

DESPERATION WITHOUT DIGNITY: Executive Summary

October 2021

The suffocation death of 16-year-old Cornelius Frederick at a privately-operated residential facility in April 2020 focused the world on the plight of children and youth housed in for-profit residential treatment facilities (RFs).¹ Sadly however, these concerns are not new.

Protection and Advocacy (P&A) agencies, created by Congress in the 1970s to advocate for persons with disabilities in every state and territory, have learned through monitoring and investigating these facilities that the children placed in many RFs are not treated as people with value--with a human need for dignity. The P&A Network² has monitored, reported, investigated, analyzed documents and data, and recommended specific policy changes regarding these facilities nationwide and over the course of many years. The P&As' work informs this report (<https://www.ndrn.org/resource/desperation-without-dignity/>).

This problem is current, ongoing and is not limited to any one corporation or geographic region. As is documented in this report,³ P&A investigations have uncovered abuse in for-profit residential facilities across the nation -- from broken bones, fight clubs and sexual abuse by trusted staff, to forced isolation, shaming and the complete failure by some facilities to provide the mental health treatment that prompted placement in the first place. In some facilities, children quite literally do not receive

¹ *Id.*

² NDRN is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) agencies for individuals with disabilities. P&A have the legal authority to monitor and investigate allegations of abuse and neglect in specific types of facilities. The P&As were established by Congress to protect the rights of people with disabilities and their families. A P&A exists in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A affiliated with the Native American Consortium in the Four Corners region of the Southwest. Collectively, the 57 P&As are the largest provider of legally based advocacy services to people with disabilities in the United States.

³ Citations not provided here are provided elsewhere in the report.

enough food to grow normally and are housed in vermin-infested buildings. They are prevented from contact with their families and do not receive critical medical care in time to prevent serious injury. There are instances in which medication is administered as a “chemical restraint” to control behavior for staff convenience, rather than as intended to protect the health and safety of the child or others.

Facilities may not provide evidence-based treatment, such as cognitive behavior therapy (CBT), dialectical behavior therapy (DBT) and trauma-informed care due to cost or staff availability. The minimal psychotherapy that may be offered has little therapeutic benefit, since the foundation of psychotherapy—a trusting patient and provider relationship—is lacking in many of the for-profit RFs the P&As and state licensing agencies have investigated. Lack of meaningful therapy may exacerbate a child’s trauma and mental health condition, and a child’s refusal to participate in therapy may result in loss of privileges.

Restraint and seclusion should be utilized only as a last resort. It can be additionally traumatic for children with significant abuse histories. Yet routinely, P&A’s report that restraint and seclusion is systematically imposed on youth. Children are subject to extreme and illegal restraints as punishment rather than for their own health or protection and for non-threatening behaviors, such as verbally provoking staff.

Despite all these issues, RFs continue to make profit. In recent years, privatization of private RFs for children and youth grew rapidly into a multi-million-dollar enterprise.⁴ Although for-profit behavioral health facilities may be lucrative for investors, they often implement cost-saving measures that are detrimental to the vulnerable youth they serve.⁵

State and local governments routinely contract with these facilities, both in and outside their own states. This practice stems in part from the facilities’ cheerful and promising advertising, as well as the desperate shortage of community-based services that can provide the care these children need at home. The business model of for-profit RFs “banks on governments’ incapacity to create safe places for their most vulnerable

⁴ Eileen O’Grady, Understaffed, Unlicensed, and Untrained: Behavioral Health Under Private Equity, PRIV. EQUITY STAKEHOLDER PROJECT, p. 3.

⁵ O’Grady, note 5, at 3.

children.”⁶ These facilities exist because they purportedly meet a need that others will not.

RFs collectively generate millions of dollars per year, at times charging nearly double what governments would pay for the same services in-state.⁷ The monetary incentives driving the operation of some RFs has even led to allegations of insurance fraud for filing claims for services not provided.⁸ In one case, this resulted in a \$4 million settlement between an RF and the state of Massachusetts.⁹ A recent settlement by the U.S. Department of Justice with provider giant, Universal Health Services (UHS), resulted in an agreement to pay \$117 million. The agreement resolved alleged violations of the False Claims Act “for falsely billing inpatient behavioral health services that were not reasonable or medically necessary and/or failed to provide adequate and appropriate services for adults and children admitted to UHS facilities across the country.”¹⁰

This recent focus on these facilities has resulted in tepid and scattered attempts at state legislation and oversight efforts, and a wave of reporting by media and advocacy by facility survivor groups and youth advocates, including high profile celebrity survivors.¹¹ The fact that advocacy has not resulted in more change may be both a testament to the power of this industry and the lack of a functional service system of community-based mental health supports that can provide alternatives.

Placing children in these facilities, especially once a state has notice of reported failures, is a violation of the states’ obligation to act *in loco parentis* (in the place of a parent), ensuring the safety of children in their care. This report will examine the rights violations endemic to for-profit RFs, discuss the financial structure supporting these facilities, and recommend specific solutions at the federal, state, and local level.

⁶ Curtis Gilbert & Lauren Drake, *The Bad Place*, APM REP. (Sept. 28, 2020), <https://www.apmreports.org/story/2020/09/28/for-profit-sequel-facilities-children-abused>.

⁷ See Gilbert & Drake, note 5.

⁸ O’Grady, note 5 at 7.

⁹ O’Grady, note 5, at 7.

¹⁰ USDOJ. July 10, 2020, [Universal Health Services, Inc. to Pay \\$117 Million to Settle False Claims Act Allegations | USAO-EDPA | Department of Justice](https://www.justice.gov/opa/pr/universal-health-services-inc-to-pay-117-million-to-settle-false-claims-act-allegations-usao-edpa-department-justice)

¹¹ See, e.g., Julia Reinstein, *Paris Hilton Testified That She Was "Abused On A Daily Basis" At A Treatment Facility For Teens*, BUZZFEED NEWS (Feb. 9, 2021, 1:44 PM), <https://www.buzzfeednews.com/article/juliareinstein/paris-hilton-abuse-testimony-utah>.