





INFLUENCERS

Insurance, LE, Media, Audits, Accrediting Bodies, Foster Parents/Staff, Foundations, Schools, CASA/AAL/GAL

VISITS & RELATED ACTIVITIES FOR THE PURPOSE OF OVERSIGHT

These visits and related activities (such as provision of records) are generally for the purpose of assuring the quality and sound practices of the residential childcare provider, including how a specific child is doing in the operation. They take many forms but regularly compel staff to be available, make copies, provide access to children or personnel of the agency, etc. without some of the impacts and scope of each are below:

DFPS CHILD CARE INVESTIGATIONS (CCI)

- Visits are time sensitive; visits may occur at any time; and investigators will regularly need staff access and records (quickly).
 - Investigators regularly contact children and youth with follow up questions—this will cause the operation to need to pull the child out of activities and the child often does not want to speak to investigator and will be dysregulated by the interaction.
 - Because investigations are generally unannounced there is little time for preparation—not coaching, not anything other than getting the right people and documents together and preparing the child for any visit/interview. It is in the best interest of the child for an organization to be prepared and prepare a child for a visit. Surprises elevate everyone's stress levels and disrupt a child's structured day.
 - Investigators often interact with the children in the same manner as they interact with adults, they have an attitude of wanting or needing to find something wrong.
- Common practice is to interview all children at the home or facility during an investigation. At a GRO or RTC it has become very common place to have multiple investigations conducted in a short span of time. Children who are not the alleged victim of the investigation are typically asked general safety questions like do you feel safe, does staff do anything that makes you uncomfortable, is there any staff that you do not like, do you like it here, has anyone ever hurt you...etc. When these kinds of questions are asked multiple times to the same child, the child becomes compelled to give an answer--often times a different answer (The child thinks I am not answering these questions correctly

because they keep coming back and asking me the same questions over and over

- Findings can have major consequences to staff and overall operations. And, while the alleged perpetrator has a limited amount of time to request review, the conduct of the review from the agency side may take some time.
- No due process specific to the operation itself; the perpetrator may challenge the finding but operation may challenge only indirectly through challenging related citation at CCR. SOAH hearings can take a very long time, and some judges seem highly favorable to the state.
- Can put safety plans in place that impact day to day operations while investigation pending.
 - Safety plans must be constructed by operation without necessarily knowing what the investigation has found. This leads to attempting to come up with plan and being told only that it is not sufficient but not what would make it sufficient.
 - Safety plans may involve removal of a child, pending investigation results, causing disruption, dysregulation and potentially additional trauma to the youth.

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HHSC CHILD-CARE REGULATORY (CCR)

- Charged under state law with regulating residential childcare. Chapter 42 Texas Human Resources Code. Inspectors and investigators conduct regular on-site inspections; also may conduct standards investigations when there is a pending intake that meets criteria; ask for records; impose enforcement actions/
- Visits can be very involved, and the stakes are high. Deficiencies are a major component that goes toward HM. Some impressions:

- Lengthy, tedious, unplanned visits where a leader is expected to drop everything to be available
- Operation staff must gather lots of info for them. Quickly.
- ▷ Oftentimes, there is an inconsistent interpretation of the regulations.
- Inspectors have an attitude of wanting/ needing to find something wrong, even if it is TA on a preference.
- Similarly, to CCI investigators, CCR inspectors/ investigators regularly contact children and youth with follow up questions—this will cause the operation to need to pull the child out of activities and the child often does not want to speak to investigator and will be dysregulated by the interaction
- Show up unannounced to foster homes, which may be necessary but can be extremely disruptive.
- For CPAs, must complete any Child Placing Agency Internal Investigation Report(s) when requested by RCCR.
 - These are visits to the foster home that are typically scheduled but may be unannounced for the actual homes. Each period the homes to be visited are pulled randomly and CCR requests background documents (often quite extensive) from the CPA to be sent to CCR. In addition to the impact to the home itself and the children. Caregivers have reported significant unease for children before and after such visits.

<u>C</u> DFPS RESIDENTIAL CONTRACTS (RCC)

- Must comply with terms of contract (uniform terms and conditions, as well as terms specific to GRO or CPA) which also incorporates lengthy and detailed RCC requirements and addendum
- Providers selected for annual monitoring based on SMP (criteria not fully transparent); have follow up review after annual monitoring. The monitoring visit requires youth and foster parents chosen by monitoring inspector to be available at specific dates/times for in person interviews, without

exception.

- PACES audits done online once per quarter.
 - Multiple providers have reported that these are extremely confusing and tedious to complete.
 One noted that even their own contract manager couldn't consistently explain how to complete PACES correctly. They also noted that they were erroneously assessed for liquidated damages (as were other agencies) due to a glitch with background checks, but we appealed and still haven't gotten a response. The issue was completely out of the control of providers and there is written proof of the glitch that triggered the liquidated damages, but it's been several months with no resolution.
 - ▷ The findings from the PACES audits are regularly unclear, and the time to dispute can be quite lengthy.
 - For both PACES and EPSDT audits, it seems that the guidelines shift—and documentation or practices that were acceptable in one quarter are rejected in the next.
- Attachment A audits done once per quarter
- Stakes for monitoring can be very high:
 - remedies (fines) levied against agencies are significant in many instances and have not always taken due process into account
 - may impose corrective action plan, liquidated damages, or contract termination, which for many may have the same effect as a license revocation
 - every single type of contract violation regardless of severity is counted towards HM methodology with no recourse/right of appeal. These violations include the items listed below and are counted in addition to any violations of SSCC contracts in place:
 - Monitoring Findings
 - Complaints
 - Liquidated Damages
 - HM Visits with a Contract Violation
 - 24 Hour Supervision Violations
 - Youth for Tomorrow Missed Indicators

<u>D</u> CASEWORKERS

- Need timely access to children
- Staff do not always have the most current information about regulatory requirements or other practices
- Disconnect between commitments of agency leadership to partnership and attitudes of front-line staff who visit (e.g. cooperating to share contact information for extended family for children and youth in GROs to support family engagement)
- May also conduct safety visits or even be stationed in operations in times of crisis/state concern
- CPS also issues placement holds/disallowances and, together with SSCCs, may issue a placement improvement plan. The caseworker (and chain of command) also has a unilateral right to decide a placement is not right for a child. Of course, this may be appropriate but often there is no warning, no prep for the child, and sometimes the decision to move has not been made in a careful way ultimately resulting in additional trauma.
- Visits can be upsetting to the children especially if caseworker is unfamiliar with the child and their likes/dislikes
- Caseworkers are not required to check in on the operation before and after with the agency (caregiver) about what they hope to do in a visit and what the results are. This leaves the provider more in the dark about what the legal parent is thinking may be needed for the child. Required communication along these lines could allow a united effort for the child's best interest.

<u>**E</u>** HEIGHTENED MONITORING (HM)</u>

- Unannounced weekly visits at the minimum—not only to the administrative offices but to foster homes, the residences, etc.
- While some HM teams have since established quality rapport with operations, visits have been reported to be duplicative (different teams, same topics), lengthy (8 hours in some instances), disruptive (need records and follow up regardless of what else may be going on)
- The impact to the operation may be extremenot only in terms of compliance with plan tasks,

lack of a realistic exit option based on state misinterpretation of court order, but also in terms of census. Court Monitors reports note decrease over and above other operations' trends. While many placements do get approved by CPS there is nothing compelling staff to ask for approval.

<u></u> УFТ

- Perform service level indicator monitoring. There are approx. 65 indicators, each of which DFPS counts as a contract violation for the purpose of HM.
- Annual visits are burdensome. In the CPA context, YFT representatives want to meet in person with around 5 caregivers and children. However, the children must be verbal, a certain LOC, and available in the timeframe when YFT wants to conduct the visit. The pool of those who fit the criteria is minimal so coordinating this is difficult and is an impact to the caregivers and children.

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COURT-FEDERAL

• Providers impacted by compliance with foster care litigation (paperwork, 24-hour supervision, repeated training) but not given resources like state to support compliance. Court has specifically directed providers such as CBC to be required by the parties to the lawsuit to appear and answer to the Court and the attorneys in the case.

<u>H</u> COURTS-STATE

- Do not visit per se but do have a key role in assessing whether the provider is seen as suitable.
- Providers are also directly impacted by local courts with jurisdiction over foster children's cases. The amount of scrutiny operations and families face from the Court is enormous. Children can be court ordered into or out of a placement with no notice. And oftentimes when a child is court-ordered into a specific placement, the placement may not be appropriate for that child or have availability to take the child. There are even instances of judges court ordering a youth into CWOP.
- Courts may also compel records or ask provider to appear in court.

<u>|</u> SAO

- Audits purchases made by health and human agencies, including DFPS. Tex. Gov't Code 2155.144(f). The SAO is specifically directed to contract with HHSC to "perform on-site financial audits of selected residential contractors as necessary. Contractors are selected through consultation between SAO and HHSC (possibly also DFPS) "based on the contract's risk assessment rating, allegations of fraud or misuse of state or other contract funds, or other appropriate audit selection criteria."
- State also mandates that DFPS in turn ensure that contract files be complete and made available to the state auditor when requested. (c). While this is not objectionable on its face, the impacts of the provision and the SAO's expectations around production of records may be considerable. Anecdotally we have heard:
 - The audits can be incredibly disruptive to an organization. If there are concerns about the way an organization is spending restricted or regulated funds, the SAO will show up and audit everything. When that happens, the operation is given little notice – and it is all hands on deck, regardless of what other oversight activities and other programming may be taking place. The auditors take up space, disrupt meetings, pull staff away from their work, and cost a lot of administrative money.
- Detailed reports, e.g. this report

J OIG

- Perform multiple oversight activities that could potentially impact a residential provider, including inspections, audits, and investigations.
- Work to de-duplicate from other related oversight activities, e.g. routine contract monitoring.
- Strive to be objective, fair, reasonable and transparent.

<u>K</u> SSCC CONTRACTS

- Audits purchases made by health and human Monitoring is in addition to any monitoring done by agencies, including DFPS. Tex. Gov't Code DFPS if the operation contracts with DFPS
 - Has improved as the SSCCs came together to create joint monitoring processes but it does still require the operation to make sure it is keeping up with another compliance regimen

<u>L</u> 24-HOUR SUPERVISION CHECKS

- This is a function of DFPS contracts but involves a separate team
- Visits are unannounced and during the night

<u>M</u> FOSTER CARE OMBUDSMAN

- Investigate and potentially substantiate complaints related to rights of children and youth in foster care as well as complaints regarding DFPS for casespecific activities; do not necessarily visit but given authority to investigate complaints; they also talk with staff and kids as part of FCO engagement efforts.
- While created in statute as a neutral entity, this has not always been the anecdotal impression left by FCO interactions
- Although not in a direct oversight role, any identified trends and associated recommendations may have sweeping impacts, e.g. retraining of all CPS and CBC caseworkers and placing onus on them for agreeing to communication plan with AAL/GAL (2022 report at p. 17-18), requiring RCCR inspectors to cite all potential violations of minimum standards identified in RCCI investigation reports (2022 report, Appendix B-1)

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FEDERAL COURT MONITORING TEAMS

- The Court Monitoring teams have unfettered access to operations/individual foster homes, records, and children at any time they determine appropriate. The visits are unannounced and may last several days or longer.
- The administrative lift to provide responsive records

and interviews can be intense. If Court Monitors appear to an operation, it will be an all hands-on deck situation.

 Court Monitors do not always have documentation linking them to the case. They are required to present the court order generally giving monitors access, and DFPS Contracts has on occasion produced lists of monitoring staff but there is not a uniform practice of updating the lists. Not having a reliable way to link a specific individual to their role in the case can leave an operation in an extremely difficult position.

0 **MULTI-AGENCY**

- FITS—the Facility Intervention Team Staffing meetings bring together multiple oversight divisions for a cross-agency/division approach to handling issues that have been identified with an individual provider. They are not a separate oversight process but increase the focus and coordination for processes that are already in place and may lead to an overall uptick in remedial steps.
- AD HOC/CRISIS RESPONSE
 - There is not a specific oversight process when a crisis occurs, whether a potential disaster, a pandemic or significant event (such as a local chemical spill) occurs.
 - In effect the individual operation is contacted with demands for updates from CPS, CCR and individual SSCCs when the operation may be in the throes of the actual crisis. This has • GAO: looked like HM teams showing up following the devastating winter storm that wrecked buildings and plumbing, an unwillingness for the state to develop a central reporting system for disasters, and rule changes requiring immediate reporting even as providers raised concerns about the devastating impact of natural disasters and the need for focus to be on first ensuring safety, not reporting about it.

STATE LEADERSHIP—OOG, LEGISLATORS

- Understandably invested in the success of the child welfare system
- This can look like legislative hearings that may focus on providers, information requests to state

agencies with impact to providers, or policy related direction through laws of immediate and direct impact to residential providers, e.g. SB 1869, SB 11.

FEDERAL—CHIDLREN'S BUREAU

- The federal government drives many aspects of the state system—and requirements that are then passed down to private providers.
- Quantitative requirements related to AFCARS reporting may impact what providers are required to report. IV-E eligibility reviews look specifically at provider compliance with background check requirements.
- Qualitative inquiries through the Child and Family Service Review will involve looking at provider records, treatment, and service provision.

R FEDERAL—CONGRESS & GAO

Congress

- Drives and considers legislation of direct impact on system, e.g. FFPSA
- Does not visit but in many ways performs the ultimate level of oversight on foster care system
- ▶ Will conduct and direct inquiries and hold hearings specific to residential operations. (e.g. this OPB article, and this ProPublica article)

- per US House of Representatives, "is known as 'the investigative arm of Congress' and 'the congressional watchdog.' GAO supports the Congress in meeting its constitutional responsibilities and helps improve the performance and accountability of the federal government for the benefit of the American people." Reports will tend to support underlying congressional policy direction. See for example:
 - Foster Care: HHS Could Do More to Support States' Efforts to Keep Children in Family-Based Care
 - HHS Should Facilitate Information Sharing Between States to Help **Prevent and Address Maltreatment**

in Residential Facilities (important and necessary premise but note that the impetus for the study, which was requested by congressional members, was: "News media have reported several incidents of youth being maltreated at residential facilities. Some of these youth were in the child welfare system and some had special needs. States oversee these facilities, and often contract with private providers to operate them. Little information is publicly available about incidents of maltreatment in federally funded residential facilities for youth.")

▷ While rare, providers would need to comply with GAO requests for information

<u>S</u> FEDERAL—OIG

• May partner with federal DHHS to investigate/ audit programmatic issues of direct impact to residential providers-e.g. Texas Did Not Always Ensure that Allegations and Referrals of Abuse and Neglect of Children Eligible for Title IV-E Foster Care Payments Were Recorded and Investigated in Accordance With Federal and State Requirements (note this was also in response to congressional concerns regarding child deaths and the need for information on "States' use of private entities or organizations to administer some or all of their foster care programs." The review specifically focused on investigations in homes verified by Texas CPAs), or Kansas Did Not Ensure That Group Homes for Children in Foster Care Complied With All State Health and Safety Requirements,

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LOCAL HEALTH & SAFETY OFFICIALS

- Fire dept and fire marshals— can include monthly fire drills and random inspections such as fire extinguishers, smoke alarms, and sprinklers
- Food safety— site visits require an in-depth look at all areas that contain food. If a program is enrolled in the CACFP federal food program, there is much more oversight.
 - Areas to consider: cafeteria, group homes with kitchens, home economics areas, staff lounges/breakrooms

in Residential Facilities (important •Local officials also have fairly broad discretion during disasters so may craft local ordinances or disaster instructions that impact providers

<u>U</u> SUPERIOR HEALTH PLAN AUDITS

- Selection criteria and scope of audit not fully known; no explicit documentation yet made available
- These audits look at if kids in care are getting their star health services and if the provider is completing the service plan.
- Providers have reported they can be onerous and involved.

VISITS AND IMPACT FROM "INFLUENCERS"

These activities do not fit neatly within the box of direct oversight but can lead to visits, information requests, disruption in daily programming, and influence on services and structure.

Α ACCREDITING BODIES

- the impact to the operation may be weighty, there is a bit more control for the provider.
- influence in that the accrediting body will perform a comprehensive review of many facets of the programming to determine whether certain standards are met.

SCHOOLS

- Again, not a direct oversight but the education system often requires meetings with the child and their team to discuss things like IEPs, 504 plans, etc.
- Additionally, there is much overlap in residential between treatment/milieu staff and education staff that affects the children in care
- Finally, schools are often much more watchful and critical of foster parents or residential operations. More likely to call CPS or law enforcement than to just call the caregiver

С LAW ENFORCEMENT

- May accompany or be called in by many different entities in the child's life, e.g. school
- They may be quicker to intervene with foster children-or may entirely decline to intervene because a child is in the foster system, even if a non-system involved youth might be arrested. For some providers, LE will refuse and leave the youth at the placement for the agency to deal with.

D. MEDIA

- Tends to be highly critical of private providers, particularly those in the congregate care space
- Reinforces narrative of lax oversight

Ε CASA/AAL/GAL

- These activities are entirely voluntary. Thus, while Need access to the child and may not always plan ahead for a time that is convenient for child or family (or program operations in GRO)
- Nonetheless, accreditation is a form of oversight/ By law, a GAL may make recommendations on the child's placement (see Tex. Fam. Code 107.002(c) (8).
 - Pending legislation would also increase focus on the AAL/GAL role related to residential treatment. See HB 2541.

E **INSURANCE**

• Carriers may require specific risk mitigation activities in order to carry policies

G AUDITS

• Certain funding streams carry requirement of single state audit. These can be extensive.

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FOSTER PARENTS / OPERATION STAFF

- Both foster parents and CPA/GRO Staff wield critical influence over providers.
- Foster parents and staff must believe in the stewardship and good governance of the organization. Admissions decisions, policies and protocols may be deeply influenced by either.

FOUNDATIONS

- To supplement their funding, many orgs will work with philanthropic foundations to support programs or services that are either not funded or only partially funded through the state. The foundations may help support innovation, fund specific trainings, etc.
- The foundations in turn may visit because they want and expect to be able to monitor the organizations' progress.

VISITS & REVIEWS TO SUPPORT NORMALCY

These types of visits are generally favorable but it is important to bear in mind that all require scheduling, staffing adjustments, transportation, etc. and must be factored in when oversight entities arrive or demand records/access to staff/etc.

• **Mentors**—many children & youth in GRO's have mentors. Often, they visit monthly and sometimes weekly.

Note: these relationships are helpful to the children but also become an area of power/control. For example: most get put on child's contact list to call. Child gets upset with staff and when the caseworker doesn't respond, they call their mentor. The mentor then shows up randomly with comfort items in response.

- **Tutoring** tutors meet with children youthly, typically after school, evenings, weekends.
- **Volunteers** frequent rotation of visits to the GRO. Most are on a calendar that a program staff manages:
 - Animal Assisted Therapy
 - Spiritual Care
 - Community Volunteers- programming for children
 - ▶ Work Based Volunteers do things like flower beds, painting buildings etc.
- Holiday Programming such an important time of year and can be wonderful for children, but additional guardrails must be put in place. There is an influx of visitors and volunteers.