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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

October 9, 2024

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

I am writing to share evidence of abuse, neglect, and fraud uncovered by a two-year investigation by the Senate Committee on Finance into four Residential Treatment Facility (RTF)[1] operators: Universal Health Services, Acadia Healthcare, Devereux Advanced Behavioral Health, and Vivant Behavioral Healthcare. This investigation culminated in a Finance Committee hearing and a staff report titled *Warehouses of Neglect: How Taxpayers are Funding Systemic Abuse in Youth Residential Treatment Facilities.* The report synthesizes new information about rampant abuse, neglect, and substandard care experienced by youth in congregate settings and finds a causal connection between these harms and providers' profit models.

In July 2022, following years of in-depth public reporting and survivors' advocacy efforts, I launched an investigation into allegations of abuse and neglect in RTFs with my Senate Health, Education, Labor, and Pensions Committee counterpart. The Senate Committee on Finance has jurisdiction over many RTF placements funded through the Medicaid program and the child welfare provisions of the Social Security Act. Each year, taxpayers spend hundreds of millions of dollars on RTF placements.[2]

[1] For the purposes of this investigation, residential treatment facilities are defined as psychiatric residential treatment facilities (PRTFs) (42 CFR § 483.352), qualified residential treatment programs (42 USC § 672(k)(4)), therapeutic boarding schools, therapeutic residential treatment centers, non-medical residential centers, congregate care facilities for youth, wilderness camps or therapy programs, boot camps, and behavior modification facilities—that are intended to address youth's behavioral, emotional, mental health, or substance use needs.

[2] According to company documents and conversations with the Committee cited in *Warehouses of Neglect*, 95 percent of Devereux Advanced Behavioral Health's RTF revenue came from Medicaid dollars and half of Vivant

RTFs are intended to provide intensive, short-term inpatient therapeutic services to a diverse group of high-need youth, including those who are a danger to themselves and/or others. Prior to placement in an RTF, children should be able to access a continuum of community-based behavioral health services to meet their needs. Following short-term, intensive residential treatment, children should be able to progress to lower acuity settings, like outpatient care in the community. A continuum of community-based care enables children to receive residential treatment only when all other in-community options fail to meet their needs.

Unfortunately, the findings of my report reveal a very different reality experienced by children in RTFs. My investigation found that children suffer routine harms inside RTFs, including sexual, physical, and emotional abuse, unsafe and unsanitary conditions, inadequate provision of behavioral health treatment, and substandard educational activities. This risk of harm to children in RTFs is endemic to the operating model: to maximize per diem margins, RTF providers often offer minimal therapeutic treatment in deficient physical settings, understaffing and failing to train staff. Further, despite advertising short to medium-term duration stays, my investigation found that children sometimes remain in these facilities for many years.[3]

As a continuation of my efforts, I am referring these investigative findings to the Department of Justice (DOJ) for consideration by the agency to:

1. Investigate whether the RTF providers at-issue in *Warehouses of Neglect* are engaging in fraud (i) by not adhering to the Medicaid's regulatory requirements and (ii) by regularly billing Medicaid for substandard and inadequate care.

Fraud: Violations of Medicaid Regulations and Billing for Substandard Care

The four RTF providers identified in this investigation take billions of dollars from the Medicaid program, but fail in many instances to adhere to CMS regulations and provision the behavioral health services to children for which they are paid.[4] Recently, deficiencies similar to those presented in my report were the basis of a $20 million dollar settlement between the DOJ and Acadia Healthcare in which it was alleged that the company made baseless admissions to its

Behavioral Healthcare's facilities rely on public dollars for more than 75 percent of their revenue. *See Warehouses of Neglect* at 23.

[3] *Warehouses of Neglect* at 103.

[4] In 2023, 27 percent of UHS' total revenue came from Medicaid, *See Warehouses of Neglect* at 28. Also in 2023, nearly 54 percent of Acadia's revenue came from Medicaid *See Warehouses of Neglect* at 29. According to company documents and conversations with the Committee cited in the report, 95 percent of Devereux Advanced Behavioral Health's RTF revenue came from Medicaid dollars and half of. Vivant Behavioral Healthcare's facilities rely on public dollars for more than 75 percent of their revenue. *See Warehouses of Neglect* at 23.

adult facilities, failed to provision services to patients in its care, and chronically understaffed its facilities, leading to patient injury and death.[5]

Violations of Medicaid Regulations

In many instances, facilities reviewed in this investigation repeatedly failed to follow CMS regulations as they apply to the use of restraint and seclusion and proper provision of care.

(i) Restraint and Seclusion

Facilities are required to specifically document use of restraints, including child assessments during restraints and efforts post-restraint to update treatment plans.[6] Moreover, CMS rules stipulate that Psychiatric Residential Treatment Facilities may not receive Medicaid monies where "[…] restraint and seclusion, of any form, [are] used as a means of coercion, discipline, convenience, or retaliation."[7]

This investigation revealed numerous instances of children being restrained for destruction of property, for being noncompliant but noncombative, for stealing staff keys, for refusing to consent to a strip search, and in instances in which a child was seated and did not present a danger to others.[8]

Federal rules likewise prohibit restraint and seclusion from being used concurrently.[9] However, this investigation found numerous cases of prolonged simultaneous use. In one instance, documents disclosed to the Committee reveal 13 separate occurrences involving nine individual children during which children were simultaneously secluded and chemically restrained.[10]

(ii) Inadequate Care

The Medicaid program requires care be provided under the supervision of a physician or licensed practitioner.[11] But, in multiple instances, physicians were not consulted for restraint orders or involved in post-restraint debriefs, in violation of federal regulations.[12] At one facility a

[5] 42 CFR § 483.358(h).
[6] 42 U.S.C. § 483.356(a).
[7] *Warehouses of Neglect* at 59-60.
[8] 42 U.S.C. § 483.356(a).
[9] *Warehouses of Neglect* at 57 *citing* Acadia, Plan of Correction Response Attachments (Nov. 4, 2019) 20191011 Piney Ridge OLTC POC RESPONSE ATTACHMENTS.
[10] § 441.151; CMS, *Psychiatric Residential Treatment Facilities (PRTF): General Requirements and Conditions of Participation* (accessed May 30, 2024) https://www.cms.gov/outreach-and-education/american-indian-alaska-native/aian/prtfgeneralrequirementsandconditionsofparticipation.pdf.
[11] 42 CFR 483.358(a);(f).
[12] *Warehouses of Neglect* at 65; https://www.finance.senate.gov/imo/media/doc/sfc_report_warehouses_of_neglect.pdf.

physician did not participate in either staff or child post-restraint debriefs.[13] At another facility, a physician's post-restraint documentation was "'late by over two hours…[and] blank in pertinent areas on the restraint form.' Further [...] 'required forms were not completed by the same physician over more than six months.'"[14] At a third facility, post-restraint assessments were improperly documented, where the "physician had somehow been notified of the post-assessment prior to the assessment taking place."[15] In many cases, "children spend the majority of their time supervised by general staff who may lack the training, experience, and tools necessary to adequately meet the needs of the children in their care."[16]

Facilities are also required to maintain an Individual Plan of Care (IPC) for each child, and services must involve "active treatment."[17] My investigation established that RTFs routinely fail to create IPCs, with some plans created prior to admission, others developed weeks after a child's admission, and some never created at all.[18] In numerous cases, IPCs were not individualized to a child's specific needs and diagnoses – as is required – and, in some cases, treatment goals in IPCs were duplicated across children.[19] Further, my investigation found that "RTFs sometimes exclude families from treatment planning. Under Medicaid, requirements dictate that an IPC must be developed with input from the 'parents, legal guardians, or others in

[13] *Id.*
[14] *Id.*
[15] *Id*. at 4.
[16] § 441.155;§ 441.154; *CMS, Psychiatric Residential Treatment Facilities (PRTF): General Requirements and Conditions of Participation* (accessed May 30, 2024) https://www.cms.gov/outreach-and-education/american-indian-alaska-native/aian/prtfgeneralrequirementsandconditionsofparticipation.pdf.
[17] *Id*. at 93.
[18] *Id*. at 119.
[19] *See e.g.* DOJ, Residential Youth Treatment Facility for Medicaid Recipients in Marion, Virginia Agrees to Resolve False Claims Act Allegations (Mar. 28, 2012) https://www.justice.gov/opa/pr/residential-youth-treatment-facility-medicaid-recipients-marion-virginia-agrees-resolve-false#:~:text=Under%20the%20False%20Claims%20Act,penalty%20for%20each%20false%20claim; DOJ, Universal Health Services, Inc. And Related Entities To Pay $122 Million To Settle False Claims Act Allegations Relating To Medically Unnecessary Inpatient Behavioral Health Services And Illegal Kickbacks (Jul. 10, 2020) https://www.justice.gov/opa/pr/universal-health-services-inc-and-related-entities-pay-122-million-settle-false-claims-act; DOJ, Iowa Nursing Facility, Its Ownership, and Its Management Agree to Pay $100,000 to Resolve Allegations that Residents Received Worthless Care (Feb. 1, 2017) https://www.justice.gov/usao-ndia/pr/iowa-nursing-facility-its-ownership-and-its-management-agree-pay-100000-resolve; DOJ, Landlord and Former Operators of Upstate New York Nursing Home Pay $7,168,000 to Resolve False Claims Act Allegations of Worthless Services Provided to Residents (Feb. 27, 2023) https://www.justice.gov/usao-ndny/pr/landlord-and-former-operators-upstate-new-york-nursing-home-pay-7168000-resolve-false; DOJ, SavaSeniorCare LLC Agrees To Pay $11.2 Million To Resolve False Claims Act Allegations (May 21, 2021) https://www.justice.gov/usao-mdtn/pr/savaseniorcare-llc-agrees-pay-112-million-resolve-false-claims-act-allegations; DOJ, Skilled Nursing Facility, Management Company, And Owner Agree To Pay $540,000 To Resolve Allegations Of Providing Worthless Services And Upcoding (Jun. 29, 2018) https://www.justice.gov/usao-edky/pr/skilled-nursing-facility-management-company-and-owner-agree-pay-540000-resolve; DOJ, Mississippi Skilled Nursing Facility, Related Companies, and Executives Agree to Pay $1.25 Million to Settle False Claims Act Allegations of Grossly Substandard Care to Facility Residents (Nov. 16, 2017) https://www.justice.gov/usao-sdms/pr/mississippi-skilled-nursing-facility-related-companies-and-executives-agree-pay-125.

whose care [a child] will be released after discharge.'"[20] The IPC must also include discharge planning which was, likewise, often lacking or improperly documented at facilities.[21]

Billing for Substandard Care

The government has routinely reached settlements where it alleges that entities have knowingly billed the government for substandard care under the False Claims Act (FCA).[22] This investigation uncovered numerous examples across RTF providers of grossly inadequate services that fell below the standard of care required by CMS regulations and other relevant standards, amounting in many cases to worthless services. Providers surveyed in this investigation receive billions of dollars in reimbursement from the Medicaid Program on claims of service provision for children with complex behavioral health needs. The findings of this investigation indicate that children often either do not receive the care they desperately need, that providers fail to document care, or that children are subjected to actively harmful conditions that complicate their care.

(i) Lack of Care

This investigation uncovered numerous cases in which children did not receive the care they needed inside RTFs. Providers often failed to establish adequate treatment for children in their care, including instances in which an RTF serving Spanish-speaking children employed only one Spanish-speaking staffer, instances in which facilities failed to create adequate treatment plans for children or failed to create any treatment plan at all, instances in which treatment plans did not address a child's individualized needs, instances in which treatment plans did not include treatment goals, instances in which providers failed to assess the nutritional needs of children, instances in which treatment plans were not updated following serious occurrences or changes in health, and instances in which children were not adequately screened for suicide risk and self-harm behavior.[23]

(ii) Failure to Maintain Records

This investigation likewise revealed consistent failures to document children's treatment. Documentation is itself a critical component of care, ensuring a child achieves measurable goals in a continuum of services. In numerous instances therapy sessions were not documented, including in the case of a child who was in a facility for 67 days with only three indications of group therapy and two of individual therapy sessions.[24] In a government review of one facility, the facility was cited where, "progress notes seldom detailed a clear picture with correct dates

[20] *Warehouses of Neglect* at 89-95.
[21] *Id*. at 99.
[22] *Id*.
[23] *Id*. at 100.
[24] *Id*. at 100-101.

and reasons for the level transition between units."[25] The same facility failed in numerous cases to keep coherent therapy notes and failed for numerous weeks to document any therapy sessions.[26] Facilities also often failed to keep records of medication administration to children, including an instance in which a facility failed to document 100 doses of medication across three weeks for a child.[27] Numerous facilities also failed to consistently develop and maintain discharge planning for children in their care, compromising children's safe and successful return to the community.[28]

(iii) Harm to Children

This investigation's findings also reveal that children inside RTFs are often exposed to harms that compromise the therapeutic environment. In numerous cases this investigation found that children had access to self-harm modalities while in treatment, in some instances dying by suicide.[29] Other instances reveal that RTFs often present dangerous environments to children where they are not maintained, resulting in broken glass, broken furniture, and cracked tile.[30] This investigation surveyed numerous documented cases of unsanitary environments inside RTFs, included cases of "a dark substance" inside the bathroom, peeling walls, bugs on-unit, including bedbugs, blood and feces that was not cleaned from a bathroom for several days, improper medication storage, improper emergency protocol, and numerous failures to control the spread of infectious disease.[31]

In light of the seriousness of these facts, I formally refer this matter to DOJ and request that you launch an investigation into violations of CMS regulation and violations of the FCA at RTFs where youth are treated, as well as any other violations that DOJ identifies.

Thank you for your prompt attention to this matter. Please contact Senate Finance Committee staff directly with any questions.

Sincerely,

[25] *Id*. at 118-119.
[26] *Id*. at 120.
[27] *Id*. at 122.
[28] *Id*. at 79-85.
[29] *Warehouses of Neglect* at 89-90; https://www.finance.senate.gov/imo/media/doc/sfc_report_warehouses_of_neglect.pdf.
[30] *Id*. at 90.
[31] DOJ, *Acadia Healthcare Company Inc. to Pay $19.85M to Settle Allegations Relating to Medically Unnecessary Inpatient Behavioral Health Services,* Sept. 26, 2024, https://www.justice.gov/opa/pr/acadia-healthcare-company-inc-pay-1985m-settle-allegations-relating-medically-unnecessary.

Ron Wyden
United States Senator
Chairman, Committee on
Finance

Enclosure: *Warehouses of Neglect: How Taxpayers Are Funding Systemic Abuse in Youth Residential Treatment Facilities*

Enclosure: DOJ letter on potential *Olmstead* violations by states that institutionalize children in RTFs instead of ensuring access to community-based services.