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HHS Should Improve Internal Coordination Regarding Unaccompanied Children

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Why OIG Did This Review

HHS frequently addresses issues that transcend a single program. To achieve its mission, HHS needs to collaborate effectively across its internal agencies.

In previous work, OIG identified instances in which limited or ineffective internal coordination hampered the Department's efforts to effectively serve beneficiaries. Accordingly, OIG initiated this review to assess coordination within HHS regarding a Centers for Disease Control and Prevention (CDC) public health order that significantly affected operations of the Office of Refugee Resettlement (ORR), a program office within the Administration for Children and Families (ACF). Specifically, in March 2020, CDC issued a Title 42 order under which most noncitizen children entering the United States without a parent ("unaccompanied children") were expelled to their home countries. This Title 42 order affected ORR because previously such children would have been referred to ORR for care.

Coordination across HHS operating divisions regarding overlapping programs or initiatives is a best practice for effective governance. Our retrospective analysis of the Title 42 order's development and initial implementation in 2020 serves to identify steps that HHS can take to improve internal coordination in the future and better ensure that ORR has the information necessary to effectively care for unaccompanied children.

Key Takeaway

CDC did not coordinate with ORR on development or implementation of a public health order that significantly affected unaccompanied children.

What OIG Found

In March 2020, citing the risk of COVID-19, CDC invoked authorities under Title 42 of the United States Code to suspend entry of certain persons into the United States at or near the border with Canada or Mexico. Under CDC's Title 42 order directing this suspension, most unaccompanied children were expelled to their home countries upon attempting to enter the United States. Before the Title 42 order, these children generally would have been referred to ORR, which provides temporary care for unaccompanied children until they are released to a sponsor or otherwise leave ORR custody. Therefore, after the Title 42 order, the number of children entering ORR's care dropped substantially.

Despite the Title 42 order's impact on ORR, OIG found that CDC did not inform the Assistant Secretary for Children and Families, the ORR Director, or ORR career staff in advance about the Title 42 order. Instead, ORR staff first learned of the forthcoming order through a draft Department of Homeland Security document received 2 days before CDC issued the Title 42 order. This lack of communication was due, in part, to the fact that CDC career staff who typically coordinate with ORR staff regarding migration-related health issues were not involved in developing or managing the Title 42 order.

OIG also found a lack of communication during the Title 42 order's ongoing implementation. Approximately 2,000 children were excepted from the order and referred to ORR's care between April and September 2020. However, ORR staff reported that they had not been informed about criteria for these exceptions and did not know why certain children had been referred to ORR during this period. Incomplete information about the factors driving referrals can complicate efforts to predict ORR's facility capacity and programmatic needs.

Finally, OIG found that CDC did not inform ORR about a timeline or process for lifting the Title 42 order, despite the likelihood that this action would lead to a significant increase in the number of children referred to ORR and the need for ORR to rapidly increase capacity. This may have been, in part, because the Title 42 order continued to be managed through the Office of the CDC Director, without involvement from career staff who typically coordinate with ORR. Additionally, CDC

How OIG Did This Review

This review focuses primarily on events that occurred from March through November 2020.

Our findings are based on interviews with officials and staff within CDC and ACF; written responses to questions submitted to CDC, ACF, and others within HHS; and internal HHS documents, such as emails and memoranda. We also reviewed relevant public documents.

We conducted a qualitative analysis of these materials to establish the timeline and content of coordination between CDC and ORR; the context for that coordination; and factors that assisted or challenged effective coordination to protect the well-being of unaccompanied children and to address the impact of the Title 42 order on ORR operations.

reported to OIG in November 2020 that it considered a variety of factors to determine, every 30 days, whether the Title 42 order would remain in effect; however, CDC did not provide to OIG any targets or benchmarks associated with these criteria. Without specific metrics that would trigger a decision to lift the Title 42 order, CDC had limited ability to advise ORR about a possible timeline for rescission.

What OIG Recommends and How the Agency Responded

Past OIG work noted that poor internal communication had impeded ORR's ability to provide prompt and appropriate care for unaccompanied children in 2018. OIG's findings in this review demonstrate a similar lack of internal communication regarding unaccompanied children from March through November 2020, during the development and early implementation of CDC's Title 42 order. As a best practice, HHS can, and should, take action to improve communication among its own internal offices and operating divisions regarding decisions affecting unaccompanied children. To excel in its mission, ORR must have timely access to all relevant information about HHS decision making that affects unaccompanied children.

Given these findings, as well as OIG's prior findings regarding poor internal communication about unaccompanied children, OIG recommends that HHS: (1) take steps to improve internal coordination and communication about unaccompanied children and (2) ensure that CDC coordinates with ORR when making future decisions that could affect the number of unaccompanied children placed in ORR's care, including any Title 42 order.

ACF and CDC concurred with both of our recommendations. ACF stated that it has already taken significant steps to implement the recommendations and affirmed that it will continue these efforts to support effective operation of the Unaccompanied Children Program. CDC also provided examples of recent coordination and stated that it will continue to improve internal coordination and communication efforts.

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BACKGROUND

OBJECTIVE

To assess coordination within the Department of Health and Human Services (HHS) during the development and early implementation of a March 2020 public health order affecting unaccompanied noncitizen children.

The Office of Inspector General (OIG) initiated this review to assess coordination within HHS regarding a Centers for Disease Control and Prevention (CDC) public health order affecting noncitizen children who had crossed the United States border without a parent or guardian ("unaccompanied children"). This population is typically served by the HHS Office of Refugee Resettlement (ORR) within the Administration for Children and Families (ACF). Effective internal communication about policies affecting unaccompanied children is vital to ORR's ability to effectively plan for facility capacity and programmatic needs.

Specifically, in March 2020, in response to the COVID-19 pandemic, CDC invoked public health authorities under Title 42 of the United States Code to issue "Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists" (hereafter, "Title 42 order"). Under the Title 42 order, numerous individuals seeking to enter the United States were expelled, including thousands of unaccompanied children. Prior to the Title 42 order, these children generally would have been placed in ORR's custody.

Our review focused on the order's development and early implementation, from March through November 2020. Since the period of OIG's review, substantial changes in agency leadership and policy have occurred. Our retrospective analysis serves to identify steps that HHS can take to improve internal coordination in the future and better ensure that ORR has the information necessary to effectively care for unaccompanied children.

ORR Care of Unaccompanied Children

ORR is a program office of ACF within HHS. ORR operates the Unaccompanied Children Program to provide care to minors (under 18 years of age) who have no lawful immigration status in the United States and do not have a parent or legal guardian available in the United States to provide care and physical custody.[1] Most children referred to ORR are apprehended by immigration authorities while crossing the border; some are apprehended within the U.S. interior. In rare cases, children are referred to ORR after being separated from their parents or legal guardians by

immigration authorities within the Department of Homeland Security (DHS) after entering the country.

Under the Trafficking Victims Protection Reauthorization Act of 2008, an unaccompanied child must be transferred to ORR within 72 hours barring exceptional circumstances.[2] Federal law requires the safe and timely placement of children in the least restrictive setting that is in the best interest of the child.[3] To that end, ORR funds and oversees a network of approximately 200 facilities that provide temporary care for children until they are released to a sponsor or otherwise leave ORR custody. Nearly all ORR facilities are licensed under the laws of their respective States and provide housing, food, medical care, mental health services, educational services, and recreational activities.[4]

A child remains in ORR custody until one of the following occurs: an appropriate sponsor (usually a parent or close relative) is located in the United States who can care for the child, the child turns 18 years of age, or the child's immigration status is resolved. ORR releases a child to a sponsor only after conducting a sponsor assessment, in accordance with Federal law and ORR policy, to confirm that the sponsor can safely care for the child.

ORR Capacity Planning for Care of Unaccompanied Children

Capacity planning—accurately predicting the number of children that ORR should be prepared to serve at any given time—poses an ongoing challenge for ORR. Numerous factors affect the number of children in ORR's care. These factors include fluctuating migration trends, immigration policies and enforcement practices (typically determined by DHS and the Department of Justice), and ORR's ability to locate and discharge children to appropriate sponsors.

As a result of these factors, ORR periodically experiences surges in the number of children receiving care. During such an influx, ORR may expand its care provider network or place children into temporary emergency care facilities, including influx care facilities and emergency intake sites. ORR can either activate or deactivate these facilities depending on the number of children requiring care.[5] Influx care facilities provide temporary shelter and minimum required services and may be exempt from State or local licensing.[6] Emergency intake sites are unlicensed and intended to meet the immediate shelter needs of unaccompanied children, implementing standards for care for children in an emergency response setting.[7]

Effective capacity planning is critical to ensure that unaccompanied children can promptly be placed in a suitable ORR facility and begin receiving the care and services to which they are entitled under Federal law. If ORR does not have sufficient capacity, children may be detained for longer than 72 hours in DHS detention facilities. Conversely, if excess capacity is unnecessarily maintained, Federal funds may be used ineffectively. To balance these risks, ORR uses both internal information as well as information from interagency partners to predict and plan for its capacity needs.

CDC Actions Affecting Unaccompanied Children

HHS Statutory and Regulatory Authorities for Control of Communicable Diseases

Section 362 of the Public Health Service Act (42 U.S.C. § 265) authorizes the Secretary of HHS to prohibit the introduction of persons or property from foreign countries to prevent the entry and spread of any communicable disease into the United States[8, 9] Federal regulations issued in 2017 permit the CDC Director—who has been delegated the authority to carry out these functions[10]—to suspend introduction into the United States of animals or products that pose a threat to public health and to quarantine or isolate persons in accordance with certain principles and procedures. As part of its response to the COVID-19 pandemic, CDC issued an interim final rule, effective March 20, 2020, designating a procedure for the CDC Director to suspend the introduction of persons from designated countries or places, if required, in the interest of public health. CDC subsequently finalized this interim rule, effective October 13, 2020.[11, 12]

Title 42 Order Suspending Entry of Certain Persons Into the United States

Effective March 20, 2020, citing the COVID-19 pandemic, CDC invoked public health authorities under Title 42 of the United States Code to issue "Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists."[13] The Title 42 order suspends entry of individuals into the United States at or near the border with Canada or Mexico if entry would result in their being placed in a congregate setting in a land or coastal port of entry or border patrol station at or near the U.S. borders (i.e., immigrant processing and detention facilities operated by DHS, including facilities used to process and detain unaccompanied children).[14] These include individuals seeking to enter the United States who lack proper travel documents, whose entry is otherwise contrary to law, or who are apprehended at or near the border seeking to unlawfully enter the United States between ports of entry. The Title 42 order exempts U.S. citizens, lawful permanent residents, and those with valid travel documents or subject to the visa waiver program, among others. The order states that CDC "requested that DHS implement this Order because CDC does not have the capability, resources, or personnel needed to do so."[15]

The Title 42 order was implemented for an initial period of 30 days, extended in April 2020 for an additional 30 days, and extended again in May 2020 for an indefinite period.[16, 17, 18] The May extension stated, "CDC shall review the latest information regarding the status of the COVID-19 pandemic and associated public health risks every thirty days to ensure that the Order remains necessary to protect the public health."

Effective October 13, 2020, immediately after the final rule took effect, CDC issued a new order replacing the extended March 20, 2020, order.[19] The October 13, 2020, Title 42 order was substantially the same as the prior Title 42 order and, like the May

extension, stated that CDC would conduct a review every 30 days to determine whether the order remains necessary to protect the public health.

Impact of the Title 42 Order on Unaccompanied Children Entering ORR Care

As a result of the Title 42 order, numerous individuals seeking to enter the United States were expelled, including thousands of unaccompanied children. Prior to the Title 42 order, these children generally would have been processed through DHS facilities and then transferred to ORR's care. Accordingly, after implementation of the Title 42 order, the number of unaccompanied children entering ORR care dropped substantially. At the end of August 2020, when the Title 42 order had been in effect for approximately 5 months, ORR was operating at just 3 percent of its total bed capacity, with more than 10,000 vacant beds.[20]

Relevant Events Occurring After the Period of OIG's Review

OIG's review addresses coordination within HHS regarding the development and early implementation of the Title 42 order, from March through November 2020. Since that time, court rulings and Federal actions have affected the order's implementation:

- On November 18, 2020, the United States District Court for the District of Columbia issued a preliminary injunction to prevent the expulsion of unaccompanied children.[21]
- On January 29, 2021, the United States Court of Appeals for the District of Columbia Circuit granted a motion to stay pending appeal the lower court's preliminary injunction of the Title 42 order, enabling DHS to resume expelling unaccompanied children under the authority of CDC's Title 42 order.[22]
- On February 2, 2021, President Biden issued an Executive Order directing that HHS, in consultation with DHS, review the Title 42 order and the CDC final rule to "determine whether termination, rescission, or modification" of these actions is "necessary and appropriate."[23]
- On February 11, 2021, CDC issued a notice stating that "CDC has decided to exercise its discretion to temporarily except from expulsion unaccompanied noncitizen children encountered in the United States pending the outcome of its forthcoming public health reassessment of the Order."[24]
- On July 16, 2021, CDC issued an order fully excepting unaccompanied children from the Title 42 order.[25]
- On August 2, 2021, CDC issued a new Title 42 order that replaces and supersedes the October 13, 2020, Title 42 order.[26] The August 2, 2021, Title 42 order "continues the suspension of the right to introduce 'covered noncitizens' into the United States along the U.S. land and adjacent coastal borders" while also continuing the exception for unaccompanied children. CDC stated that it

would reassess "the circumstances necessitating the Order" at least every 60 days.

- Effective March 11, 2022, CDC terminated the Title 42 order with respect to unaccompanied noncitizen children.[27] In April 2022, CDC announced that it would terminate the Title 42 order for other noncitizens effective May 23, 2022.[28]

Prior OIG Work

In 2018, OIG initiated a large, multifaceted review of the health and safety of unaccompanied children in ORR care, including how both internal and interagency communication affected ORR's ability to provide prompt and appropriate care and placement. Key findings from this body of work include:

- In September 2019, OIG found that in general, ORR facilities met a range of background check and qualification requirements. However, some facilities did not have evidence of the required Federal Bureau of Investigation fingerprint or Child Protective Services check results and did not always ensure that the out-of-State Child Protective Services checks were completed.[29]
- In January 2019, OIG found that the total number of children separated from their parents or legal guardians and placed in ORR care as a result of DHS practices to increase immigration enforcement was unknown but likely significantly more than the 2,737 identified by HHS at the time of our review.[30]
- In September 2019, OIG found that ORR facilities struggled to address the mental health needs of children who had experienced intense trauma and had difficulty accessing specialized treatment for children who needed it.[31]
- In March 2020, OIG found that communication and management challenges impeded HHS's response to the zero-tolerance policy. As a result, HHS was unable to provide prompt and appropriate care for an increasing number of immigrant children who were separated from their families under the policy.[32]
- In June 2020, OIG found that ORR's incident reporting system for incidents of serious harm was not effectively capturing data to assist in its efforts to ensure the safety of minors in HHS custody.[33]

Methodology

Scope

This review assessed coordination within HHS regarding CDC's "Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists." In particular, we assessed coordination between CDC and ORR in advance of the Title 42 order's issuance and during its initial implementation. Our review examined events that occurred from March through November 2020. We did not

assess the substance of the Title 42 policy itself; we focused exclusively on communication and coordination within HHS regarding aspects of the policy that affected unaccompanied children.

Data Sources and Analysis

This review is based on interviews with officials and staff within CDC and ORR; written responses to questions submitted to CDC, ACF, and the HHS Office of the General Counsel; and internal HHS documents such as emails and memoranda. We conducted a qualitative analysis of these materials to establish the timeline and content of coordination between CDC and ORR, the context for that coordination, and factors that assisted or challenged effective coordination.

Interviews and Written Responses

We interviewed knowledgeable officials and staff within CDC and ORR between September and November 2020. At CDC, we separately interviewed the Chief of Staff and a career official within the Division of Global Migration and Quarantine. At ORR, we conducted a panel interview of ORR staff holding management and operational responsibilities affected by the Title 42 order, including staff in ORR's Division of Unaccompanied Children's Services and ORR's Division of Policy and Procedures.

We requested and received answers to questions in writing submitted to CDC, ACF, and the HHS Office of the General Counsel. We also requested and received data from ORR about the number of children referred to ORR prior to and after the Title 42 order went into effect.

Documents

We requested documents from CDC, ACF, and the HHS Office of the General Counsel to support, provide context for, and expand upon interview responses. These documents included emails, memoranda, and other materials to document the frequency and nature of internal HHS coordination about the Title 42 order. We also reviewed public documents related to the Title 42 order to the extent that they pertained to the issues under review.

Limitations

We did not interview certain officials involved in decisions related to the Title 42 order who had left Federal service prior to our data collection. We gathered as much information as possible from other staff with knowledge of events surrounding the Title 42 order and from the documentary record. We note that significant changes in agency leadership and policy have occurred since the period of our review.

Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

CDC did not inform ORR in advance about the Title 42 order

ACF and ORR leadership and ORR career staff reported that CDC did not inform them in advance about the Title 42 order, despite the order's impact on the number of children who would enter ORR's care. Staff-level communication channels exist between ORR and CDC to address issues affecting unaccompanied children; however, the Title 42 order was initiated through an interagency process that did not include CDC career staff, which contributed to the lack of communication.

ORR staff first learned of the Title 42 order through a draft DHS document received 2 days before CDC issued the order

CDC did not inform the Assistant Secretary for Children and Families, the ORR Director, or ORR career staff in advance about the Title 42 order. ORR staff recalled that they first became aware of the Title 42 order through a draft DHS document that only referenced the forthcoming order. That draft DHS document was circulated to ACF on March 18, 2020—2 days before CDC would issue the Title 42 order.

ACF leadership consulted ORR staff and elevated their concerns and perspectives within HHS

Upon receiving the DHS document, which described its planned implementation of CDC's forthcoming Title 42 order, ACF leadership requested feedback from ORR staff about DHS's plans. ORR staff raised several operational concerns and emphasized that DHS should not separate children from their parents as a result of the Title 42 order; ACF leadership elevated these concerns to HHS leadership in preparation for interagency discussions. (OIG reviewed ORR referral data for the 6 months before and after March 2020 and did not observe any increase in separations following issuance of the Title 42 order.)

Additionally, ACF leadership consulted ORR staff regarding a DHS request that ORR use influx facilities to provide temporary care for children who were subject to expulsion under the Title 42 order but whom DHS could not immediately remove from the United States. ORR staff expressed to ACF leadership that an influx facility is not appropriate for all children (for example, young children or children with special needs) and that licensed shelters could better serve this purpose. (Ultimately, this subset of children remained in the care of DHS.) [34, 35]

CDC staff who typically coordinate with ORR staff were not involved in the Title 42 order, contributing to the lack of internal communication

The Title 42 order and its subsequent extensions were signed by the CDC Director. However, CDC reported to OIG that CDC "did not issue the Order unilaterally," characterizing the order as "an interagency decision led from the White House, developed in coordination with HHS and DHS." Specifically, an interagency group including representatives from the White House, National Security Council, and DHS, engaged with HHS to discuss potential regulations and subsequent orders that CDC could issue related to COVID-19 and DHS operations at the northern and southern borders. In response to the interagency request, an HHS official noted in internal correspondence from early March 2020 that "HHS is willing to put together a justification for DHS's exercise of [HHS] authorities related to the turning back of aliens for security reasons driven by public health concerns." This justification ultimately took the form of the Title 42 order issued by CDC on March 20, 2020.

Within CDC, the Division of Global Migration and Quarantine (DGMQ) typically plays a leading role in CDC's efforts to prevent the introduction, transmission, and spread of communicable disease into the United States from other countries. However, DGMQ did not develop or implement the Title 42 order. A career DGMQ official requested that DGMQ be recused from involvement in the Title 42 order, because the official believed that the order was inconsistent with a CDC guiding principle articulated in 2017 Federal regulations: "HHS/CDC will seek to use the least restrictive means necessary to prevent the spread of communicable disease."[36] The official reported to OIG that CDC's Office of the Director respected this request. CDC confirmed that within the agency, coordination of the Title 42 order was handled within the Office of the CDC Director, with engagement with senior officials at HHS and DHS; CDC career staff had no role.

The lack of DGMQ staff's involvement contributed to the lack of communication between CDC and ORR about the Title 42 order. Staff-level communication channels do exist between ORR (within ACF) and DGMQ (within CDC) to address operational issues. ORR staff indicated that those previously established channels have been used regularly and effectively throughout the COVID-19 pandemic; for example, they noted that CDC and ORR staff communicate about infection control guidance for ORR care provider facilities and share draft guidance for informal review. However, with the Title 42 order removed from DGMQ's purview, information related to the Title 42 order was not communicated through those channels.

Some children were excepted from the Title 42 order and referred to ORR, but ORR was not informed about the criteria for these exceptions, which complicated programmatic and capacity planning

According to ORR referral data, between April and September 2020, a total of 1,971 children were excepted from the Title 42 order and referred to ORR's care. ORR staff reported that they did not know what criteria were used to determine which children would receive these exceptions.

The Title 42 order does not require coordination with ORR about exceptions for unaccompanied children. Decisions about which children to except from the Title 42 order and refer to ORR were made by DHS officials charged with implementing the order on CDC's behalf.[37] CDC officials whom OIG interviewed in October and November 2020 reported that they were not aware of any consultation with DHS about these exceptions.

Incomplete information about the factors driving referrals—such as the exceptions to the Title 42 order—complicates efforts to predict ORR facility capacity and programmatic needs. ORR staff explained that the total number of children for whom it can provide care at any given time depends in part "on the flow of kids and any grouping of kids infected [with COVID-19], and what those demographics of individual children are." As an example of the difficulties faced during this period, ORR staff noted that on some occasions, they had received groups of 50 to 60 COVID-19-exposed children at one time, posing challenges for placement.

CDC did not inform ORR about a timeline or criteria for lifting the Title 42 order

ORR staff whom OIG interviewed in October 2020 reported no communications with CDC about the order's multiple extensions or about the timeline or criteria for rescinding it, despite the likelihood that lifting the Title 42 order would lead to a significant increase in the number of children requiring ORR's care.

Both the May 2020 extension and the October 2020 reissuance of the Title 42 order state that CDC will, every 30 days, review information about the COVID-19 pandemic to ensure that the Title 42 order remains necessary to protect the public health. However, ORR staff reported that they did not know what metrics CDC had established for this review and that they were not informed of progress on those metrics or a likely timeline for lifting the Title 42 order. ORR staff explained to OIG that ideally, they would prefer a 60-day notice before the Title 42 order was rescinded to ensure that ORR facilities would be sufficiently prepared.

CDC reported to OIG in November 2020 that it considered a variety of factors when conducting its 30-day review to determine whether the Title 42 order would remain in

effect. These included, for example, the total number of COVID-19 infections, active infections, deaths, and tests in Canada, Mexico, the United States, and other relevant countries; modeling released by public health authorities and major public health institutions in Canada, Mexico, the United States, and other relevant countries; and DHS enforcement data, such as the number of border encounters, apprehensions, and expulsions pursuant to the Title 42 order. (See Appendix A for a complete list of criteria that CDC reported considering in its determinations that the Title 42 order remained necessary to protect the public health.) However, CDC did not provide any targets or benchmarks associated with these criteria that would determine when a threat to public safety no longer exists and the Title 42 order can be lifted.

With no specific metrics that would trigger a decision to lift the Title 42 order, CDC had limited ability to predict the timing of that decision, and therefore also had limited ability to provide ORR with a likely timeline that ORR could consider in its programmatic and capacity planning. Additionally, the Title 42 order continued to be managed through the Office of the CDC Director, without involvement from career staff who typically coordinate with ORR and might otherwise have engaged further with ORR staff to address their planning needs as they related to the Title 42 order. As a result of these two factors, ORR staff were left without insight into CDC's plans. When interviewed in October 2020, ORR staff expressed significant concerns about ORR's ability to adapt to capacity demands if the Title 42 order were to be lifted without sufficient prior notice.

CONCLUSION AND RECOMMENDATIONS

HHS frequently faces complex issues that transcend a single HHS program. To achieve its mission, HHS needs to collaborate effectively across its internal offices and operating divisions. Providing care for unaccompanied children exemplifies the type of challenge that demands effective coordination. HHS can best protect unaccompanied children's interests when it works across program lines to leverage the Department's expertise and infrastructure on their behalf.

OIG found a lack of internal coordination during the development and early implementation of the Title 42 order. In particular, CDC did not inform ACF or ORR in advance about the Title 42 order or the timing or circumstances of its eventual rescission, despite the impact of those actions on unaccompanied children and ORR operations. However, OIG also noted effective communication between ACF leadership and ORR staff; upon learning of the Title 42 order through DHS's implementation plans, ACF leadership both consulted with ORR staff and elevated their concerns within the Department.

Past OIG work noted that poor internal communication had impeded ORR's ability to ensure sufficient capacity to provide prompt and appropriate care for unaccompanied children and that risks to the well-being of unaccompanied children had not been prioritized in decisions affecting their care. To excel in its mission, ORR must have timely access to all relevant information about HHS decision making that affects unaccompanied children. HHS can, and should, take action to improve communication among its internal offices and operating divisions with regard to this highly vulnerable population. We recommend that HHS:

Take steps to improve internal coordination and communication about unaccompanied children

ORR faces significant challenges inherent to its complex mission. ORR can best meet those challenges when it has timely information about HHS decisions that affect unaccompanied children placed in ORR's care. OIG has previously recommended that HHS ensure that unaccompanied children's interests are prioritized and represented in decisions affecting their care and placement. Improving internal coordination about unaccompanied children will help HHS accomplish this aim by supporting ORR's ability to carry out effective capacity and programmatic planning for this population.

HHS should therefore take steps to ensure that, in the future, any information potentially affecting this population is promptly shared with ORR. For example, HHS should assess whether its reporting structures and formal communication channels enable prompt and effective sharing of such information across operating divisions

and make any necessary changes to improve communication and protect children's interests. Further, HHS must be alert to communication gaps that may arise when policies are developed or implemented under atypical circumstances, as occurred when the CDC recused DGMQ from involvement in the Title 42 order.

Ensure that CDC coordinates with ORR when making future decisions that could affect the number of unaccompanied children placed in ORR's care, including any Title 42 order

This review highlights a lack of internal coordination related to the Title 42 order during its development and early implementation, from March through November 2020. In July 2021—after the period of OIG's review—CDC issued an order fully excepting unaccompanied children from expulsion under the Title 42 order. The July 2021 order explained that "at this time, there is appropriate infrastructure in place to protect the children, caregivers, and local communities from elevated risk of COVID-19 transmission as a result of the introduction of [unaccompanied children]" but also warned that "[t]his situation could change based on an increased influx of [unaccompanied children], changes in COVID-19 infection dynamics among [unaccompanied children], or unforeseen reductions in housing capacity." On March 11, 2022, CDC terminated the Title 42 order with respect to unaccompanied children but also stated that nothing in this termination will prevent CDC from issuing a new order, based on new findings, as dictated by public health needs. Effective coordination between CDC and ORR will be necessary to ensure that ORR has all relevant information to facilitate capacity and programmatic planning for care of unaccompanied children.

AGENCY COMMENTS AND OIG RESPONSE

ACF and CDC concurred with both of our recommendations. ACF stated that it has already taken significant steps to implement the recommendations and affirmed that it will continue these efforts to support effective operation of the Unaccompanied Children Program. CDC also provided examples of recent coordination and stated that it will continue to improve internal coordination and communication efforts.

Regarding our first recommendation, ACF described steps taken to improve coordination between ORR and CDC. For example, ORR staff now meet weekly with the CDC Southern Border Migrant Health Workgroup to address ORR operational issues. In addition, ORR and CDC leadership meet weekly to ensure coordination of activities. CDC similarly cited recent examples of coordination with ORR to provide public health technical assistance and stated that it defers to HHS regarding how best to address Departmentwide communication gaps, policy development, and implementation.

Regarding our second recommendation, ACF stated that since January 2021 (after the period of OIG's review), weekly meetings between ORR and CDC have included discussion of topics related to the Title 42 order. CDC likewise described recent coordination regarding Title 42. CDC further stated, "The COVID-19 pandemic is occurring at the same time as a global and ongoing child refugee crisis. It is HHS's collective goal to protect the health and wellbeing of these children as part of the overall U.S. [G]overnment response."

For the full text of ACF's comments, see Appendix B. For the full text of CDC's comments, see Appendix C.

APPENDICES

Appendix A: Factors That CDC Considered When Determining Whether the Title 42 Order Should Remain in Effect (as Reported to OIG in November 2020)

In November 2020, CDC reported to OIG that the decision made each month as to whether the Title 42 order should remain in effect was based on the following factors:

- total number of COVID-19 infections in Canada, Mexico, the United States, and other relevant countries (i.e., other South or Central American countries, Schengen Area countries);
- total number of COVID-19-related deaths in Canada, Mexico, the United States, and other relevant countries;
- total number of active COVID-19 infections in Canada, Mexico, the United States, and other relevant countries;
- total number of COVID-19 tests administered and positivity rates in Canada, Mexico, the United States, and other relevant countries;
- hospital utilization data from Canada, Mexico, the United States, and other relevant countries;
- shortcomings in epidemiologic surveillance data;
- significant outbreaks in Canada, Mexico, and the United States, particularly those occurring in areas close to United States borders;
- major public health measures in Canada, Mexico, the United States, and other relevant countries, such as mask mandates or "lockdown" orders;
- modeling released by public health authorities and major public health institutions in Canada, Mexico, the United States, and other relevant countries;
- mortality and fatality rates among DHS personnel; and
- DHS enforcement data, such as the number of border encounters, apprehensions, and expulsions pursuant to the order.

ADMINISTRATION FOR CHILDREN & FAMILIES

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Principle Deputy Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW.
Washington, DC 20201

Dear Ms. Grimm:

I am writing to provide the Administration for Children and Families' (ACF) response to the Office of Inspector General's (OIG) report titled, *HHS Should Improve Internal Coordination Regarding Unaccompanied Children*, (OEI-BL-20-00670), which contains recommendations for the Office of Refugee Resettlement. We appreciate the opportunity to review and comment on the report. Below you will find our general comments on the report findings and our specific response to each recommendation.

As described below, ACF concurs with all of the OIG recommendations, and has already taken significant steps to implement the recommended improvements.

ACF Response to Recommendations

Recommendation 1: Take steps to improve internal coordination and communication about unaccompanied children.

ACF Response: ACF concurs with this recommendation.

Since January 2021, ACF's Office of Refugee Resettlement (ORR) and the Centers for Disease Control and Prevention (CDC) have been in close, frequent contact at both the leadership and staff level regarding the health and safety of unaccompanied children in the care and custody of ORR during the coronavirus disease (COVID-19) pandemic. Coordination and communication between ORR and the CDC has been critical in ensuring ORR has information and resources available to effectively implement safeguards to protect unaccompanied children, staff at ORR-funded programs, and their respective communities from the risk of COVID-19.

ORR consults with CDC to ensure COVID-19 guidance issued to ORR-funded care providers is consistent with the latest CDC guidelines and is adapted to best serve ORR's specific population in both congregate and foster care settings. Since January 2021, ORR and CDC have taken steps to strengthen existing lines of communication and to establish new ones. For example, ORR Division of Health for Unaccompanied Children (DHUC) and the CDC's Southwest Border Migrant Health Workgroup (SBMHW), previously the

Southwest Border Migrant Health Task Force, continue to maintain weekly staff-level communications with CDC career staff to address ORR operational issues. These weekly discussions focus on prevention and control efforts for COVID-19, and other communicable diseases, and have yielded essential protocols, policy, and field guidance to keep unaccompanied children safe, including at Emergency Intake Sites (EIS). The COVID-19 guidelines issued by ORR in close consultation and collaboration with CDC include:

- Field Guidance #2 **COVID-19 Verbal Screening and Temperature Check for Staff and Visitors**
- Field Guidance #3 **Temperature Checks and Reporting**
- Field Guidance #4 **COVID-19 Discharge Guidance**
- Field Guidance #6 **COVID-19 Intake Procedures for Unaccompanied Children Newly Admitted into ORR Custody**
- Field Guidance #17 **COVID-19 Vaccination of Unaccompanied Children (UC) in ORR Care**
    - **Appendix B - Children Who Received COVID-19 Vaccine Outside the US**
    - **Discharge Letter for Sponsors**

In addition to the weekly staff-level meetings, ORR's DHUC and CDC's SBMHW leadership meet once per week to facilitate and ensure coordination of efforts and activities within each organization's work units. This has allowed for closer coordination between DHUC and CDC SBMHW subject matter experts, who meet routinely to discuss specific cases that require closer subject matter review and analysis. This has also opened a direct line of communication between DHUC and CDC SBMHW staff and medical staff and leadership at active EIS facilities. DHUC and CDC SBMHW staff participate on weekly calls with EIS facility medical leadership to ensure any site-specific issues or complex problems or cases are directly elevated to DHUC and CDC leadership. These weekly calls with EIS medical leadership have been critical to facilitating communication of site-specific issues and coordination of a prompt response from DHUC and CDC SBMHW.

ORR will continue to closely monitor the COVID-19 situation and coordinate efforts with the CDC SBMHW.

Recommendation 2: Ensure that CDC coordinates with ORR when making future decisions that could affect the number of unaccompanied children placed in ORR's care, including any Title 42 order.

ACF Response: ACF concurs with this recommendation.

Generally speaking, in addition to historical migration trends and patterns, ORR's largest predictor for advanced planning of UC Program needs is current Department of Homeland Security (DHS) referral levels. While ORR works very closely with DHS stakeholders to monitor and predict referral levels to ensure ORR has the bed capacity and resources necessary to safely receive referrals of UC, who DHS is required by law to transfer to ORR within 72

hours, there are several other factors that contribute to the challenges of planning and preparing for the UC Program's needs and bed capacity. Among these factors are the emergence and effects of communicable diseases. While the COVID-19 pandemic was unprecedented, interagency collaboration between ORR and CDC in the last 2 years have promoted greater efficiencies in information and resource sharing that leveraged the expertise and strengths of each agency and will only benefit future collaboration efforts to response and preparedness. To date, COVID-19 continues to be a major driver of ORR bed capacity unavailability due to safety protocols. For example, and as recommended by the CDC in order to help prevent the spread of COVID-19 at each program, care providers have moved bed capacity offline to ensure proper social distancing and other safety measures that prioritize the health and well-being of children. Additional capacity constraints derive from adherence to COVID-19 quarantine and medical isolation provisions and unpredictable staffing challenges. Though these challenges remain and the extent of which vary from program to program, ORR and CDC have built a strong collaborative partnership at both career and leadership levels working to safely implement and adapt CDC protocols and guidance to bring back online beds that were negatively impacted by COVID-19. ORR and CDC continue to leverage these communication channels to share information in order to ensure children are placed in a safe, child-friendly environment and do not remain in DHS custody, whose facilities are not staffed or equipped to care for children.

ORR and CDC continue to meet weekly at both the staff and leadership levels to discuss overall COVID-19 trends and cases among unaccompanied children, and to coordinate and resolve issues. These discussions include topics related to the Title 42 order with ORR equities. Since CDC first excepted unaccompanied children from the Title 42 order in January 2021, through its decision to terminate the Title 42 order with respect to unaccompanied children on March 12, 2022, ORR and CDC have continued to leverage communication channels to discuss any potential changes to Title 42 or CDC guidance that further impact the UC program. These efforts ensure ORR has all CDC information available and necessary to effectively plan for UC Program needs as far in advance as possible, and ensure children continue to be promptly and safely placed in a ORR care within 72 hours.

Again, I appreciate the opportunity to review and comment on this report. Please direct any follow-up inquiries to our OIG liaison Scott Logan within ACF's Office of Legislative Affairs and Budget, at (202) 401-4529.

Sincerely,

Jennifer M. Cannistra

Jennifer M. Cannistra,
Acting Assistant Secretary
for Children and Families

Appendix C: Agency Comments: Centers for Disease Control and Prevention

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

MEMORANDUM

To: Christi A. Grimm
Principal Deputy Performing Duties of the Inspector General

From: Rochelle P. Walensky, MD, MPH
Director, Centers for Disease Control and Prevention (CDC)

Date: March 7, 2022

Subject: Office of the Inspector General (OIG) Draft Report, "HHS Should Improve Internal Coordination Regarding Unaccompanied Children" OEI-BL-20-00670

OIG's work on this review and draft report assesses coordination within the Department of Health and Human Services (HHS) during the development and early implementation of a March 2020 public health order affecting unaccompanied noncitizen children. Based on these findings, OIG issued two recommendations.

CDC appreciates the opportunity to review and comment prior to release of the final report and submits the following in response to the OIG's recommendations.

OIG Recommendation 1:
OIG recommends that HHS take steps to improve internal coordination and communication about unaccompanied children

CDC Response:
CDC concurs with the recommendation.

CDC agrees effective internal communication about policies affecting unaccompanied children is vital to effectively plan for facility capacity and programmatic needs. CDC has a long-standing partnership and history of close coordination with the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR). CDC will continue to improve internal coordination and communication efforts.

CDC defers to HHS for specific recommendations regarding how best to address department-wide communication gaps, policy development, and implementation.

In a more recent example of effective coordination between CDC and ACF, CDC's Southwest Border team supports ORR by providing public health technical assistance and expertise on communicable disease control, COVID-19 mitigation efforts, outbreak response, and children's vaccination and safety and wellness. CDC coordinates closely with ORR (staff and contractors) and Public Health Service officers to provide technical assistance. CDC does this work in coordination and partnership with multiple federal partners including ORR, the Department of

Homeland Security and Customs and Border Protection, and as part of the larger U.S. government activities.

OIG Recommendation 2:
OIG recommends that CDC coordinates with ORR when making future decisions that could affect the number of unaccompanied children placed in ORR's care, including any Title 42 order.

CDC Response:
CDC concurs with the recommendation.

Recognizing the backdrop of this work was at the time of a pandemic when certain planning and processes that were prudent did not exist, these processes are being established. CDC, in coordination with other HHS components, is currently building this critical capacity through planning, lessons learned, and future exercises.

With more recent examples during the pandemic, the agencies have been in close communication regarding Title 42, and ACF has provided input on the draft orders. Since January 2021, CDC and ORR senior staff have been meeting regularly with other HHS components to resolve issues as they arise. This close collaboration – which is happening at the senior level of both organizations – has further strengthened the relationship and coordination between the two agencies. The COVID-19 pandemic is occurring at the same time as a global and ongoing child refugee crisis. It is HHS's collective goal to protect the health and wellbeing of these children as part of the overall U.S. government response.

Rochelle P. Walensky, MD, MPH
Director, CDC

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

Louise Schoggen served as the team leader for this study. Others in the Office of Evaluation and Inspections who conducted the study include Bahar Adili and Louis Day. Office of Evaluation and Inspections staff who provided support include Christine Moritz and Mike Novello.

We would also like to acknowledge the contributions of other Office of Inspector General staff, including Sara Bodnar, Laura Canfield, Sarai Infante, and Peter Taschenberger.

This report was prepared under the direction of David Tawes, Regional Inspector General for Evaluation and Inspections in the Baltimore regional office; Louise Schoggen, Assistant Regional Inspector General; and Heather Barton, Deputy Regional Inspector General.

Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov. OIG reports and other information can be found on the OIG website at oig.hhs.gov.

Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

ABOUT THE OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These audits help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

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The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

ENDNOTES

[1] 6 U.S.C. § 279(g)(2).

[2] 8 U.S.C. § 1232(b)(3).

[3] 8 U.S.C. § 1232(c)(2)(A).

[4] Exceptions include influx care facilities and emergency intake sites; see Endnote 5. In addition, the State of Texas announced in summer 2021 that it intended to discontinue the licenses of any facility providing care to unaccompanied children under agreement with HHS. As a result, ORR issued a request for information to explore the possibility of providing Federal licenses to ORR-funded facilities where States decline to license or otherwise exempt these facilities from needing licenses. See: 86 Fed. Reg. 49549 (published on Sept. 3, 2021), Notice, Federal Licensing of Office of Refugee Resettlement Facilities Request for Information.

[5] ORR may activate and open an influx care facility when the net bed capacity of ORR's State-licensed shelters and transitional foster care programs is at or exceeds 85 percent for a period of 3 days. (See: Office of Refugee Resettlement, ORR Guide: Children Entering the United States Unaccompanied, § 7 Policies for Influx Care Facilities.) In the event of a severe shortage of licensed facilities and influx facilities, ORR may open one or more emergency intake sites. According to ORR field guidance, "a severe shortage occurs when ORR is unable to accept referrals of children for placement in [S]tate-licensed facilities and influx care facilities that result or would result in unaccompanied children remaining in DHS custody for over 72 hours without a placement designation due to shortages of available [non-emergency intake site] ORR bed capacity." (See: Office of Refugee Resettlement, ORR Field Guidance No. 13, Emergency Intake Sites (EIS) Instructions and Standards.) Emergency intake sites were first established during a significant influx that began in spring 2021, after the period of OIG's review.

[6] Office of Refugee Resettlement, ORR Guide: Children Entering the United States Unaccompanied, § 7 Policies for Influx Care Facilities.

[7] Office of Refugee Resettlement, ORR Field Guidance No. 13, Emergency Intake Sites (EIS) Instructions and Standards.

[8] 42 U.S.C. § 265.

[9] The statute assigns this authority to the Surgeon General of the Public Health Service; however, Reorganization Plan No. 3 of 1966 transferred all statutory powers and functions of the Surgeon General and other officers of the Public Health Service and of all agencies of or in the Public Health Service to the Secretary of Health, Education, and Welfare, now the Secretary of Health and Human Services, who retains that authority today. See 31 Fed. Reg. 8855 (June 25, 1966) and 20 U.S.C. Sec. 3508(b).

[10] Sections 361 through 369 of the Public Health Service Act (42 U.S.C. §§ 264–272) have been delegated from the HHS Secretary to the CDC Director.

[11] 85 Fed. Reg. 16559 (published on Mar. 24, 2020, and effective on Mar. 20, 2020), Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes.

[12] 42 C.F.R. Part 71 (85 Fed. Reg. 56424 (published on Sept. 11, 2020, and effective on Oct. 13, 2020)), Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes. There were several changes between the interim final rule and this final rule, including the use of the term "quarantinable communicable disease" in place of ''communicable disease" and the addition of the requirement that the CDC Director include in the CDC order a statement of the serious danger posed by the introduction of the quarantinable communicable disease.

[13] 85 Fed. Reg. 17060 (published on Mar. 26, 2020, and effective on Mar. 20, 2020), Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists. Additionally, CDC published an earlier notice informing the public of the Title 42 order. See: 85 Fed. Reg. 16567 (published on Mar. 24, 2020, and effective on Mar. 20, 2020), Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists.

[14] The initial March 2020 Order specifies "a land Port of Entry (POE) or Border Patrol station" (85 Fed. Reg. at 17061); however, the extension issued in May 2020 amended the initial Title 42 Order to add the modifier "coastal" so that the Order expressly applied to land and coastal Ports of Entry and Border Patrol stations (85 Fed. Reg. at 31507).

[15] 85 Fed. Reg. 17060 (published on Mar. 26, 2020, and effective on Mar. 20, 2020), Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists.

[16] Ibid.

[17] 85 Fed. Reg. 22424 (published on Apr. 22, 2020, and effective on Apr. 20, 2020), Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists.

[18] 85 Fed. Reg. 31503 (published on May 26, 2020, and effective on May 21, 2020), Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists.

[19] 85 Fed. Reg. 65806 (published on Oct. 16, 2020, and effective on Oct. 13, 2020), Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists. CDC has stated that this version of the order is "substantially the same" as the initial Title 42 order (85 Fed. Reg. at 65807).

[20] *Flores v. Barr*, No. CV 85-4544-DMG, In Chambers—Order Re Plaintiffs' Motion to Enforce Settlement as to "Title 42" Class Members [920], Sept. 4, 2020. ORR reported to OIG that due to COVID-19 restrictions, its operational capacity was 30 to 40 percent below its total bed capacity in August 2020. OIG notes the small percentage of total bed capacity in use as of August 2020 to illustrate the sudden and significant drop in the number of children in ORR's care compared to the level for which the program had previously been prepared to serve.

[21] *P.J.E.S. v. Wolf*, No. 20-2245, Memorandum Opinion, Nov. 18, 2020 (adopting the Magistrate Judge's Report and Recommendation, Sept. 25, 2020).

[22] *P.J.E.S. v. Mayorkas*, No. 20-5357, Order, Jan. 29, 2021.

[23] Executive Order 14010 of February 2, 2021, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, 86 Fed. Reg. 8267 (Feb. 5, 2021).

[24] 86 Fed. Reg. 9942 (published on Feb. 17, 2021, and effective on or about Jan. 30, 2021), Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Encountered in the United States Pending Forthcoming Public Health Determination.

[25] 86 Fed. Reg. 38717 (published on July 22, 2021, and effective on July 16, 2021), Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children From the Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists. This July 16, 2021, order supersedes the February 2021 notice that provided for a temporary exception from expulsion for unaccompanied children.

[26] 86 Fed. Reg. 42828 (published on Aug. 5, 2021, and effective on Aug. 2, 2021), Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists.

[27] 87 Fed. Reg. 15243 (published on Mar. 17, 2022, and implemented on Mar. 11, 2022).

[28] At the time of this report's publication, there is active litigation that could affect the Title 42 order.

[29] HHS-OIG, *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees,* A-12-19-20001, September 2019. Available at https://oig.hhs.gov/oas/reports/region12/121920001.pdf.

[30] HHS-OIG, *Separated Children Placed in Office of Refugee Resettlement Care*, OEI-BL-18-00511, January 2019. Available at https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf. Following OIG's report, HHS identified an additional 1,556 children that were separated and referred to ORR after July 1, 2017. An interagency task force is currently reviewing records from January 20, 2017, through January 20, 2021, to determine whether additional family separations occurred.

[31] HHS-OIG, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431, September 2019. Available at https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf.

[32] HHS-OIG, *Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy*, OEI-BL-18-00510, March 2020. Available at https://oig.hhs.gov/oei/reports/oei-BL-18-00510.pdf.

[33] HHS-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. Available at https://oig.hhs.gov/oei/reports/oei-09-18-00430.pdf.

[34] HHS reported to OIG that day-to-day responsibility for these children was delegated to DHS through the Title 42 order; the order does not explicitly discuss care of children but states that the CDC Director requested that DHS implement the order. After a court-appointed independent monitor raised concerns about the care provided to these children, a district court ordered DHS to stop placing minors at hotels, with the exception that DHS may, as necessary and in good faith to alleviate bottlenecks in the intake process, implement brief stays of not more than 72 hours before transferring minors to ORR-funded licensed facilities. After granting a series of temporary stay orders, the district court's ruling ultimately went into effect on October 4, 2020, and was affirmed on appeal by the 9th Circuit in June 2021. See: *Flores v. Barr*, No. CV-85-4544-DMG, In Chambers—Order Re Plaintiffs' Motion to Enforce Settlement as to "Title 42" Class Members [920], Sept. 4, 2020; *Flores v. Barr*, No. CV-85-4544-DMG, In Chambers—Order Re Defendants' Ex Parte Application to Stay [985], Sept. 21, 2020; *Flores v. Barr*, No. 20-55951, Order, Oct. 4, 2020; *Flores v. Garland*, Nos. 20-55951 and 20-56052, Opinion, June 30, 2021.

[35] Court documents in related litigation note a small number of cases in which children were placed in ORR custody prior to expulsion under the Title 42 order; in one case a child was transferred from an ORR facility to a hotel prior to expulsion. See: *Flores v. Barr*, No. CV 85-4544-DMG, In Chambers—Order Re Plaintiffs' Motion to Enforce Settlement as to "Title 42" Class Members [920], Sept. 4, 2020.

[36] 82 Fed. Reg. 6890 (published on Jan. 19, 2017, and effective on Feb. 21, 2017), Control of Communicable Diseases.

[37] The Title 42 Order states that DHS "shall consult with CDC concerning how these types of case-by-case, individualized exceptions shall be made to help ensure consistency with current CDC guidance and public health assessments."