Policy Guide Section 5.5.2](#)). Finally, ICFs are required to conduct internal monitoring, evaluation, and continuance quality assurance assessments on a quarterly basis (see [UC Policy Guide Section 5.5.5](#)). ORR uses its standard and quarterly site visit tools for comprehensive and quarterly site visits to ICFs, respectively. In addition, this request includes alternate versions of three ORR monitoring tools that are tailored for ICFs – ICF Monitoring Notes (Form M-6E), ICF Monitoring Site Visit Guide (Form M-7G), and ICF Personnel File Checklist (Form M-10E).

4. One commenter, representing a federal child advocacy organization, noted that Unlicensed Facility Legal Service Provider Questionnaire (Form M-13C-UF) asks “Are you made aware of incidents that may impact an [unaccompanied child’s] legal case (ex. Age outs, runaways, SIRs, etc.)” The commenter recommends adding “reports of abuse and neglect” to the list of examples in this question. The commenter stated that legal service providers have reported that they have not been made aware of report of sexual harassment, assault, or abuse of children in custody, even when children have specifically requested that their attorneys be informed.

ORR Response: ORR thanks the commenter for their suggestion and notes that reports of abuse and neglect are already encompassed within the included example of SIRs (Significant Incident Reports). SIRs are used to report on a variety of events that affect the safety and well-being of children in ORR custody, including reports of sexual abuse and sexual harassment (see [UC Policy Guide Section 4.10](#)) as well as other types of abuse (see [UC Policy Guide Section 5.8](#)). Related notification requirements, including notifications to legal service providers can be found in [UC Policy Guide Sections 4.10.4](#) and [5.8.11](#). In general, ORR will follow the child’s decision for children 14 years old or older if they request notification be provided to their attorney of record or legal service provider. For children under 14 years old, ORR will presume consent and notify the child’s attorney of record or legal service provider. ORR encourages legal service providers to inform ORR of any instance in which ORR notification policies have not been followed.

5. A commenter, representing a federal child advocacy organization, recommended that ORR use its monitoring visits to ensure that its facilities understand and are complying with their responsibilities under Section 504 of the Rehabilitation Act. The commenter suggested that questionnaires for facility staff services in various roles include questions about their responsibilities under Section 5.4. The commenter made the following form-specific recommendations:
 - a. Unlicensed Facility Education Staff Questionnaire (Form M-11G-UF) – The commenter suggested that ORR include specific questions on what training education staff receive on disability and educating youth with disabilities; how educators assess for disability; and how they adjust their curriculum to meet disability-related needs.
 - b. Unlicensed Facility Medical Coordinator Questionnaire (Form M- 11I-UF) – The commenter suggested that ORR include questions regarding how the medical team assesses for disability and mental health concerns and how they ensure children receive timely and appropriate evidence-based treatment.
 - c. Unlicensed Facility Program Director Questionnaire (Form M-11A-UF) – The commenter suggested that ORR confirm the Director’s understanding of the facility’s 504 obligations, and what the facility’s policies are for meeting them, including any policies on reasonable accommodations, and promptly accessing auxiliary communication aids and supports. The commenter also suggested that the form ask about the facility’s behavior management plans, how disruptive behavior is addressed, how and when punitive measures are enacted, if and when the facility resorts to calling law enforcement, and how it ensures that these actions do not target or penalize youth based on their disability or mental health concerns.

ORR Response: While this comment includes form-specific suggestions, it also implicates underlying monitoring policies. Nevertheless, ORR appreciates the commenter’s suggestions and will consider broadening the scope of its monitoring activities to include Section 504 compliance in the future.

6. A commenter, representing a federal child advocacy organization, noted that the proposed information collection does not provide information regarding what quarterly monitoring visits entail, who is conducting these visits, and how ORR follows up after monitoring visits to ensure compliance with corrective action plans and to address systemic issues.

ORR Response: This comment relates to ORR monitoring policies and not the information collection itself. Nevertheless, ORR thanks the commenter for their interest and notes that quarterly monitoring visits are conducted by contractor monitors. The quarterly visits entail all activities performed for monitoring visits as described in [UC Policy Guide Section 5.5.1](#), with a particular focus on areas that directly affect child health and safety. Follow-up activities includes a written monitoring report with corrective actions and child welfare best practice recommendations as described in [UC Policy Guide Section 5.5.2](#). ORR also notes that quarterly visits are in addition to and do not take the place of existing monitoring activities as described in [UC Policy Guide Section 5.5](#).

7. One commenter, representing a federal child advocacy organization, noted that interviewing children as part of the monitoring visits can raise sensitive issues and further traumatize the

children and requested more information on how ORR conducts interviews with children. The commenter also noted that the way in which the child's disclosures are documented in ORR files could impact their immigration case. In addition, the commenter recommended that ORR notify the children's attorneys, legal service providers, and child advocates in advance that ORR intends to interview the child so that they can speak with the child in advance and/or accompany the child to the interview. Finally, the commenter requested information on how ORR intends to prevent retaliation against children who report violations or disclose instances of neglect, abuse, or other harm, as well as if there are opportunities for children to respond anonymously.

ORR Response: ORR appreciates the commenter's feedback and notes that the purpose of interviewing children is to gain insight on care provider compliance with ORR requirements and whether the children are being provided everything they need to meet their individual needs by hearing directly from the population the UC Program serves. This is a vital part of the monitoring process and ensuring the safety and well-being of children in ORR custody. Historical disclosures (prior to a child's time in ORR custody) are not germane to monitoring interviews and would not be raised by ORR Monitors. However, ORR also understands that sensitive issues may arise during an interview that have the potential to retraumatize the child. Therefore, ORR provides resources and training to its monitors on child-friendly and trauma-informed interview techniques; this includes both federal monitors and the contractor monitors who are performing the quarterly site visits.

ORR also clarifies that interview notes are not part of the child's case file. Depending upon what the child disclosed during the interview, it is possible that a Significant Incident Report (SIR) may be created to ensure appropriate action is taken to ensure the child's safety and well-being (see [UC Policy Guide Section 5.8](#)). SIRs are part of the child's case file; however, ORR limits the sharing of information with the Department of Homeland Security and the Executive Office for Immigration Review. In addition, ORR never shares information for the purposes of immigration enforcement. See [UC Policy Guide Sections 5.10.1](#) and [5.10.2](#).

In addition, ORR notes that ORR Monitors connect with the program's legal service provider to conduct a stakeholder interview in advance of the site visit. Monitors may preselect children to interview and may also make themselves available for any other child who wishes to speak with them. During the site visit, monitors explain to children that the interview is not mandatory and confirm voluntary participation. Monitoring site visits are focused on facility compliance and child interview questions are designed to solicit information about placement conditions, services provided, and treatment of the child. Monitors are not performing any duties related to the child's immigration case.

Finally, ORR notes that per [UC Policy Guide Section 4.10.1](#) care providers are required to develop policies and procedures to ensure that minors have multiple ways to report sexual abuse, sexual harassment, inappropriate sexual behavior, or staff code of conduct violations, including staff neglect or violations of responsibilities that may have contributed to such incidents and retaliation for reporting. In addition, these policies and procedures must include provisions for staff to accept reports made verbally, in writing, anonymously, and via a grievance. Care providers are required to submit these policies and procedures to their ORR Project Officer for review and approval.

8. One commenter, representing a federal child advocacy organization, recommended that ORR engage in a deliberative planning process regarding oversight and accountability in unlicensed

facilities that involves regular and transparent engagement with child advocacy groups and ORR providers, as well as state officials and child welfare experts.

ORR Response: This comment relates to ORR internal processes and not the information collection itself. Nevertheless, ORR appreciates the commenter's recommendation notes that as mentioned above it is engaging in the rulemaking process to establish a federal licensing scheme to be used for unlicensed facilities.

In September 2021, ORR published a Request for Information in the Federal Register to seek public feedback on questions related to the potential federal licensure of residential facilities that house unaccompanied children in states which exempt or refuse to license ORR care providers. In June 2022, the Fall Unified Agenda announced ORR's proposed rulemaking that will provide the regulatory framework for a new Federal licensing scheme for ORR facilities, which will be used when state governments do not provide state licensing for such facilities.

As part of the rulemaking process, a Notice of Proposed Rulemaking will be published publicly in the Federal Register and stakeholders (including child advocacy groups, ORR providers, state officials, and child welfare experts) will have the opportunity to provide feedback on the proposed rule.

9. One commenter, representing a federal child advocacy organization, recommended that ORR make its monitoring reports and corrective action plans publicly available at some reasonable point after they are complete.

ORR Response: ORR thanks the commenter for their feedback and will consider the commenter's recommendation in its future work.