

part, and for the third and fourth quarters in accordance with paragraph (a) of this section.

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**PARTS 404-409 [RESERVED]**

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**Subpart A—Care and Placement of Unaccompanied Children**

**§ 410.1000 Scope of this part.**

(a) This part governs those aspects of the placement, care, and services provided to unaccompanied children in Federal custody by reason of their immigration status and referred to the Unaccompanied Children Program (UC Bureau) as authorized by section 462 of the Homeland Security Act of 2002, Public Law 107–296, 6 U.S.C. 279, and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA), Public Law 110–457, 8 U.S.C. 1232. This part includes provisions implementing the settlement agreement reached in *Jenny Lisette Flores v. Janet Reno, Attorney General of the United States*, Case No. CV 85–4544–RJK (C.D. Cal. 1996).

(b) The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

(c) ORR does not fund or operate facilities other than standard programs, restrictive placements (which includes secure facilities, including residential treatment centers, and heightened supervision facilities), or emergency or influx facilities, absent a specific waiver as described under § 410.1801(d) or such additional waivers as are permitted by law.

[89 FR 34584, Apr. 30, 2024; 89 FR 53361, June 26, 2024]

**§ 410.1001 Definitions.**

For the purposes of this part, the following definitions apply.

*ACF* means the Administration for Children and Families, Department of Health and Human Services.

*Attorney of record* means an attorney who represents an unaccompanied child in legal proceedings or matters subject to the consent of the unaccompanied child. In order to be recognized as an unaccompanied child’s attorney of record by the Office of Refugee Resettlement (ORR), for matters within ORR’s authority, the individual must provide proof of representation of the child to ORR. ORR notes that attorneys of record may engage with ORR in the course of this representation in order to obtain custody-related document and to engage in other communications necessary to facilitate the representation.

*Best interest* is a standard ORR applies in determining the types of decisions and actions it makes in relation to the care of an unaccompanied child. When evaluating what is in a child’s best interests, ORR considers, as appropriate, the following non-exhaustive list of factors: the unaccompanied child’s expressed interests, in accordance with the unaccompanied child’s age and maturity; the unaccompanied child’s mental and physical health; the wishes of the unaccompanied child’s parents or legal guardians; the intimacy of relationship(s) between the unaccompanied child and the child’s family, including the interactions and interrelationship of the unaccompanied child with the child’s parents, siblings, and any other person who may significantly affect the unaccompanied child’s well-being; the unaccompanied child’s adjustment to the community;

the unaccompanied child's cultural background and primary language; length or lack of time the unaccompanied child has lived in a stable environment; individualized needs, including any needs related to the unaccompanied child's disability; and the unaccompanied child's development and identity.

*Care provider facility* means any physical site, including an individual family home, that houses one or more unaccompanied children in ORR custody and is operated by an ORR-funded program that provides residential services for unaccompanied children. Out of network (OON) placements are not included within this definition.

*Case file* means the physical and electronic records for each unaccompanied child that are pertinent to the care and placement of the child. Case file materials include but are not limited to biographical information on each unaccompanied child; copies of birth and marriage certificates; various ORR forms and supporting documents (and attachments, e.g., photographs); incident reports; medical and dental records; mental health evaluations; case notes and records, including educational records, clinical notes and records; immigration forms and notifications; legal papers; home studies and/or post-release service records on a sponsor of an unaccompanied child; family unification information including the sponsor's individual and financial data; case disposition; correspondence regarding the child's case; and Social Security number (SSN); juvenile/criminal history records; and other relevant records. The records of unaccompanied children are the property of ORR, whether in the possession of ORR or a grantee or contractor, and grantees and contractors may not release these records without prior approval from ORR, except for program administration purposes.

*Case manager* means the individual that coordinates, in whole or in part, assessments of unaccompanied children, individual service plans, and efforts to release unaccompanied children from ORR custody. Case managers also ensure services for unaccompanied children are documented within the

case files for each unaccompanied child.

*Chemical restraints* include, but are not limited to, drugs administered to children to chemically restrain them, and external chemicals such as pepper spray or other forms of inflammatory and/or aerosol agents.

*Child advocates* means third parties, appointed by ORR consistent with its authority under TVPRA at 8 U.S.C. 1232(c)(6), who make independent recommendations regarding the best interests of an unaccompanied child.

*Clear and convincing evidence* means a standard of evidence requiring that a factfinder be convinced that a contention is highly probable—i.e., substantially more likely to be true than untrue.

*Close relative* means a brother, sister, grandparent, aunt, uncle, first cousin, or other immediate biological relative, or immediate relative through legal marriage or adoption, and half-sibling.

*Corrective action* means steps taken to correct any care provider facility non-compliance identified by ORR.

*Department of Justice Accredited Representative, or DOJ Accredited Representative*, means a representative of a qualified nonprofit religious, charitable, social service, or other similar organization established in the United States and recognized by the Department of Justice in accordance with 8 CFR part 1292. A DOJ Accredited Representative who is representing a child in ORR custody may file a notice of such representation in order to receive updates on the unaccompanied child.

*DHS* means the U.S. Department of Homeland Security.

*Director* means the Deputy Assistant Secretary for Humanitarian Services and Director of the Office of Refugee Resettlement (ORR), Administration for Children and Families, Department of Health and Human Services.

*Disability* means, with respect to an individual, the definition provided by section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, which is adopted by reference in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), and its implementing regulations, 45 CFR 84.3 (programs receiving Department of Health and Human Services (HHS) financial

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assistance) and 45 CFR 85.3 (programs conducted by HHS), as well as in the TVPRA at 8 U.S.C. 1232(c)(3)(B).

*Discharge* means an unaccompanied child that exits ORR custody, or the act of an unaccompanied child exiting ORR custody.

*Emergency* means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of unaccompanied children, or impacts other conditions provided by this part.

*Emergency incidents* means urgent situations in which there is an immediate and severe threat to a child's safety and well-being that requires immediate action, and also includes unauthorized absences of unaccompanied children from a care provider facility. Emergency incidents include, but are not limited to:

- (1) Abuse or neglect in ORR care where there is an immediate and severe threat to the child's safety and well-being, such as physical assault resulting in serious injury, sexual abuse, or suicide attempt;
- (2) Death of an unaccompanied child in ORR custody, including out-of-network facilities;
- (3) Medical emergencies;
- (4) Mental health emergencies requiring hospitalization; and
- (5) Unauthorized absences of unaccompanied children in ORR custody.

*Emergency or influx facility (EIF)* means a type of care provider facility that opens temporarily to provide shelter and services for unaccompanied children during an influx or emergency. An EIF is not defined as a standard program, shelter, or secure facility under this part. Because of the emergency nature of EIFs, they may be unlicensed or may be exempted from licensing requirements by State and/or local licensing agencies. EIFs may also be operated on federally-owned or leased property, in which case, the facility may not be subject to State or local licensing standards.

*Emergency safety situation* means a situation in which a child presents a risk of imminent physical harm to themselves, or others, as demonstrated by overt acts or expressed threats.

*Family planning services* include, but are not limited to, Food and Drug Administration (FDA)-approved contraceptive products (including emergency contraception), pregnancy testing and non-directive options counseling, sexually transmitted infection (STI) services, and referrals to appropriate specialists. ORR notes that the term "family planning services" does not include abortions. Instead, abortion is included in the definition of *medical services requiring heightened ORR involvement*, and is further discussed in §410.1307.

*Family Reunification Packet* means an application and supporting documentation which must be completed by a potential sponsor who wishes to have an unaccompanied child released from ORR to their care. ORR uses the application and supporting documentation, as well as other procedures, to determine the sponsor's ability to provide for the unaccompanied child's physical and mental well-being.

*Heightened supervision facility* means a facility that is operated by a program, agency or organization licensed by an appropriate State agency, or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children, and that meets the standards for standard programs set forth in §410.1302, and that is designed for an unaccompanied child who requires close supervision but does not need placement in a secure facility, including a residential treatment center (RTC). It provides 24-hour supervision, custody, care, and treatment. It maintains stricter security measures than a shelter, such as intensive staff supervision, in order to provide supports, manage problem behavior, and prevent children from running away. A heightened supervision facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with juvenile detention centers or correctional facilities.

*HHS* means the U.S. Department of Health and Human Services.

*Home study* means an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being, initiated by ORR as part of the sponsor suitability assessment. A home study includes an investigation of the living conditions in which the unaccompanied child would be placed if released to a particular potential sponsor, the standard of care that the unaccompanied child would receive, and interviews with the potential sponsor and other household members. A home study is conducted for any case where it is required by the TVPRA, this part, and for other cases at ORR's discretion, including for those in which the safety and well-being of the unaccompanied child is in question.

*Influx* means, for purposes of HHS operations, a situation in which the net bed capacity of ORR's standard programs that is occupied or held for placement by unaccompanied children meets or exceeds 85 percent for a period of seven consecutive days.

*Legal guardian* means an individual who has been lawfully vested with the power, and charged with the duty of caring for, including managing the property, rights, and affairs of, a child or incapacitated adult by a court of competent jurisdiction, whether foreign or domestic.

*Legal service provider* means an organization or individual attorney who provides legal services to unaccompanied children, either on a pro bono basis or through ORR funding for unaccompanied children's legal services. Legal service providers provide Know Your Rights presentations and screenings for legal relief to unaccompanied children, and/or direct legal representation to unaccompanied children.

*LGBTQI+* includes lesbian, gay, bisexual, transgender, queer or questioning, and intersex.

*Mechanical restraint* means any device attached or adjacent to the child's body that the child cannot easily remove that restricts freedom of movement or normal access to the child's body. For purposes of the Unaccompanied Children Bureau, mechanical restraints are prohibited across all care provider types except in secure facilities, where they are permitted only as

consistent with State licensure requirements.

*Medical services requiring heightened ORR involvement* means:

(1) Significant surgical or medical procedures;

(2) Abortions; and

(3) Medical services necessary to address threats to the life of or serious jeopardy to the health of an unaccompanied child.

*Notification of Concern (NOC)* means an instrument used by home study and post-release services providers, ORR care providers, and the ORR National Call Center staff to document and notify ORR of certain concerns that arise after a child is released from ORR care and custody.

*Notice of Placement (NOP)* means a written notice provided to unaccompanied children placed in restrictive placements, explaining the reasons for placement in the restrictive placement and kept as part of the child's case file. The care provider facility where the unaccompanied child is placed must provide the NOP to the child within 48 hours after an unaccompanied child's arrival at a restrictive placement, as well as at minimum every 30 days the child remains in a restrictive placement.

*ORR* means the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

*ORR long-term home care* means an ORR-funded family or group home placement in a community-based setting. An unaccompanied child may be placed in long-term home care if ORR is unable to identify an appropriate sponsor with whom to place the unaccompanied child during the pendency of their immigration legal proceedings. "Long-term home care" has the same meaning as "long-term foster care," as that term is used in the definition of *traditional foster care* provided at 45 CFR 411.5.

*ORR transitional home care* means an ORR-funded short-term placement in a family or group home. "Transitional home care" has the same meaning as "transitional foster care," as that term is used in the definition of *traditional foster care* provided at 45 CFR 411.5.

*Out of network (OON) placement* means a facility that is licensed by an appropriate State agency and that provides physical care and services for individual unaccompanied children as requested by ORR on a case-by-case basis, that operates under a single case agreement for care of a specific child between ORR and the OON provider. OON may include hospitals, restrictive settings, or other settings outside of the ORR network of care. An OON placement is not defined as a standard program under this part.

*Peer restraints* mean asking or permitting other children to physically restrain another child.

*Personal restraint* means the application of physical force without the use of any device, for the purpose of restraining the free movement of a child's body. This does not include briefly holding a child without undue force in order to calm or comfort them.

*Placement* means delivering the unaccompanied child to the physical custody and care of either a care provider facility or an alternative to such a facility. An unaccompanied child who is placed pursuant to this part is in the legal custody of ORR and may only be transferred or released by ORR. An unaccompanied child remains in the custody of a referring agency until the child is physically transferred to a care provider facility or an alternative to such a facility.

*Placement Review Panel* means a three-member panel consisting of ORR's senior-level career staff with requisite experience in child welfare that is convened for the purposes of reviewing requests for reconsideration of restrictive placements. An ORR staff member who was involved with the decision to step-up an unaccompanied child to a restrictive placement may not serve as a Placement Review Panel member with respect to that unaccompanied child's placement.

*Post-release services (PRS)* mean follow-up services as that term is used in the TVPRA at 8 U.S.C. 1232(c)(3)(B). PRS are ORR-approved services which may, and when required by statute must, be provided to an unaccompanied child and the child's sponsor, subject to available resources as determined by ORR, after the child's release from

ORR custody. Assistance may include linking families to educational and community resources, home visits, case management, in-home counseling, and other social welfare services, as needed. When follow-up services are required by statute, the nature and extent of those services would be subject to available resources.

*Program-level events* mean situations that affect the entire care provider facility and/or unaccompanied children and its staff within and require immediate action and include, but are not limited to:

(1) Death of a staff member, other adult, or a child who is not an unaccompanied child but is in the care provider facility's care under non-ORR funding;

(2) Major disturbances such as a shooting, attack, riot, protest, or similar occurrence;

(3) Natural disasters such as an earthquake, flood, tornado, wildfire, hurricane, or similar occurrence;

(4) Any event that affects normal operations for the care provider facility such as, for instance, a long-term power outage, gas leaks, inoperable fire alarm system, infectious disease outbreak, or similar occurrence.

*Prone physical restraint* means a restraint restricting a child's breathing, restricting a child's joints or hyperextending a child's joints, or requiring a child to take an uncomfortable position.

*PRS provider* means an organization funded by ORR to connect the sponsor and unaccompanied child to community resources for the child and for other child welfare services, as needed, following the release of the unaccompanied child from ORR custody.

*Psychotropic medication(s)* means medication(s) that are prescribed for the treatment of symptoms of psychosis or another mental, emotional, or behavioral disorder and that are used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state. The term includes the following categories:

(1) Psychomotor stimulants;

(2) Antidepressants;

(3) Antipsychotics or neuroleptics;

(4) Agents for control of mania or depression;

(5) Antianxiety agents; and

(6) Sedatives, hypnotics, or other sleep-promoting medications.

*Qualified interpreter* means:

(1) For an individual with a disability, an interpreter who, via a video remote interpreting service (VRI) or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

(2) For a limited English proficient individual, an interpreter who via a remote interpreting service or an on-site appearance:

(i) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language;

(ii) Is able to interpret effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and

(3) Adheres to generally accepted interpreter ethics principles, including client confidentiality.

*Qualified translator* means a translator who:

(1) Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language;

(2) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and

(3) Adheres to generally accepted translator ethics principles, including client confidentiality.

*Release* means discharge of an unaccompanied child to an ORR-vetted and approved sponsor. After release, ORR does not have legal custody of the unaccompanied child, and the sponsor be-

comes responsible for providing for the unaccompanied child's physical and mental well-being.

*Residential treatment center (RTC)* means a sub-acute, time limited, interdisciplinary, psycho-educational, and therapeutic 24-hour-a-day structured program with community linkages, provided through non-coercive, coordinated, individualized care, specialized services, and interventions. RTCs provide highly customized care and services to individuals following either a community-based placement or more intensive intervention, with the aim of moving individuals toward a stable, less intensive level of care or independence. RTCs are a type of secure facility and are not a standard program under this part.

*Restrictive placement* means a secure facility, including RTCs, or a heightened supervision facility.

*Runaway risk* means it is highly probable or reasonably certain that an unaccompanied child will attempt to abscond from ORR care. Such determinations must be made in view of a totality of the circumstances and should not be based solely on a past attempt to run away.

*Seclusion* means the involuntary confinement of a child alone in a room or area from which the child is instructed not to leave or is physically prevented from leaving.

*Secure facility* means a facility with an ORR contract or cooperative agreement having separate accommodations for minors, in a physically secure structure with staff able to control violent behavior. ORR uses a secure facility as the most restrictive placement option for an unaccompanied child who poses a danger to self or others or has been charged with having committed a criminal offense. A secure facility is not defined as a standard program or shelter under this part.

*Shelter* means a kind of standard program in which all of the programmatic components are administered on-site, consistent with the standards set forth in §410.1302.

*Significant incidents* mean non-emergency situations that may immediately affect the safety and well-being of a child. Significant incidents include, but are not limited to:

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- (1) Abuse or neglect in ORR care;
- (2) Sexual harassment or inappropriate sexual behavior;
- (3) Staff Code of Conduct violations;
- (4) Contact or threats to an unaccompanied child while in ORR care from trafficking or smuggling syndicates, organized crime, or other criminal actors;
- (5) Incidents involving law enforcement on site;
- (6) Potential fraud schemes perpetrated by outside actors on unaccompanied children’s sponsors;
- (7) Separation from a parent or legal guardian upon apprehension by a Federal agency;
- (8) Mental health concerns; and
- (9) Use of safety measures, such as restraints.

*Sponsor* means an individual (or entity) to whom ORR releases an unaccompanied child out of ORR custody, in accordance with ORR’s sponsor suitability assessment process and release procedures.

*Staff Code of Conduct* means the set of personnel requirements established by ORR in order to promote a safe environment for unaccompanied children in its care, including protecting unaccompanied children from sexual abuse and sexual harassment.

*Standard program* means any program, agency, or organization that is licensed by an appropriate State agency to provide residential, group, or transitional or long-term home care services for dependent children, including a program operating family or group homes, or facilities for unaccompanied children with specific individualized needs; or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children. A standard program must meet the standards set forth in §410.1302. All homes and facilities operated by a standard program, including facilities for unaccompanied children with specific individualized needs, shall be non-secure as required under State law. However, a facility for unaccompanied children with specific individualized needs may maintain that level of security permitted under State law which

is necessary for the protection of an unaccompanied child or others in appropriate circumstances.

*Tender age* means twelve years of age or younger.

*Transfer* means the movement of an unaccompanied child from one ORR care provider facility to another ORR care provider facility, such that the receiving care provider facility takes over physical custody of the child. ORR sometimes uses the terms “step-up” and “step-down” to describe transfers of unaccompanied children to or from restrictive placements. For example, if ORR transfers an unaccompanied child from a shelter facility to a heightened supervision facility, that transfer would be a “step-up,” and a transfer from a heightened supervision facility to a shelter facility would be a “step-down.” But a transfer from a shelter to a community-based care facility, or vice versa, would be neither a step-up nor a step-down, because both placement types are not considered restrictive.

*Trauma bond* means when a trafficker uses rewards and punishments within cycles of abuse to foster a powerful emotional connection with the victim.

*Trauma-informed* means a system, standard, process, or practice that realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in unaccompanied children, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.

*Unaccompanied child/children* means a child who:

- (1) Has no lawful immigration status in the United States;
- (2) Has not attained 18 years of age; and
- (3) With respect to whom:
  - (i) There is no parent or legal guardian in the United States; or
  - (ii) No parent or legal guardian in the United States is available to provide care and physical custody.

*Unaccompanied Refugee Minors (URM) Program* means the child welfare services program available pursuant to 8 U.S.C. 1522(d).

[89 FR 34584, Apr. 30, 2024; 89 FR 53361, June 26, 2024]

**§ 410.1002 ORR care and placement of unaccompanied children.**

ORR coordinates and implements the care and placement of unaccompanied children who are in ORR custody by reason of their immigration status.

**§ 410.1003 General principles that apply to the care and placement of unaccompanied children.**

(a) Within all placements, unaccompanied children shall be treated with dignity, respect, and special concern for their particular vulnerability.

(b) ORR shall hold unaccompanied children in facilities that are safe and sanitary and that are consistent with ORR's concern for the particular vulnerability of unaccompanied children.

(c) ORR plans and provides care and services based on the individual needs of and focusing on the strengths of the unaccompanied child.

(d) ORR encourages unaccompanied children, as developmentally appropriate and in their best interests, to be active participants in ORR's decision-making process relating to their care and placement.

(e) ORR strives to provide quality care tailored to the individualized needs of each unaccompanied child in its custody, ensuring the interests of the child are considered, and that unaccompanied children are protected from traffickers and other persons seeking to victimize or otherwise engage them in criminal, harmful, or exploitative activity, both while in ORR custody and upon release from the UC Bureau.

(f) In making placement determinations, ORR shall place each unaccompanied child in the least restrictive setting that is in the best interests of the child, giving consideration to the child's danger to self, danger to others, and runaway risk.

(g) When requesting information or consent from unaccompanied children ORR consults with parents, legal guardians, child advocates, and attor-

neys of record or DOJ Accredited Representatives as needed.

[89 FR 34584, Apr. 30, 2024; 89 FR 53361, June 26, 2024]

**§ 410.1004 ORR custody of unaccompanied children.**

All unaccompanied children placed by ORR in care provider facilities remain in the legal custody of ORR and may be transferred or released only with ORR approval; provided, however, that in the event of an emergency, a care provider facility may transfer temporary physical custody of an unaccompanied child prior to securing approval from ORR but shall notify ORR of the transfer as soon as is practicable thereafter, and in all cases within 8 hours.

**Subpart B—Determining the Placement of an Unaccompanied Child at a Care Provider Facility**

**§ 410.1100 Purpose of this subpart.**

This subpart sets forth the process by which ORR receives referrals of unaccompanied children from other Federal agencies and the factors ORR considers when placing an unaccompanied child in a particular care provider facility. As used in this subpart, "placement determinations" or "placements" refers to placements in ORR-approved care provider facilities during the time an unaccompanied child is in ORR care, and not to the location of an unaccompanied child once the unaccompanied child is released in accordance with subpart C of this part.

**§ 410.1101 Process for placement of an unaccompanied child after referral from another Federal agency.**

(a) ORR shall accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time of day, every day of the year.

(b) Upon notification from any department or agency of the Federal Government that a child in its custody is an unaccompanied child and therefore must be transferred to ORR custody, ORR shall identify a standard program placement for the unaccompanied

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child, unless one of the listed exceptions in §410.1104 applies, and notify the referring Federal agency within 24 hours of receiving the referring agency's notification whenever possible, and no later than within 48 hours of receiving notification, barring exceptional circumstances. ORR may seek clarification about the information provided by the referring agency as needed. In such instances, ORR shall notify the referring agency and work with the referring agency, including by requesting additional information, in accordance with statutory time frames.

(c) ORR shall work with the referring Federal Government department or agency to accept transfer of custody of the unaccompanied child, consistent with the statutory requirements at 8 U.S.C. 1232(b)(3).

(d) For purposes of paragraphs (b) and (c) of this section, ORR may be unable to timely identify a placement for and timely accept transfer of custody of an unaccompanied child due to exceptional circumstances, including:

(1) Any court decree or court-approved settlement that requires otherwise;

(2) An influx, as defined at §410.1001;

(3) An emergency, including a natural disaster such as an earthquake or hurricane, a facility fire, or a civil disturbance;

(4) A medical emergency, such as a viral epidemic or pandemic among a group of unaccompanied children;

(5) The apprehension of an unaccompanied child in a remote location;

(6) The apprehension of an unaccompanied child whom the referring Federal agency indicates:

(i) Poses a danger to self or others; or

(ii) Has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent, and additional information is essential in order to determine an appropriate ORR placement.

(e) ORR shall take legal custody of an unaccompanied child when it assumes physical custody from the referring agency.

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### §410.1102 Care provider facility types.

ORR may place unaccompanied children in care provider facilities as defined at §410.1001, including but not limited to shelters, group homes, individual family homes, heightened supervision facilities, or secure facilities, including RTCs. ORR may place unaccompanied children in out-of-network (OON) placements, subject to §410.1103, if ORR determines that a child has a specific need that cannot be met within the ORR network of facilities, if no in-network care provider facility equipped to meet the child's needs has the capacity to accept a new placement, or if transfer to a less restrictive facility is warranted and ORR is unable to place the child in a less restrictive in-network facility. Unaccompanied children shall be separated from delinquent offenders in OON placements (except those unaccompanied children who meet the requirements for a secure placement pursuant to §410.1105). In times of influx or emergency, as further discussed in subpart I of this part, ORR may place unaccompanied children in care provider facilities that may not meet the standards of a standard program, but rather meet the standards in subpart I.

### §410.1103 Considerations generally applicable to the placement of an unaccompanied child.

(a) ORR shall place each unaccompanied child in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs, provided that such setting is consistent with the interest in ensuring the unaccompanied child's timely appearance before DHS and the immigration courts and in protecting the unaccompanied child's well-being and that of others.

(b) ORR shall consider the following factors to the extent they are relevant to the unaccompanied child's placement, including:

(1) Danger to self;

(2) Danger to the community/others;

(3) Runaway risk;

(4) Trafficking in persons or other safety concerns;

(5) Age;

(6) Gender;

- (7) LGBTQI+ status or identity;
- (8) Disability;
- (9) Any specialized services or treatment required or requested by the unaccompanied child;
- (10) Criminal background;
- (11) Location of potential sponsor and safe and timely release options;
- (12) Behavior;
- (13) Siblings in ORR custody;
- (14) Language access;
- (15) Whether the unaccompanied child is pregnant or parenting;
- (16) Location of the unaccompanied child's apprehension; and
- (17) Length of stay in ORR custody.

(c) ORR may utilize information provided by the referring Federal agency, child assessment tools, interviews, and pertinent documentation to determine the placement of all unaccompanied children. ORR may obtain any records from local, State, and Federal agencies regarding an unaccompanied child to inform placement decisions.

(d) ORR shall review, at least every 30 days, the placement of an unaccompanied child in a restrictive placement to determine whether a new level of care is appropriate.

(e) ORR shall make reasonable efforts to provide licensed placements in those geographical areas where DHS encounters the majority of unaccompanied children.

(f) A care provider facility must accept the placement of unaccompanied children as determined by ORR, and may deny placement only for the following reasons:

- (1) Lack of available bed space;
- (2) Placement of the unaccompanied child would conflict with the care provider facility's State or local licensing rules;
- (3) Initial placement involves an unaccompanied child with a significant physical or mental illness for which the referring Federal agency does not provide a medical clearance; or

(4) In the case of the placement of an unaccompanied child with a disability, the care provider facility concludes it is unable to meet the child's disability-related needs, without fundamentally altering the nature of its program, even by providing reasonable modifications and even with additional support from ORR.

(g) Care provider facilities must submit a written request to ORR for authorization to deny placement of unaccompanied children, providing the individualized reasons for the denial. Any such request must be approved by ORR before the care provider facility may deny a placement. ORR may follow up with a care provider facility about a placement denial to find a solution to the reason for the denial.

**§410.1104 Placement of an unaccompanied child in a standard program that is not restrictive.**

ORR shall place all unaccompanied children in standard programs that are not restrictive placements, except in the following circumstances:

(a) An unaccompanied child meets the criteria for placement in a restrictive placement set forth in §410.1105; or

(b) In the event of an emergency or influx of unaccompanied children into the United States, in which case ORR shall place the unaccompanied child as expeditiously as possible in accordance with subpart I of this part.

**§410.1105 Criteria for placing an unaccompanied child in a restrictive placement.**

(a) *Criteria for placing an unaccompanied child in a secure facility that is not a residential treatment center (RTC).*

(1) ORR may place an unaccompanied child in a secure facility (that is not an RTC) either at initial placement or through a transfer to another care provider facility from the initial placement. This determination must be made based on clear and convincing evidence documented in the unaccompanied child's case file. All determinations to place an unaccompanied child in a secure facility (that is not an RTC) will be reviewed and approved by ORR Federal field staff. A finding that a child poses a danger to self shall not be the sole basis for a child's placement in a secure facility (that is not an RTC).

(2) ORR shall not place an unaccompanied child in a secure facility (that is not an RTC) if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances. ORR shall place an unaccompanied

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child in a heightened supervision facility or other non-secure care provider facility as an alternative, provided that the unaccompanied child does not currently pose a danger to others and does not need placement in an RTC pursuant to the standard set forth at 410.1105(c).

(3) ORR may place an unaccompanied child in a secure facility (that is not an RTC) only if the unaccompanied child:

(i) Has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent, and where ORR deems that those circumstances demonstrate that the unaccompanied child poses a danger to others, not including:

(A) An isolated offense that was not within a pattern or practice of criminal activity and did not involve violence against a person or the use or carrying of a weapon; or

(B) A petty offense, which is not considered grounds for stricter means of detention in any case;

(ii) While in DHS or ORR’s custody, or while in the presence of an immigration officer or ORR official or ORR contracted staff, has committed, or has made credible threats to commit, a violent or malicious act directed at others; or

(iii) Has engaged, while in a restrictive placement, in conduct that has proven to be unacceptably disruptive of the normal functioning of the care provider facility, and removal is necessary to ensure the welfare of others, as determined by the staff of the care provider facility (e.g., stealing, fighting, intimidation of others, or sexually predatory behavior), and ORR determines the unaccompanied child poses a danger to others based on such conduct.

(b) *Criteria for placing an unaccompanied child in a heightened supervision facility.* (1) ORR may place an unaccompanied child in a heightened supervision facility either at initial placement or through a transfer to another facility from the initial placement. This determination must be made based on clear and convincing evidence documented in the unaccompanied child’s case file.

(2) In determining whether to place an unaccompanied child in a heightened supervision facility, ORR considers if the unaccompanied child:

(i) Has been unacceptably disruptive to the normal functioning of a shelter such that transfer is necessary to ensure the welfare of the unaccompanied child or others;

(ii) Is a runaway risk;

(iii) Has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff;

(iv) Has a non-violent criminal or delinquent history not warranting placement in a secure facility, such as isolated or petty offenses as described in paragraph (a)(3)(i) of this section;

(v) Is assessed as ready for step-down from a secure facility, including an RTC.

(c) *Criteria for placing an unaccompanied child in an RTC.* (1) An unaccompanied child with serious mental health or behavioral health issues may be placed in an RTC only if the unaccompanied child is evaluated and determined to be a danger to self or others by a licensed psychologist or psychiatrist consulted by ORR or a care provider facility, which includes a determination by clear and convincing evidence documented in the unaccompanied child’s case file, including documentation by a licensed psychologist or psychiatrist that placement in an RTC is appropriate.

(2) ORR may place an unaccompanied child in an out of network (OON) RTC when a licensed clinical psychologist or psychiatrist consulted by ORR or a care provider facility has determined that the unaccompanied child requires a level of care only found in an OON RTC either because the unaccompanied child has identified needs that cannot be met within the ORR network of RTCs or no placements are available within ORR’s network of RTCs, or that an OON RTC would best meet the unaccompanied child’s identified needs.

(3) The criteria for placement in or transfer to an RTC also apply to transfers to or placements in OON RTCs. Care provider facilities may request ORR to transfer an unaccompanied

child to an RTC in accordance with § 410.1601(d).

(d) For an unaccompanied child with one or more disabilities, consistent with section 504 of the Rehabilitation Act, 29 U.S.C. 794(a), ORR's determination under § 410.1105 whether to place the unaccompanied child in a restrictive placement shall include consideration whether there are any reasonable modifications to the policies, practices, or procedures of an available less restrictive placement or any provision of auxiliary aids and services that would allow the unaccompanied child to be placed in that less restrictive facility. ORR's consideration of reasonable modifications and auxiliary aids and services to facilitate less restrictive placement shall also apply to transfer decisions under § 410.1601 and will be incorporated into restrictive placement case reviews under § 410.1901. However, ORR is not required to take any action that it can demonstrate would fundamentally alter the nature of a program or activity.

[89 FR 34584, Apr. 30, 2024; 89 FR 53361, June 26, 2024]

**§ 410.1106 Unaccompanied children who need particular services and treatment.**

ORR shall assess each unaccompanied child in its care to determine whether the unaccompanied child requires particular services and treatment by staff to address their individualized needs while in the care and custody of the UC Program. An unaccompanied child's assessed needs may require particular services, equipment, and treatment by staff for various reasons, including, but not limited to disability, alcohol or substance use, a history of serious neglect or abuse, tender age, pregnancy, or parenting. If ORR determines that an unaccompanied child's individualized needs require particular services and treatment by staff or particular equipment, ORR shall place the unaccompanied child, whenever possible, in a standard program in which the unaccompanied child with individualized needs can interact with children without those individualized needs to the fullest extent possible, but which provides serv-

ices and treatment or equipment for such individualized needs.

**§ 410.1107 Considerations when determining whether an unaccompanied child is a runaway risk for purposes of placement decisions.**

When determining whether an unaccompanied child is a runaway risk for purposes of placement decisions, ORR shall consider, among other factors, whether:

- (a) The unaccompanied child is currently under a final order of removal.
- (b) The unaccompanied child has previously absconded or attempted to abscond from State or Federal custody.
- (c) The unaccompanied child has displayed behaviors indicative of flight or has expressed intent to run away.
- (d) Evidence that the unaccompanied child is experiencing a strong trauma bond to or is threatened by a trafficker in persons or drugs.

**§ 410.1108 Placement and services for children of unaccompanied children.**

(a) *Placement.* ORR shall accept referrals for placement of parenting unaccompanied children who arrive with children of their own to the same extent that it receives referrals of other unaccompanied children and shall prioritize placing and keeping the parent and child together in the interest of family unity.

(b) *Services.* (1) ORR shall provide the same care and services to the children of unaccompanied children as it provides to unaccompanied children, as appropriate, regardless of the children's immigration or citizenship status.

(2) U.S. citizen children of unaccompanied children are eligible for public benefits and services to the same extent as other U.S. citizens. Application(s) for public benefits and services shall be submitted on behalf of the U.S. citizen children of unaccompanied children by care provider facilities. Utilization of those benefits and services shall be exhausted to the greatest extent practicable before ORR-funded services are utilized.

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**§410.1109 Required notice of legal rights.**

(a) ORR shall promptly provide each unaccompanied child in its custody, in a language and manner the unaccompanied child understands, with:

(1) A State-by-State list of free legal service providers compiled and annually updated by ORR and that is provided to unaccompanied children as part of a Legal Resource Guide for unaccompanied children;

(2) The following explanation of the right of potential review: “ORR usually houses persons under the age of 18 in the least restrictive setting that is in an unaccompanied child’s best interest, and generally not in restrictive placements (which means secure facilities, heightened supervision facilities, or residential treatment centers). If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance and get advice about your rights to challenge this action. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form;” and

(3) A presentation regarding their legal rights, as provided under §410.1309(a)(2).

**Subpart C—Releasing an Unaccompanied Child From ORR Custody**

**§410.1200 Purpose of this subpart.**

This subpart covers the policies and procedures used to release, without unnecessary delay, an unaccompanied child from ORR custody to a vetted and approved sponsor.

**§410.1201 Sponsors to whom ORR releases an unaccompanied child.**

(a) Subject to an assessment of sponsor suitability, when ORR determines that the detention of the unaccompanied child is not required either to secure the child’s timely appearance before DHS or the immigration court, or to ensure the child’s safety or that of others, ORR shall release a child from its custody without unnecessary delay, in the following order of preference, to:

- (1) A parent;
  - (2) A legal guardian;
  - (3) An adult relative;
  - (4) An adult individual or entity designated by the parent or legal guardian as capable and willing to care for the unaccompanied child’s well-being in:
    - (i) A declaration signed under penalty of perjury before an immigration or consular officer; or
    - (ii) Such other document that establishes to the satisfaction of ORR, in its discretion, the affiant’s parental relationship or guardianship;
  - (5) A licensed program willing to accept legal custody; or
  - (6) An adult individual or entity seeking custody, in the discretion of ORR, when it appears that there is no other likely alternative to long term custody, and family unification does not appear to be a reasonable possibility.
- (b) ORR shall not disqualify potential sponsors based solely on their immigration status and shall not collect information on immigration status of potential sponsors for law enforcement or immigration enforcement related purposes. ORR shall not share any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time.
- (c) In making determinations regarding the release of unaccompanied children to potential sponsors, ORR shall not release unaccompanied children on their own recognizance.

**§410.1202 Sponsor suitability.**

(a) Potential sponsors shall complete an application package to be considered as a sponsor for an unaccompanied child. The application package may be obtained from either the care provider facility or ORR directly.

(b) Prior to releasing an unaccompanied child, ORR shall conduct a suitability assessment to determine whether the potential sponsor is capable of providing for the unaccompanied child’s physical and mental well-being. At minimum, such assessment shall consist of review of the potential sponsor’s application package, including verification of the potential sponsor’s identity, physical environment of the sponsor’s home, and relationship to the

unaccompanied child, if any, and an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the unaccompanied child. ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented.

(c) ORR's suitability assessment shall include taking all needed steps to determine that the potential sponsor is capable of providing for the unaccompanied child's physical and mental well-being. As part of its suitability assessment, ORR may require such components as an investigation of the living conditions in which the unaccompanied child would be placed and the standard of care the unaccompanied child would receive, verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child, interviews with members of the household, a home visit or home study as discussed at §410.1204. In all cases, ORR shall require background and criminal records checks, which at minimum includes an investigation of public records sex offender registry conducted through the U.S. Department of Justice National Sex Offender public website for all sponsors and adult residents of the potential sponsor's household, and may include a public records background check or an FBI National Criminal history check based on fingerprints for some potential sponsors and adult residents of the potential sponsor's household. Any such assessment shall also take into consideration the wishes and concerns of the unaccompanied child.

(d) ORR shall assess the nature and extent of the potential sponsor's previous and current relationship with the unaccompanied child, and the unaccompanied child's family, if applicable. Lack of a pre-existing relationship with the child does not categorically disqualify a potential sponsor, but the lack of such relationship will be a factor in ORR's overall suitability assessment.

(e) ORR shall consider the potential sponsor's motivation for sponsorship; the unaccompanied child's preferences

and perspective regarding release to the potential sponsor; and the unaccompanied child's parent's or legal guardian's preferences and perspective on release to the potential sponsor, as applicable.

(f) ORR shall evaluate the unaccompanied child's current functioning and strengths in conjunction with any risks or concerns such as:

(1) Victim of sex or labor trafficking or other crime, or is considered to be at risk for such trafficking due, for example, to observed or expressed current needs, e.g., expressed need to work or earn money;

(2) History of criminal or juvenile justice system involvement (including evaluation of the nature of the involvement, for example, whether the child was adjudicated and represented by counsel, and the type of offense) or gang involvement;

(3) History of behavioral issues;

(4) History of violence;

(5) Any individualized needs, including those related to disabilities or other medical or behavioral/mental health issues;

(6) History of substance use; or

(7) Parenting or pregnant unaccompanied child.

(g) For individual sponsors, ORR shall consider the potential sponsor's strengths and resources in conjunction with any risks or concerns that could affect their ability to function as a sponsor including:

(1) Criminal background;

(2) Substance use or history of abuse or neglect;

(3) The physical environment of the home; and/or

(4) Other child welfare concerns.

(h) ORR shall assess the potential sponsor's:

(1) Understanding of the unaccompanied child's needs;

(2) Plan to provide adequate care, supervision, and housing to meet the unaccompanied child's needs;

(3) Understanding and awareness of responsibilities related to compliance with the unaccompanied child's immigration court proceedings, school attendance, and U.S. child labor laws; and

(4) Awareness of and ability to access community resources.

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(i) ORR shall develop a release plan that will enable a safe release to a potential sponsor through the provision of post-release services if needed.

### § 410.1203 Release approval process.

(a) ORR or the care provider providing care for the unaccompanied child shall make and record the prompt and continuous efforts on its part towards family unification and the release of the unaccompanied child pursuant to the provisions of this section. These efforts include intakes and admissions assessments and the provision of ongoing case management services to identify potential sponsors.

(b) If a potential sponsor is identified, ORR shall explain to both the unaccompanied child and the potential sponsor the requirements and procedures for release.

(c) Pursuant to the requirements of § 410.1202, the potential sponsor shall complete an application for release of the unaccompanied child, which includes supporting information and documentation regarding the sponsor's identity; the sponsor's relationship to the child; background information on the potential sponsor and the potential sponsor's household members; the sponsor's ability to provide care for the unaccompanied child; and the sponsor's commitment to fulfill the sponsor's obligations in the Sponsor Care Agreement, which requires the sponsor to:

(1) Provide for the unaccompanied child's physical and mental well-being;

(2) Ensure the unaccompanied child's compliance with DHS and immigration courts' requirements;

(3) Adhere to existing Federal and applicable state child labor and truancy laws;

(4) Notify DHS, the Executive Office for Immigration Review (EOIR) at the Department of Justice, and other relevant parties of changes of address;

(5) Provide notice of initiation of any dependency proceedings or any risk to the unaccompanied child as described in the Sponsor Care Agreement; and

(6) In the case of sponsors other than parents or legal guardians, notify ORR of a child moving to another location with another individual or change of address. Also, in the event of an emergency (e.g., serious illness or destruc-

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tion of the home), a sponsor may transfer temporary physical custody of the unaccompanied child to another person who will comply with the Sponsor Care Agreement, but the sponsor must notify ORR as soon as possible and no later than 72 hours after the transfer.

(d) ORR shall conduct a sponsor suitability assessment consistent with the requirements of § 410.1202.

(e) ORR shall not be required to release an unaccompanied child to any person or agency it has reason to believe may harm or neglect the unaccompanied child or fail to present the unaccompanied child before DHS or the immigration courts when requested to do so.

(f) During the release approval process, ORR shall educate the sponsor about the needs of the unaccompanied child and develop an appropriate plan to care for the unaccompanied child.

### § 410.1204 Home studies.

(a) As part of assessing the suitability of a potential sponsor, ORR may require a home study. A home study includes an investigation of the living conditions in which the unaccompanied child would be placed and takes place prior to the child's physical release, the standard of care the child would receive, and interviews with the potential sponsor and others in the sponsor's household.

(b) ORR shall require home studies under the following circumstances:

(1) Under the conditions identified in TVPRA at 8 U.S.C. 1232(c)(3)(B), which requires home studies for the following:

(i) A child who is a victim of a severe form of trafficking in persons;

(ii) A child with a disability (as defined in 42 U.S.C. 12102) who requires particularized services or treatment;

(iii) A child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or

(iv) A child whose potential sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.

(2) Before releasing any child to a non-relative sponsor who is seeking to

sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children.

(3) Before releasing any child who is 12 years old or younger to a non-relative sponsor.

(c) ORR may, in its discretion, initiate home studies if it determines that a home study is likely to provide additional information which could assist in determining that the potential sponsor is able to care for the health, safety, and well-being of the unaccompanied child.

(d) The care provider must inform the potential sponsor whenever a home study is conducted, explaining the scope and purpose of the study and answering the potential sponsor's questions about the process.

(e) An unaccompanied child for whom a home study is conducted shall receive an offer of post-release services as described at § 410.1210.

**§ 410.1205 Release decisions; denial of release to a sponsor.**

(a) A potential sponsorship shall be denied, if as part of the sponsor assessment process described at § 410.1202 or the release process described at § 410.1203, ORR determines that the potential sponsor is not capable of providing for the physical and mental well-being of the unaccompanied child or that the placement would result in danger to the unaccompanied child or the community.

(b) ORR shall adjudicate the completed sponsor application of a parent or legal guardian; brother, sister, or grandparent; or other close relative who has been the child's primary caregiver within 10 calendar days of receipt of the completed sponsor application, absent an unexpected delay (such as a case that requires completion of a home study). ORR shall adjudicate the completed sponsor application of other close relatives who were not the child's primary caregiver within 14 calendar days of receipt of the completed sponsor application, absent an unexpected delay (such as a case that requires completion of a home study).

(c) If ORR denies release of an unaccompanied child to a potential sponsor who is a parent or legal guardian or

close relative, the ORR Director or their designee who is a neutral and detached decision maker shall promptly notify the potential sponsor of the denial in writing via a Notification of Denial letter. The Notification of Denial letter shall include:

(1) An explanation of the reason(s) for the denial;

(2) The evidence and information supporting ORR's denial decision and shall advise the potential sponsor that they have the opportunity to examine the evidence upon request, unless ORR determines that providing the evidence and information, or part thereof, to the potential sponsor would compromise the safety and well-being of the unaccompanied child or is not permitted by law;

(3) Notice that the proposed sponsor may request an appeal of the denial to the Assistant Secretary for Children and Families, or a designee who is a neutral and detached decision maker and instructions for doing so;

(4) Notice that the potential sponsor may submit additional evidence, in writing before a hearing occurs, or orally during a hearing;

(5) Notice that the potential sponsor may present witnesses and cross-examine ORR's witnesses, if such sponsor and ORR witnesses are willing to voluntarily testify; and

(6) Notice that the potential sponsor may be represented by counsel in proceedings related to the release denial at no cost to the Federal Government.

(d) The ORR Director, or a designee who is a neutral and detached decision maker, shall review denials of completed sponsor applications submitted by parents or legal guardians or close relative potential sponsors.

(e) ORR shall inform the unaccompanied child, the unaccompanied child's child advocate, and the unaccompanied child's counsel (or if the unaccompanied child has no attorney of record or DOJ Accredited Representative, the local legal service provider) of a denial of release to the unaccompanied child's parent or legal guardian or close relative potential sponsor and inform them that they have the right to inspect the evidence underlying ORR's decision upon request unless

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ORR determines that disclosure is not permitted by law.

(f) If the sole reason for denial of release is a concern that the unaccompanied child is a danger to self or others, ORR shall send the unaccompanied child and their counsel (if represented by counsel) a copy of the Notification of Denial described at paragraph (c) of this section. The child may seek an appeal of the denial.

(g) ORR shall permit unaccompanied children to have the assistance of counsel, at no cost to the Federal Government, with respect to release or the denial of release to a potential sponsor.

**§ 410.1206 Appeals of release denials.**

(a) Denied parent or legal guardian or close relative potential sponsors to whom ORR's Director or their designee, who is a neutral and detached decision maker, must send Notification of Denial letters pursuant to § 410.1205 may seek an appeal of ORR's decision by submitting a written request to the Assistant Secretary for ACF, or the Assistant Secretary's neutral and detached designee.

(b) The requestor may seek an appeal with a hearing or without a hearing. The Assistant Secretary, or their neutral and detached designee, shall acknowledge the request for appeal within five business days of receipt.

(c) If the sole reason for denial of release is concern that the unaccompanied child is a danger to self or others, the unaccompanied child may seek an appeal of the denial as described in paragraphs (a) and (b) of this section. If the unaccompanied child expresses a desire to seek an appeal, the unaccompanied child may consult with their attorney of record at no cost to the Federal Government or a legal service provider for assistance with the appeal. The unaccompanied child may seek such appeal at any time after denial of release while the unaccompanied child is in ORR custody.

(d) ORR shall deliver the full evidentiary record including any countervailing or otherwise unfavorable evidence, apart from any legally required redactions, to the denied parent or legal guardian or close relative potential sponsor within a reasonable timeframe to be established by ORR, unless

ORR determines that providing the evidentiary record, or part(s) thereof, to the potential sponsor would compromise the safety and well-being of the unaccompanied child.

(e) ORR shall deliver the unaccompanied child's complete case file, apart from any legally required redactions, to a parent or legal guardian potential sponsor on request within a reasonable timeframe to be established by ORR, unless ORR determines that providing the complete case file, or part(s) thereof, to the parent or legal guardian potential sponsor would compromise the safety and well-being of the unaccompanied child. ORR shall deliver the unaccompanied child's complete case file, apart from any legally required redactions, to the unaccompanied child and the unaccompanied child's attorney or legal service provider on request within a reasonable timeframe to be established by ORR.

(f) The appeal process, including notice of decision on appeal sent to the potential sponsor, shall be completed within 30 calendar days of the potential sponsor's request for an appeal, unless an extension of time is granted by the Assistant Secretary or their neutral and detached designee for good cause.

(g) The appeal of a release denial shall be considered, and any hearing shall be conducted, by the Assistant Secretary, or their neutral and detached designee. Upon making a decision to reverse or uphold the decision denying release to the potential sponsor, the Assistant Secretary or their neutral and detached designee, shall issue a written decision, either ordering or denying release to the potential sponsor within the timeframe described in § 410.1206(f). If the Assistant Secretary, or their neutral and detached designee, denies release to the potential sponsor, the decision shall set forth detailed, specific, and individualized reasoning for the decision. ORR shall also notify the unaccompanied child and the child's attorney of the denial. ORR shall inform the potential sponsor and the unaccompanied child of any right to seek review of an adverse decision in the United States District Court.

(h) ORR shall make qualified interpretation and/or translation services

available to unaccompanied children and denied parent or legal guardian or close relative potential sponsors upon request for purposes of appealing denials of release. Such services shall be available to unaccompanied children and denied parent or legal guardian or close relative potential sponsors in enclosed, confidential areas.

(i) If a child is released to another sponsor during the pendency of the appeal process, the appeal will be deemed moot.

(j)(1) Denied parent or legal guardian or close relative potential sponsors to whom ORR must send Notification of Denial letters pursuant to §410.1205 have the right to be represented by counsel in proceedings related to the release denial, including at any hearing, at no cost to the Federal Government.

(2) The unaccompanied child has the right to consult with counsel during the potential sponsor's appeal process at no cost to the Federal Government.

**§ 410.1207 Ninety (90)-day review of pending sponsor applications.**

(a) ORR supervisory staff who supervise field staff shall conduct an automatic review of all pending sponsor applications. The first automatic review shall occur within 90 days of an unaccompanied child entering ORR custody to identify and resolve in a timely manner the reasons that a sponsor application remains pending and to determine possible steps to accelerate the unaccompanied child's safe release.

(b) Upon completion of the initial 90-day review, unaccompanied child case managers or other designated agency or care provider staff shall update the potential sponsor and unaccompanied child on the status of the case, explaining the reasons that the release process is incomplete. Case managers or other designated agency or care provider staff shall work with the potential sponsor, relevant stakeholders, and ORR to address the portions of the sponsor application that remain unresolved.

(c) For cases that are not resolved after the initial 90-day review, ORR supervisory staff who supervise field staff shall conduct additional reviews as provided in §410.1207(a) at least every

90 days until the pending sponsor application is resolved. ORR may in its discretion and subject to resource availability conduct additional reviews on a more frequent basis than every 90 days.

**§ 410.1208 ORR's discretion to place an unaccompanied child in the Unaccompanied Refugee Minors Program.**

(a) An unaccompanied child may be eligible for services through the ORR Unaccompanied Refugee Minors (URM) Program. Eligible categories of unaccompanied children include:

(1) Cuban and Haitian entrant as defined in section 501 of the Refugee Education Assistance Act of 1980, 8 U.S.C. 1522 note, and as provided for at 45 CFR 400.43;

(2) An individual determined to be a victim of a severe form of trafficking as defined in 22 U.S.C. 7102(11);

(3) An individual DHS has classified as a Special Immigrant Juvenile (SIJ) under section 101(a)(27)(J) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(27)(J), and who was either in the custody of HHS at the time a dependency order was granted for such child or who was receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980, 8 U.S.C. 1522 note, at the time such dependency order was granted;

(4) U nonimmigrant status recipients under 8 U.S.C. 1101(a)(15)(U); or

(5) Other populations of children as authorized by Congress.

(b) With respect to unaccompanied children described in paragraph (a) of this section, ORR shall evaluate each unaccompanied child case to determine whether it is in the child's best interests to be placed in the URM Program.

(c) When ORR places an unaccompanied child pursuant to this section to receive services through the URM Program, legal responsibility of the child, including legal custody or guardianship, must be established under State law as required by 45 CFR 400.115. Until such legal custody or guardianship is established, the ORR Director shall retain legal custody of the child.

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### § 410.1209 Requesting specific consent from ORR regarding custody proceedings.

(a) An unaccompanied child in ORR custody is required to request specific consent from ORR if the child seeks to invoke the jurisdiction of a juvenile court to determine or alter the child's custody status or release from ORR custody.

(b) If an unaccompanied child seeks to invoke the jurisdiction of a juvenile court for a dependency order to petition for Special Immigrant Juvenile (SIJ) classification or to otherwise permit a juvenile court to establish jurisdiction regarding a child's placement and does not seek the juvenile court's jurisdiction to determine or alter the child's custody status or release, the unaccompanied child does not need to request specific consent from ORR.

(c) Prior to a juvenile court determining or altering the unaccompanied child's custody status or release from ORR, attorneys or others acting on behalf of an unaccompanied child must complete a request for specific consent.

(d) ORR shall acknowledge receipt of the request within two business days.

(e) Consistent with its duty to promptly place unaccompanied children in the least restrictive setting that is in the best interest of the child, ORR shall consider whether ORR custody is required to:

- (1) Ensure a child's safety; or
- (2) Ensure the safety of the community.

(f) ORR shall make determinations on specific consent requests within 60 business days of receipt of a request. When possible, ORR shall expedite urgent requests.

(g) ORR shall inform the unaccompanied child, or the unaccompanied child's attorney or other authorized representative of the decision on the specific consent request in writing, along with the evidence utilized to make the decision.

(h) The unaccompanied child, the unaccompanied child's attorney of record, or other authorized representative may request reconsideration of ORR's denial with the Assistant Secretary for ACF within 30 business days of receipt of the ORR notification of denial of the request. The unaccompanied child, the

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unaccompanied child's attorney, or authorized representative may submit additional (including new) evidence to be considered with the reconsideration request.

(i) The Assistant Secretary, or their designee, shall consider the request for reconsideration and any additional evidence, and send a final administrative decision to the unaccompanied child, or the unaccompanied child's attorney or other authorized representative, within 15 business days of receipt of the request.

### § 410.1210 Post-release services.

(a) *General.* (1) Before releasing unaccompanied children, care provider facilities shall work with sponsors and unaccompanied children to prepare for safe and timely release of the unaccompanied children, to assess whether the unaccompanied children may need assistance in accessing community resources, and to provide guidance regarding safety planning and accessing services.

(2) ORR shall offer post-release services (PRS) for unaccompanied children for whom a home study was conducted pursuant to § 410.1204. An unaccompanied child who receives a home study and PRS may also receive home visits by a PRS provider.

(3) To the extent that ORR determines appropriations are available, and in its discretion, ORR may offer PRS for all released children. ORR may give additional consideration, consistent with paragraph (c), for cases involving unaccompanied children with mental health or other needs who could particularly benefit from ongoing assistance from a community-based service provider, to prioritize potential cases as needed. ORR shall make an initial determination of the level and extent of PRS, if any, based on the needs of the unaccompanied children and the sponsors and the extent appropriations are available. PRS providers may conduct subsequent assessments based on the needs of the unaccompanied children and the sponsors that result in a modification to the level and extent of PRS assigned to the unaccompanied children.

(4) ORR shall not delay the release of an unaccompanied child if PRS are not immediately available.

(b) *Service areas.* PRS include services in the areas listed in paragraphs (b)(1) through (12) of this section, which shall be provided in a manner that is sensitive to the individual needs of the unaccompanied child and in a way they effectively understand regardless of spoken language, reading comprehension, or disability to ensure meaningful access for all eligible children, including those with limited English proficiency. The comprehensiveness of PRS shall depend on the extent appropriations are available.

(1) *Placement stability and safety.* PRS providers shall work with sponsors and unaccompanied children to address challenges in parenting and caring for unaccompanied children. This may include guidance about maintaining a safe home; supervision of unaccompanied children; protecting unaccompanied children from threats by smugglers, traffickers, and gangs; and information about child abuse, neglect, separation, grief, and loss, and how these issues affect children.

(2) *Immigration proceedings.* The PRS provider shall help facilitate the sponsor's plan to ensure the unaccompanied child's attendance at all immigration court proceedings and compliance with DHS requirements.

(3) *Guardianship.* If the sponsor is not a parent or legal guardian of the unaccompanied child, then the PRS provider shall provide the sponsor and unaccompanied child information about the benefits of obtaining legal guardianship of the child. If the sponsor is interested in becoming the unaccompanied child's legal guardian, then the PRS provider may assist the sponsor in identifying the legal resources to do so.

(4) *Legal services.* PRS providers shall assist sponsors and unaccompanied children in accessing relevant legal service resources including resources for immigration matters and unresolved juvenile justice issues.

(5) *Education.* PRS providers shall assist sponsors with school enrollment and shall assist the sponsors and unaccompanied children with addressing issues relating to the unaccompanied children's progress in school, including

attendance. PRS providers may also assist with alternative education plans for unaccompanied children who exceed the State's maximum age requirement for mandatory school attendance. PRS providers may also assist sponsors with obtaining evaluations for unaccompanied children reasonably suspected of having a disability to determine eligibility for a free appropriate public education (which can include special education and related services) or reasonable modifications and auxiliary aids and services.

(6) *Employment.* PRS providers shall educate sponsors and unaccompanied children on U.S. child labor laws and requirements.

(7) *Medical services.* PRS providers shall assist the sponsor in obtaining medical insurance for the unaccompanied child if available and in locating medical providers that meet the individual needs of the unaccompanied child and the sponsor. If the unaccompanied child requires specialized medical assistance, the PRS provider shall assist the sponsor in making and keeping medical appointments and monitoring the unaccompanied child's medical requirements. PRS providers shall provide the unaccompanied child and sponsor with information and referrals to services relevant to health-related considerations for the unaccompanied child.

(8) *Individual mental health services.* PRS providers shall provide the sponsor and unaccompanied child with relevant mental health resources and referrals for the child. The resources and referrals shall take into account the individual needs of the unaccompanied child and sponsor. If an unaccompanied child requires specialized mental health assistance, PRS providers shall assist the sponsor in making and keeping mental health appointments and monitoring the unaccompanied child's mental health requirements.

(9) *Family stabilization/counseling.* PRS providers shall provide the sponsor and unaccompanied child with relevant resources and referrals for family counseling and/or individual counseling that meet individual needs of the child and the sponsor.

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(10) *Substance use.* PRS providers shall assist the sponsor and unaccompanied child in locating resources to help address any substance use-related needs of the child.

(11) *Gang prevention.* PRS providers shall provide the sponsor and unaccompanied child information about gang prevention programs in the sponsor's community.

(12) *Other services.* PRS providers may assist the sponsor and unaccompanied child with accessing local resources in other specialized service areas based on the needs and at the request of the unaccompanied child or the sponsor.

(c) *Additional considerations for prioritizing provision of PRS.* ORR may prioritize referring unaccompanied children with the following needs for PRS if appropriations are not available for it to offer PRS to all children:

(1) Unaccompanied children in need of particular services or treatment;

(2) Unaccompanied children with disabilities;

(3) Unaccompanied children who identify as LGBTQI+;

(4) Unaccompanied children who are adjudicated delinquent or who have been involved in, or are at high risk of involvement with the juvenile justice system;

(5) Unaccompanied children who entered ORR care after being separated by DHS from a parent or legal guardian;

(6) Unaccompanied children who are victims of human trafficking or other crimes;

(7) Unaccompanied children who are victims of, or at risk of, worker exploitation;

(8) Unaccompanied children who are at risk for labor trafficking;

(9) Unaccompanied children who are certain parolees; and

(10) Unaccompanied children enrolled in school who are chronically absent or retained at the end of their school year.

(d) *Assessments.* The PRS provider shall assess the released unaccompanied child and sponsor for PRS needs and shall document the assessment. The assessment shall be developmentally appropriate, trauma-informed, and focused on the needs of the unaccompanied child and sponsor.

(e) *Ongoing check-ins and in-home visits.* (1) In consultation with the released unaccompanied child and sponsor, the PRS provider shall make a determination regarding the appropriate methods, timeframes, and schedule for ongoing contact with the released unaccompanied child and sponsor based on the level of need and support needed.

(2) PRS providers shall document all ongoing check-ins and in-home visits, as well as document progress and outcomes of their home visits.

(f) *Referrals to community resources.* (1) PRS providers shall work with released unaccompanied children and their sponsors to access community resources.

(2) PRS providers shall document any community resource referrals and their outcomes.

(g) *Timeframes for PRS.* (1) For a released unaccompanied child who is required under the TVPRA at 8 U.S.C. 1232(c)(3)(B) to receive an offer of PRS, the PRS provider shall to the greatest extent practicable start services within two (2) days of the unaccompanied child's release from ORR care. If a PRS provider is unable to start PRS within two (2) days of the unaccompanied child's release, PRS shall, to the greatest extent possible, start no later than 30 days after release.

(2) For a released unaccompanied child who is referred by ORR to receive PRS but is not required to receive an offer of PRS following a home study, the PRS provider shall to the greatest extent practicable start services within two (2) days of accepting a referral.

(h) *Termination of PRS.* (1) For a released unaccompanied child who is required to receive an offer of PRS under the TVPRA at 8 U.S.C. 1232(c)(3)(B), PRS shall be offered for the unaccompanied child until the unaccompanied child turns 18 or the unaccompanied child is granted voluntary departure, granted immigration status, or the child leaves the United States pursuant to a final order of removal, whichever occurs first.

(2) For a released unaccompanied child who is not required to receive an offer of PRS under the TVPRA at 8 U.S.C. 1232(c)(3)(B), but who receives PRS as authorized under the TVPRA,

PRS may be offered for the unaccompanied child until the unaccompanied child turns 18, or the unaccompanied child is granted voluntary departure, granted immigration status, or the child leaves pursuant to a final order of removal, whichever occurs first.

(3) If an unaccompanied child's sponsor, except for a parent or legal guardian, chooses to disengage from PRS and the child wishes to continue receiving PRS, ORR may continue to make PRS available to the child through coordination between the PRS provider and a qualified ORR staff member.

(i) *Records and reporting requirements for PRS providers*—(1) *General.* (i) PRS providers shall maintain comprehensive, accurate, and current case files on unaccompanied children that are kept confidential and secure at all times and shall be accessible to ORR upon request. PRS providers shall maintain all case file information together in the PRS provider's physical and electronic files.

(ii) PRS providers shall upload all PRS documentation on services provided to unaccompanied children and sponsors to ORR's case management system within seven (7) days of completion of the services.

(2) *Records management and retention.* (i) PRS providers shall have written policies and procedures for organizing and maintaining the content of active and closed case files, which incorporate ORR policies and procedures. The PRS provider's policies and procedures shall also address preventing the physical damage or destruction of records.

(ii) Before providing PRS, PRS providers shall have established administrative and physical controls to prevent unauthorized access to both electronic and physical records.

(iii) PRS providers may not release records to any third party without prior approval from ORR, except for program administration purposes.

(iv) If a PRS provider is no longer providing PRS for ORR, the PRS provider shall provide all active and closed case file records to ORR according to instructions issued by ORR.

(3) *Privacy.* (i) PRS providers shall have written policy and procedure in place that protects the information of

released unaccompanied children from access by unauthorized users.

(ii) PRS providers shall explain to released unaccompanied children and their sponsors how, when, and under what circumstances sensitive information may be shared while the unaccompanied children receive PRS.

(iii) PRS providers shall have appropriate controls on information-sharing within the PRS provider network, including, but not limited to, subcontractors.

(4) *Notification of Concern.* (i) If the PRS provider is concerned about the unaccompanied child's safety and well-being, the PRS provider shall document a Notification of Concern (NOC) and report the concern(s) to ORR, and as applicable, the appropriate investigative agencies (including law enforcement and child protective services).

(ii) PRS providers shall document and submit NOCs to ORR within 24 hours of first suspicion or knowledge of the event(s).

(5) *Case closures.* (i) PRS providers shall formally close a case when ORR terminates PRS in accordance with paragraph (h) of this section.

(ii) ORR shall provide appropriate instructions, including any relevant forms, that PRS providers must follow when closing a case.

(iii) PRS providers shall upload any relevant forms into ORR's case management system within 30 calendar days of a case's closure.

### Subpart D—Minimum Standards and Required Services

#### § 410.1300 Purpose of this subpart.

This subpart covers standards and required services that care provider facilities must meet and provide in keeping with the principles of treating unaccompanied children in custody with dignity, respect, and special concern for their particular vulnerability.

#### § 410.1301 Applicability of this subpart.

This subpart applies to all standard programs and secure facilities. This subpart is applicable to other care provider facilities and to PRS providers where specified.

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**§ 410.1302 Minimum standards applicable to standard programs and secure facilities.**

Standard programs and secure facilities shall:

(a) Be licensed by an appropriate State agency, or meet the State's licensing requirements if located in a State that does not allow State licensing of programs providing or proposing to provide care and services to unaccompanied children.

(b) Comply with all State child welfare laws and regulations (such as mandatory reporting of abuse) and all State and local building, fire, health, and safety codes.

(c) Provide or arrange for the following services for each unaccompanied child in care:

(1) Proper physical care and maintenance, including suitable living accommodations, food that is of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development, which can be accomplished by following the USDA Dietary Guidelines for Americans, and appropriate for the child and activity level, drinking water that is always available to each unaccompanied child, appropriate clothing, personal grooming and hygiene items such as soap, toothpaste and toothbrushes, floss, towels, feminine care items, and other similar items, access to toilets, showers, and sinks, adequate temperature control and ventilation, maintenance of safe and sanitary conditions that are consistent with ORR's concern for the particular vulnerability of children, and adequate supervision to protect unaccompanied children from others;

(2) An individualized needs assessment that shall include:

(i) Various initial intake forms;

(ii) Essential data relating to the identification and history of the unaccompanied child and family;

(iii) Identification of the unaccompanied child's individualized needs including any specific problems that appear to require immediate intervention;

(iv) An educational assessment and plan;

(v) Identification of whether the child is an Indigenous language speaker;

(vi) An assessment of family relationships and interaction with adults, peers and authority figures;

(vii) A statement of religious preference and practice;

(viii) An assessment of the unaccompanied child's personal goals, strengths, and weaknesses; and

(ix) Identifying information regarding immediate family members, other relatives, godparents, or friends who may be residing in the United States and may be able to assist in family unification;

(3) Educational services appropriate to the unaccompanied child's level of development, communication skills, and disability, if applicable, in a structured classroom setting, Monday through Friday, which concentrate on the development of basic academic competencies and on English Language Training (ELT), as well as acculturation and life skills development including:

(i) Instruction and educational and other reading materials in such languages as needed;

(ii) Instruction in basic academic areas that may include science, social studies, math, reading, writing, and physical education; and

(iii) The provision to an unaccompanied child of appropriate reading materials in languages other than English for use during the unaccompanied child's leisure time;

(4) Activities according to a recreation and leisure time plan that include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities, which do not include time spent watching television. Activities must be increased to at least three hours on days when school is not in session;

(5) At least one individual counseling session per week conducted by certified counseling staff with the specific objectives of reviewing the unaccompanied child's progress, establishing new short and long-term objectives, and addressing both the developmental and crisis-related needs of each unaccompanied child;

(6) Group counseling sessions at least twice a week;

(7) Acculturation and adaptation services that include information regarding the development of social and inter-personal skills that contribute to those abilities necessary to live independently and responsibly;

(8) An admissions process, including:

(i) Meeting unaccompanied children's immediate needs to food, hydration, and personal hygiene including the provision of clean clothing and bedding;

(ii) An initial intakes assessment covering biographic, family, migration, health history, substance use, and mental health history of the unaccompanied child. If the unaccompanied child's responses to questions during any examination or assessment indicate the possibility that the unaccompanied child may have been a victim of human trafficking or labor exploitation, the care provider facility must notify the ACF Office of Trafficking in Persons within twenty-four (24) hours;

(iii) A comprehensive orientation regarding program purpose, services, rules (provided in writing and orally), expectations, their rights in ORR care, and the availability of legal assistance, information about U.S. immigration and employment/labor laws, and services from the Unaccompanied Children Office of the Ombuds (UC Office of the Ombuds) in simple, non-technical terms and in a language and manner that the child understands, if practicable; and

(iv) Assistance with contacting family members, following the ORR Guide and the care provider facility's internal safety procedures;

(9) Whenever possible, access to religious services of the unaccompanied child's choice, celebrating culture-specific events and holidays, being culturally aware in daily activities as well as food menus, choice of clothing, and hygiene routines, and covering various cultures in children's educational services;

(10) Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation, including at least 15 minutes of phone or video contact three times a week with parents and legal guardians, family members,

and caregivers located in the United States and abroad, in a private space that ensures confidentiality and at no cost to the unaccompanied child, parent, legal guardian, family member, or caregiver. The staff shall respect the unaccompanied child's privacy while reasonably preventing the unauthorized release of the unaccompanied child;

(11) Assistance with family unification services designed to identify and verify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for release of the unaccompanied child;

(12) Legal services information regarding the availability of free legal assistance, and that they may be represented by counsel at no expense to the Government, the right to a removal hearing before an immigration judge; the ability to apply for asylum with U.S. Citizenship and Immigration Services (USCIS) in the first instance, and the ability to request voluntary departure in lieu of removal;

(13) Information about U.S. child labor laws and education around permissible work opportunities in a manner that is sensitive to the age, culture, and native or preferred language of each unaccompanied child; and

(14) Unaccompanied children must have a reasonable right to privacy, which includes the right to wear the child's own clothes when available, retain a private space in the residential facility, group or foster home for the storage of personal belongings, talk privately on the phone and visit privately with guests, as permitted by the house rules and regulations, and receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

(d) Deliver services in a manner that is sensitive to the age, culture, native or preferred language, and the complex needs of each unaccompanied child.

(e) Develop a comprehensive and realistic individual service plan for the care of each unaccompanied child in accordance with the unaccompanied child's needs as determined by the individualized needs assessment. Individual plans must be implemented and

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closely coordinated through an operative case management system. Service plans should identify individualized, person-centered goals with measurable outcomes and with steps or tasks to achieve the goals, be developed with input from the unaccompanied child, and be reviewed and updated at regular intervals. Unaccompanied children ages 14 and older should be given a copy of the plan, and unaccompanied children under age 14 should be given a copy of the plan when appropriate for that particular child's development. Individual plans shall be in that child's native or preferred language or other mode of auxiliary aid or services and/or use clear, easily understood language, using concise and concrete sentences and/or visual aids and checking for understanding where appropriate.

[89 FR 34584, Apr. 30, 2024; 89 FR 53361, June 26, 2024]

### **§ 410.1303 ORR Reporting, monitoring, quality control, and recordkeeping standards.**

(a) *Monitoring activities.* ORR shall monitor all care provider facilities for compliance with the terms of the regulations in this part and 45 CFR part 411. ORR monitoring activities include:

(1) Desk monitoring that is ongoing oversight from ORR headquarters;

(2) Routine site visits that are day-long visits to facilities to review compliance for policies, procedures, and practices and guidelines;

(3) Site visits in response to ORR or other reports that are for a specific purpose or investigation; and

(4) Monitoring visits that are part of comprehensive reviews of all care provider facilities.

(b) *Corrective actions.* If ORR finds a care provider facility to be out of compliance with the regulations in this part and 45 CFR part 411 or subregulatory policies such as its guidance and the terms of its contracts or cooperative agreements, ORR will communicate the concerns in writing to the care provider facility director or appropriate person through a written monitoring or site visit report, with a list of corrective actions and child welfare best practice recommendations, as appropriate. ORR will request a response to the corrective action findings from

the care provider facility and specify a timeframe for resolution and the disciplinary consequences for not responding within the required timeframes.

(c) *Monitoring of secure facilities.* At secure facilities, in addition to other monitoring activities, ORR shall review individual unaccompanied child case files to make sure children placed in secure facilities are assessed at least every 30 days for the possibility of a transfer to a less restrictive setting.

(d) *Monitoring of long-term home care and transitional home care facilities.* ORR long-term home care and transitional home care facilities are subject to the same types of monitoring as other care provider facilities, but the activities are tailored to the foster care arrangement. ORR long-term home care and transitional home care facilities that provide services through a sub-contract or sub-grant are responsible for conducting annual monitoring or site visits of the sub-recipient, as well as weekly desk monitoring. Upon request, care provider facilities must provide findings of such reviews to the designated ORR point of contact.

(e) *Enhanced monitoring of unlicensed standard programs and emergency or influx facilities.* In addition to the other requirements of this section, for all standard programs that are not State-licensed because the State does not allow State licensing of programs providing care and services to unaccompanied children, and emergency or influx facilities, ORR shall conduct enhanced monitoring, including on-site visits and desk monitoring.

(f) *Care provider facility quality assurance.* Care provider facilities shall develop quality assurance assessment procedures that accurately measure and evaluate service delivery in compliance with the requirements of the regulations in this part, as well as those delineated in 45 CFR part 411.

(g) *Reporting.* Care provider facilities shall report to ORR any emergency incident, significant incident, or program-level event and in accordance with any applicable Federal, State, and local reporting laws. Such reports are subject to the following rules:

(1) Care provider facilities shall document incidents with sufficient detail to

ensure that any relevant entity can facilitate any required follow-up; document incidents in a way that is trauma-informed and grounded in child welfare best practices; and update the report with any findings or documentation that are made after the fact.

(2) Care provider facilities shall not fabricate, exaggerate, or minimize incidents; use disparaging or judgmental language about unaccompanied children in incident reports; use incident reporting or the threat of incident reporting as a way to manage the behavior of unaccompanied children or for any other illegitimate reason.

(3) Care provider facilities shall not use reports of significant incidents as a method of punishment or threat towards any child in ORR care for any reason.

(4) The existence of a report of a significant incident shall not be used by ORR as a basis for an unaccompanied child's step-up to a restrictive placement or as the sole basis for a refusal to step a child down to a less restrictive placement. Care provider facilities are likewise prohibited from using the existence of a report of a significant incident as a basis for refusing an unaccompanied child's placement in their facilities. Reports of significant incidents may be used as examples or citations of concerning behavior. However, the existence of a report itself is not sufficient for a step-up, a refusal to step-down, or a care provider facility to refuse a placement.

(h) *Develop, maintain, and safeguard each individual unaccompanied child's case file.* This paragraph (h) applies to all care provider facilities responsible for the care and custody of unaccompanied children.

(1) Care provider facilities and PRS providers shall preserve the confidentiality of unaccompanied child case file records and information, and protect the records and information from unauthorized use or disclosure;

(2) The records included in an unaccompanied child's case file are ORR's property, regardless of whether they are in ORR's possession or in the possession of a care provider facility or PRS provider. Care providers facilities and PRS providers shall not release those records or information within

the records without prior approval from ORR, except for program administration purposes;

(3) Care provider facilities and PRS providers shall provide unaccompanied child case file records to ORR immediately upon ORR's request; and

(4) Subject to applicable whistleblower protection laws, employees, former employees, or contractors of a care provider facility or PRS provider shall not disclose case file records or information about unaccompanied children, their sponsors, family, or household members to anyone for any purpose, except for purposes of program administration, without first providing advanced notice to ORR to allow ORR to ensure that disclosure of unaccompanied children's information is compatible with program goals and to ensure the safety and privacy of unaccompanied children.

(i) *Records.* Care provider facilities and PRS providers shall maintain adequate records in the unaccompanied child case file and make regular reports as required by ORR that permit ORR to monitor and enforce the regulations in this part and other requirements and standards as ORR may determine are in the interests of the unaccompanied child.

**§ 410.1304 Behavior management and prohibition on seclusion and restraint.**

(a) Care provider facilities shall develop behavior management strategies that include evidence-based, trauma-informed, and linguistically responsive program rules and behavior management policies that take into consideration the range of ages and maturity in the program and that are culturally sensitive to the needs of each unaccompanied child. Care provider facilities shall not use any practices that involve negative reinforcement or involve consequences or measures that are not constructive and are not logically related to the behavior being regulated. Care provider facilities shall not:

(1) Use or threaten use of corporal punishment, significant incident reports as punishment, unfavorable consequences related to sponsor unification or legal matters (e.g., immigration, asylum); use forced chores or

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work that serves no purpose except to demean or humiliate the child; forced physical movement, such as push-ups and running, or uncomfortable physical positions as a form of punishment or humiliation; search an unaccompanied child's personal belongings solely for the purpose of behavior management; apply medical interventions that are not prescribed by a medical provider acting within the usual course of professional practice for a medical diagnosis or that increase risk of harm to the unaccompanied child or others; and

(2) Use any sanctions employed in relation to an individual unaccompanied child that:

(i) Adversely affect an unaccompanied child's health, or physical, emotional, or psychological well-being; or

(ii) Deny unaccompanied children meals, hydration, sufficient sleep, routine personal grooming activities, exercise (including daily outdoor activity), medical care, correspondence or communication privileges, religious observation and services, or legal assistance.

(3) Use prone physical restraints, chemical restraints, or peer restraints for any reason in any care provider facility setting.

(b) Involving law enforcement should be a last resort. A call by a facility to law enforcement may trigger an evaluation of staff involved regarding their qualifications and training in trauma-informed, de-escalation techniques.

(c) Standard programs and residential treatment centers (RTCs) are prohibited from using seclusion. Standard programs and RTCs are also prohibited from using restraints, except as described at paragraphs (d) and (f) of this section.

(d) Standard programs and RTCs may use personal restraint only in emergency safety situations.

(e) Secure facilities (that are not RTCs):

(1) May use personal restraints, mechanical restraints and/or seclusion in emergency safety situations, and as consistent with State licensure requirements. All instances of seclusion must be supervised and for the short time-limited purpose of ameliorating the underlying emergency risk that poses a serious and immediate danger to the safety of others.

(2) May restrain an unaccompanied child for their own immediate safety or that of others during transport.

(3) May restrain an unaccompanied child while at an immigration court or asylum interview if the child exhibits imminent runaway behavior, makes violent threats, demonstrates violent behavior, or if the secure facility has made an individualized determination that the child poses a serious risk of violence or running away if the child is unrestrained in court or the interview.

(4) Must provide all mandated services under this subpart to the unaccompanied child to the greatest extent practicable under the circumstances while ensuring the safety of the unaccompanied child, other unaccompanied children at the secure facility, and others.

(f) Care provider facilities may only use soft restraints (e.g., zip ties and leg or ankle weights) during transport to and from secure facilities, and only when the care provider believes a child poses a serious risk of physical harm to self or others or a serious risk of running away from ORR custody.

**§410.1305 Staff, training, and case manager requirements.**

(a) Standard programs, restrictive placements, and post-release service (PRS) providers shall provide training to all staff, contractors, and volunteers, to ensure that they understand their obligations under ORR regulations in this part and policies and are responsive to the challenges faced by staff and unaccompanied children. Standard programs and restrictive placements shall ensure that staff are appropriately trained on its behavior management strategies, including de-escalation techniques, as established pursuant to §410.1304. All trainings should be tailored to the unique needs, attributes, and gender of the unaccompanied children in care at the individual care provider facility. Standard programs, restrictive placements, and PRS providers must document the completion of all trainings in personnel files. All staff, contractors, and volunteers must have completed required background checks and vetting for their respective roles required by ORR;

(b) Care provider facilities shall meet the staff to child ratios established by their respective States or other licensing entities; and

(c) Care provider facilities shall have case managers based on site at the facility.

**§ 410.1306 Language access services.**

(a) *General.* (1) To the greatest extent practicable, care provider facilities shall consistently offer unaccompanied children the option of interpretation and translation services in their native or preferred language, depending on the unaccompanied children's preference, and in a way they effectively understand. If after taking reasonable efforts, care provider facilities are unable to obtain a qualified interpreter or translator for the unaccompanied children's native or preferred language, depending on the children's preference, care provider facilities shall consult with qualified ORR staff for guidance on how to ensure meaningful access to their programs and activities for the children, including those with limited English proficiency.

(2) Care provider facilities shall prioritize the ability to provide in-person, qualified interpreters for unaccompanied children who need them, particularly for rare or indigenous languages. After care provider facilities take reasonable efforts to obtain in-person, qualified interpreters, then they may use qualified remote interpreter services.

(3) Care provider facilities shall translate all documents and materials shared with the unaccompanied children, including those posted in the facilities, in the unaccompanied children's native or preferred language, depending on the children's preference, and in a timely manner.

(b) *Placement considerations.* ORR shall make placement decisions for the unaccompanied children that are informed in part by language access considerations and other factors as listed in § 410.1103(b). To the extent appropriate and practicable, giving due consideration to an unaccompanied child's individualized needs, ORR shall place unaccompanied children with similar language needs within the same care provider facility.

(c) *Intake, orientation, and confidentiality.* (1) Prior to completing the UC Assessment and starting counseling services, care provider facilities shall provide a written notice of the limits of confidentiality they share while in ORR care and custody, and orally explain the contents of the written notice to the unaccompanied children, in their native or preferred language, depending on the children's preference, and in a way they can effectively understand.

(2) Care provider facilities shall conduct assessments and initial medical exams with unaccompanied children in their native or preferred language, depending on the children's preference, and in a way they effectively understand.

(3) Care provider facilities shall provide a standardized and comprehensive orientation to all unaccompanied children in their native or preferred language, depending on the children's preference, and in a way they effectively understand regardless of spoken language, reading comprehension level, or disability.

(4) For all step-ups to and step-downs from restrictive placements, care provider facilities shall explain to the unaccompanied children why they were placed in a restrictive setting and/or if their placement was changed and do so in the unaccompanied children's native or preferred language, depending on the children's preference, and in a way they effectively understand. All documents shall be translated into the unaccompanied children's and/or sponsor's native or preferred language, depending on the children's preference.

(5) If the unaccompanied children are not literate, or if the documents provided during intakes and/or orientation are not translated into a language that they can read and effectively understand, the care provider facility shall have a qualified interpreter orally translate or sign language translate and explain all the documents in the unaccompanied children's native or preferred language, depending on the children's preference, and confirm with the unaccompanied children that they fully comprehend all material.

(6) Care provider facilities shall provide information regarding grievance

reporting policies and procedures in the unaccompanied children's native or preferred language, depending on the children's preference, and in a way they effectively understand. Care provider facilities shall also provide grievance reporting policies and procedures in a manner accessible to unaccompanied children with disabilities.

(7) Care provider facilities shall educate unaccompanied children on ORR's sexual abuse and sexual harassment policies in the unaccompanied children's native or preferred language, depending on the children's preference, and in a way they effectively understand.

(8) Care provider facilities shall notify the unaccompanied children that care provider facilities shall accommodate the unaccompanied children's language needs while they remain in ORR care.

(9) For paragraphs (c)(1) through (8) of this section, care provider facilities shall document that the unaccompanied children acknowledge that they effectively understand what was provided to them in the child's case files.

(d) *Education.* (1) Care provider facilities shall provide educational instruction and relevant materials in a format and language accessible to all unaccompanied children, regardless of the child's native or preferred language, including, but not limited to, providing services from an in-person, qualified interpreter, written translations of materials, and qualified remote interpretation when in-person interpretation options have been exhausted.

(2) Care provider facilities shall provide unaccompanied children with appropriate recreational reading materials in languages in formats and languages accessible to all unaccompanied children for use during their leisure time.

(3) Care provider facilities shall translate all ORR-required documents provided to unaccompanied children that are part of educational lessons in formats and languages accessible to all unaccompanied children. If written translations are not available, care provider facilities shall orally translate or sign language translate all documents, prioritizing services from an in-person, qualified interpreter and

translation before using qualified remote interpretation and translation services.

(e) *Religious and cultural observation and services.* If an unaccompanied child requests religious and/or cultural information or items, the care provider facility shall provide the requested items in the unaccompanied child's native or preferred language, depending on the child's preference, and as long as the request is reasonable.

(f) *Parent and sponsor communications.* Care provider facilities shall utilize any necessary qualified interpretation or translation services needed to ensure meaningful access by an unaccompanied child's parent(s), guardian(s), and/or potential sponsor(s). Care provider facilities shall translate all documents and materials shared with the parent(s), guardian, and/or potential sponsors in their native or preferred language, depending on their preference.

(g) *Healthcare services.* While providing or arranging healthcare services for unaccompanied children, care provider facilities shall ensure that unaccompanied children are able to communicate with physicians, clinicians, and healthcare staff in their native or preferred language, depending on the unaccompanied children's preference, and in a way the unaccompanied children effectively understand, prioritizing services from an in-person, qualified interpreter before using qualified remote interpretation services.

(h) *Legal services.* Care provider facilities shall make qualified interpretation and/or translation services available to unaccompanied children, child advocates, and legal service providers upon request while unaccompanied children are being provided with those services. Such services shall be available to unaccompanied children in enclosed, confidential areas.

(i) *Interpreter's and translator's responsibility with respect to confidentiality of information.* Qualified interpreters and translators shall keep confidential all information they receive about the unaccompanied children's cases and/or

services while assisting ORR, its grantees, and its contractors, with the provision of case management or other services. Qualified interpreters and translators shall not disclose case file information to other interested parties or to individuals or entities that are not employed by ORR or its grantees and contractors or that are not providing services under the direction of ORR. Qualified interpreters and translators shall not disclose any communication that is privileged by law or protected as confidential under this part unless authorized to do so by the parties to the communication or pursuant to court order.

**§ 410.1307 Healthcare services.**

(a) ORR shall ensure that all unaccompanied children in ORR custody will be provided with routine medical and dental care; access to medical services requiring heightened ORR involvement, consistent with paragraph (c) of this section; family planning services; and emergency healthcare services.

(b) Standard programs and restrictive placements shall be responsible for:

(1) Establishment of a network of licensed healthcare providers established by the care provider facility, including specialists, emergency care services, mental health practitioners, and dental providers that will accept ORR's fee-for-service billing system;

(2) A complete medical examination (including screening for infectious disease) within 2 business days of admission, excluding weekends and holidays, unless the unaccompanied child was recently examined at another facility and if unaccompanied children are still in ORR custody 60 to 90 days after admission, an initial dental exam, or sooner if directed by State licensing requirements;

(3) Appropriate immunizations as recommended by the Advisory Committee on Immunization Practices' Child and Adolescent Immunization Schedule and approved by HHS's Centers for Disease Control and Prevention;

(4) An annual physical examination, including hearing and vision screening, and follow-up care for acute and chronic conditions;

(5) Administration of prescribed medication and special diets;

(6) Appropriate mental health interventions when necessary;

(7) Having policies and procedures for identifying, reporting, and controlling communicable diseases that are consistent with applicable State, local, and Federal laws and regulations.

(8) Having policies and procedures that enable unaccompanied children, including those with language and literacy barriers, to convey written and oral requests for emergency and non-emergency healthcare services;

(9) Having policies and procedures based on State or local laws and regulations to ensure the safe, discreet, and confidential provision of prescription and nonprescription medications to unaccompanied children, secure storage of medications, and controlled administration and disposal of all drugs. A licensed healthcare provider must write or orally order all nonprescription medications, and oral orders must be documented in the unaccompanied child's file;

(10) Medical isolation may be used according to the following requirements:

(i) An unaccompanied child may be placed in medical isolation and excluded from contact with the general population in order to prevent the spread of an infectious disease due to a potential exposure, protect other unaccompanied children, and care provider facility staff for a medical purpose or as required under State, local, or other licensing rules, as long as the medically required isolation is limited only to the extent necessary to ensure the health and welfare of the unaccompanied child, other unaccompanied children at a care provider facility and care provider facility staff, or the public at large.

(ii) Standard programs and restrictive placements must provide all mandated services under this subpart to the greatest extent practicable under the circumstances to unaccompanied children in medical isolation. Medically isolated unaccompanied children still must be supervised under State, local, or other licensing ratios, and, if multiple unaccompanied children are in medical isolation, they should be

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placed in units or housing together (as practicable, given the nature or type of medical issue giving rise to the requirement for isolation in the first instance); and

(11) Urgent dental care if an unaccompanied child is experiencing an urgent dental issue (acute tooth pain, procedure(s) needed to maintain basic function, *i.e.*, severe and/or acute infection or a severe and/or acute infection is imminent). Care should be provided as soon as possible and not be delayed while awaiting the initial dental exam.

(c) ORR must not prevent unaccompanied children in ORR care from accessing healthcare services, including medical services requiring heightened ORR involvement and family planning services. ORR must make reasonable efforts to facilitate access to those services if requested by the unaccompanied child. Further, if there is a potential conflict between the standards and requirements set forth in this section and State law, such that following the requirements of State law would diminish the services available to unaccompanied children under this section and ORR policies, ORR will review the circumstances to determine how to ensure that it is able to meet its responsibilities under Federal law. If a State law or license, registration, certification, or other requirement conflicts with an ORR employee's duties within the scope of their ORR employment, the ORR employee is required to abide by their Federal duties, subject to applicable Federal religious freedom and conscience protections, to ensure unaccompanied children have access to all services available under this section and other ORR policies.

(1) *Initial placement and transfer considerations*—(i) *Initial placement*. Consistent with § 410.1103, when placing an unaccompanied child, ORR shall consider the child's individualized needs and any specialized services or treatment required or reasonably requested. Such services or treatment include but are not limited to access to medical specialists, family planning services, and medical services requiring heightened ORR involvement. When such care is determined to be medically necessary during the referral, intake process, Initial Medical Exam, or at any

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point while the unaccompanied child is in ORR custody, or the unaccompanied child reasonably requests such medical care while in ORR custody, ORR shall, to the greatest extent possible, identify available and appropriate bed space and place the unaccompanied child at a care provider facility that is able to provide or arrange such care, is in an appropriate location to support the unaccompanied child's healthcare needs, and affords access to an appropriate medical provider who is able to perform any reasonably requested or medically necessary services.

(ii) *Transfers*. If an appropriate initial placement is not immediately available or if the unaccompanied child's need or request for medical care is identified after the Initial Medical Exam, care providers shall immediately notify ORR and ORR shall, to the greatest extent possible, transfer the unaccompanied child needing medical care to an ORR program that meets the qualifications in paragraph (c)(1)(i) of this section.

(2) *Transportation*. ORR shall ensure unaccompanied children have access to medical care, including transportation across State lines and associated ancillary services if necessary to access appropriate medical services, including access to medical specialists, family planning services, and medical services requiring heightened ORR involvement. The requirement in this paragraph (c)(2) applies regardless of whether Federal appropriations law prevents ORR from paying for the medical care itself.

(d) Care provider facilities shall notify ORR within 24 hours of an unaccompanied child's need or request for medical services requiring heightened ORR involvement or the discovery of a pregnancy.

### § 410.1308 Child advocates.

(a) *Child advocates*. This section sets forth the provisions relating to the appointment and responsibilities of independent child advocates for child trafficking victims and other especially vulnerable unaccompanied children.

(b) *Role of the child advocate*. Child advocates are third parties who make

independent recommendations regarding the best interests of an unaccompanied child. Their recommendations are based on information obtained from the unaccompanied child and other sources (including, but not limited to, the unaccompanied child's parents, the family, potential sponsors/sponsors, government agencies, legal service providers, protection and advocacy system representatives in appropriate cases, representatives of the unaccompanied child's care provider, health professionals, and others). Child advocates formally submit their recommendations to ORR and/or the immigration court, where appropriate, in the form of best interest determinations (BIDs).

(c) *Responsibilities of the child advocate.* The child advocate's responsibilities include, but are not limited to:

(1) Visiting with their unaccompanied child client;

(2) Explaining the consequences and potential outcomes of decisions that may affect their unaccompanied child client;

(3) Advocating for their unaccompanied child client's best interest with respect to care, placement, services, release, and within proceedings to which the child is a party;

(4) Providing best interest determinations, where appropriate and within a reasonable time to ORR, an immigration court, and/or other stakeholders involved in a proceeding or matter in which the unaccompanied child is a party or has an interest; and,

(5) Regularly communicating case updates with the care provider facility, ORR, and/or other stakeholders in the planning and performance of advocacy efforts, including updates related to services provided to an unaccompanied child after their release from ORR care.

(d) *Appointment of child advocates.* ORR may appoint child advocates for unaccompanied children who are victims of trafficking or especially vulnerable.

(1) An interested party may refer an unaccompanied child for a child advocate when the unaccompanied child is currently, or was previously in, ORR's care and custody, and when that child has been determined to be a victim of trafficking or especially vulnerable. As

used in this paragraph (d)(1), *interested parties* means individuals or organizations involved in the care, service, or proceeding involving an unaccompanied child, including but not limited to, ORR Federal or contracted staff; an immigration judge; DHS Staff; a legal service provider, attorney of record, or DOJ Accredited Representative; an ORR care provider; healthcare professional; or a child advocate organization.

(2) ORR shall make an appointment decision within five (5) business days of a referral for a child advocate, except under exceptional circumstances which may delay a decision regarding an appointment. ORR will appoint child advocates for unaccompanied children who are currently in or were previously in ORR care and custody. ORR does not appoint child advocates for unaccompanied children who are not in or were not previously in ORR care and custody.

(3) Child advocate appointments terminate upon the closure of the unaccompanied child's case by the child advocate; when the unaccompanied child turns 18; or when the unaccompanied child obtains lawful immigration status.

(e) *Child advocate's access to information.* After a child advocate is appointed for an unaccompanied child, the child advocate shall be provided access to materials to effectively advocate for the best interest of the unaccompanied child. Child advocates shall be provided access to their clients during normal business hours at an ORR care provider facility and shall be provided access to all their client's case file information and may request copies of the case file directly from the unaccompanied child's care provider without going through ORR's standard case file request process.

(f) *Child advocate's responsibility with respect to confidentiality of information.* Child advocates shall keep the information in the case file, and information about the unaccompanied child's case, confidential. A child advocate may only disclose information from the case file with informed consent from the child when this is in the child's best interests. With regard to an unaccompanied child in ORR care,

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ORR shall allow the child advocate of that unaccompanied child to conduct private communications with the unaccompanied child, in a private area that allows for confidentiality for in-person and virtual or telephone meetings.

(g) *Non-retaliation against child advocates.* ORR shall presume that child advocates are acting in good faith with respect to their advocacy on behalf of unaccompanied children, and shall not retaliate against a child advocate for actions taken within the scope of their responsibilities. For example, ORR shall not retaliate against child advocates because of any disagreement with a best interest determination in regard to an unaccompanied child, or because of a child advocate's advocacy on behalf of an unaccompanied child.

**§ 410.1309 Legal services.**

(a) *Unaccompanied children's access to immigration legal services—(1) Purpose.* This paragraph (a) describes ORR's responsibilities in relation to legal services for unaccompanied children, consistent with 8 U.S.C. 1232(c)(5).

(2) *Orientation.* An unaccompanied child in ORR's legal custody shall receive:

(i) An in-person, telephonic, or video presentation concerning the rights and responsibilities of undocumented children in the immigration system, presented in the native or preferred language of the unaccompanied child and in an age-appropriate manner.

(A) Such presentation shall be provided by an independent legal service provider that has appropriate qualifications and experience, as determined by ORR, to provide such presentation and shall include information notifying the unaccompanied child of their legal rights and responsibilities, including protections under child labor laws, and of services to which they are entitled, including educational services. The presentation must be delivered in the native or preferred language of the unaccompanied child and in an age-appropriate manner.

(B) Such presentation shall occur within 10 business days of child's admission to ORR, within 10 business days of a child's transfer to a new ORR facility (except ORR long-term home care or ORR transitional home care),

and every 6 months for unrepresented children who remain in ORR custody, as practicable. If the unaccompanied child is released before 10 business days, a legal service provider shall follow up as soon as practicable to complete the presentation, in person or remotely.

(ii) Information regarding the availability of free legal assistance and that they may be represented by counsel at no expense to the Government. When an unaccompanied child requests legal counsel, ORR shall ensure that the child is provided with a list and contact information for pro bono counsel, and reasonable assistance to ensure that the child is able to successfully engage an attorney at no cost to the Government.

(iii) Notification regarding the child's ability to petition for Special Immigrant Juvenile (SIJ) classification, to request that a juvenile court determine dependency or placement in accordance with § 410.1209, and notification of the ability to apply for asylum or other forms of relief from removal.

(iv) Information regarding the unaccompanied child's right to a removal hearing before an immigration judge, the ability to apply for asylum with United States Citizenship and Immigration Services (USCIS) in the first instance, and the ability to request voluntary departure in lieu of removal.

(v) A confidential legal consultation with a qualified attorney (or paralegal working under the direction of an attorney, or DOJ Accredited Representative) to determine possible forms of relief from removal in relation to the unaccompanied child's immigration case, as well as other case disposition options such as, but not limited to, voluntary departure. Such consultation shall occur within 10 business days of a child's transfer to a new ORR facility (except ORR long-term home care or ORR transitional home care) or upon request from ORR. ORR shall request an additional legal consultation on behalf of a child, if the child has been identified as:

(A) A potential victim of a severe form of trafficking;

(B) Having been abused, abandoned, or neglected; or

(C) Having been the victim of a crime or domestic violence; or

(D) Persecuted or in fear of persecution due to race, religion, nationality, membership in a particular social group, or for a political opinion.

(vi) An unaccompanied child in ORR care shall be able to conduct private communications with their attorney of record, DOJ Accredited Representative, or legal service provider in a private enclosed area that allows for confidentiality for in-person, virtual, or telephonic meetings.

(vii) Information regarding the child's right to a hearing before an independent HHS hearing officer, to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released, as described at § 410.1903(a) and (b).

(3) *Accessibility of information.* In addition to the requirements in paragraphs (a)(1) and (2) of this section for orienting and informing unaccompanied children of their legal rights and access to services while in ORR care, ORR shall also require this information be posted for unaccompanied children in an age-appropriate format and translated into each child's preferred language, in any ORR contracted or grant-funded facility where unaccompanied children are in ORR care.

(4) *Direct immigration legal representation services for unaccompanied children currently or previously under ORR care.* To the extent ORR determines that appropriations are available, and insofar as it is not practicable for ORR to secure pro bono counsel, ORR shall fund legal service providers to provide direct immigration legal representation for certain unaccompanied children, subject to ORR's discretion and available appropriations. Examples of direct immigration legal representation include, but are not limited to:

(i) For unrepresented unaccompanied children who become enrolled in ORR Unaccompanied Refugee Minor (URM) programs, provided they have not yet obtained immigration relief or reached 18 years of age at the time of retention of an attorney;

(ii) For unaccompanied children in ORR care who are in proceedings before EOIR, including unaccompanied chil-

dren seeking voluntary departure, and for whom other available assistance does not satisfy the legal needs of the individual child;

(iii) For unaccompanied children released to a sponsor residing in the defined service area of the same legal service provider who provided the child legal services in ORR care, to promote continuity of legal services; and

(iv) For other unaccompanied children, to the extent ORR determines that appropriations are available.

(b) *Legal services for the protection of unaccompanied children's interests in certain matters not involving direct immigration representation—(1) Purpose.* This paragraph (b) provides for the use of additional funding for legal services, to the extent that ORR determines it to be available, to help ensure that the interests of unaccompanied children are considered in certain matters relating to their care and custody, to the greatest extent practicable.

(2) *Funding.* To the extent ORR determines that appropriations are available, and insofar as it is not practicable for ORR to secure pro bono counsel, ORR may fund access to counsel for unaccompanied children, including for purposes of legal representation, in the following enumerated non-immigration related matters, subject to ORR's discretion and in no particular order of priority:

(i) ORR appellate procedures, including Placement Review Panel (PRP), under § 410.1902, and risk determination hearings, under § 410.1903;

(ii) For unaccompanied children upon their placement in ORR long-term home care or in a residential treatment center outside a licensed ORR facility, and for whom other legal assistance does not satisfy the legal needs of the individual child;

(iii) For unaccompanied children with no identified sponsor who are unable to be placed in ORR long-term home care or ORR transitional home care;

(iv) For purposes of judicial bypass or similar legal processes as necessary to enable an unaccompanied child to access certain lawful medical procedures that require the consent of the parent or legal guardian under State law, and

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when the unaccompanied child is unable or unwilling to obtain such consent;

(v) For the purpose of representing an unaccompanied child in state juvenile court proceedings, when the unaccompanied child already possesses SIJ classification; and

(vi) For the purpose of helping an unaccompanied child to obtain an employment authorization document.

(c) *Standards for legal services for unaccompanied children.* (1) In-person meetings are preferred during the course of providing legal counsel to any unaccompanied child under paragraph (a) or (b) of this section, though telephonic or teleconference meetings between the unaccompanied child's attorney or DOJ Accredited Representative and the unaccompanied child may substitute as appropriate. Either the unaccompanied child's attorney, DOJ Accredited Representative, or a care provider staff member or care provider shall always accompany the unaccompanied child to any in-person courtroom hearing or proceeding, in connection with any legal representation of an unaccompanied child pursuant to this section.

(2) Upon receipt by ORR of proof of representation and authorization for release of records signed by the unaccompanied child or other authorized representative, ORR shall share, upon request and within a reasonable timeframe to be established by ORR, the unaccompanied child's complete case file, apart from any legally required redactions, to assist in the legal representation of the unaccompanied child. In addition to sharing the complete case file, upon request by an attorney of record or DOJ Accredited Representative, ORR shall promptly provide the attorney of record or DOJ Accredited Representative with the name and telephone number of potential sponsors who have submitted a completed family reunification application to ORR for their client, if the potential sponsors have provided consent to release of their information. Furthermore, and absent a reasonable belief based upon articulable facts that doing so would endanger an unaccompanied child, ORR shall ensure that unaccompanied children are allowed to

review, upon request and in the company of their attorney of record or DOJ Accredited Representative if any, such papers, notes, and other writings they possessed at the time they were apprehended by DHS or another Federal department or agency, that are in ORR or an ORR care provider facility's possession.

(3) If an unaccompanied child's attorney of record or DOJ Accredited Representative properly requests their client's case file on an expedited basis, ORR shall, within seven calendar days, unless otherwise provided herein, provide the attorney of record or DOJ Accredited Representative with key documents from the unaccompanied child's case file, as determined by ORR.

(4) Expedited basis refers to any of the following situations:

(i) Unaccompanied child has been reported missing to the National Center for Missing and Exploited Children;

(ii) Unaccompanied child has a court hearing scheduled within 30 calendar days;

(iii) Unaccompanied child is turning 18 years old in less than 30 calendar days;

(iv) Unaccompanied child has a risk determination hearing pursuant to § 410.1903 of this part scheduled within 30 calendar days;

(v) Records are needed for the provision of medical services to the child;

(vi) Records are needed for the child's enrollment or continued enrollment in school;

(vii) Records are needed for a Federal, State, or local agency investigation related to the subject of the request; or

(viii) Any other situation in which ORR determines, in its discretion, that an expedited response is warranted.

(d) *Grants or contracts for unaccompanied children's immigration legal services.* (1) This paragraph (d) prescribes requirements concerning grants or contracts to legal service providers to ensure that all unaccompanied children who are or have been in ORR care have access to counsel to represent them in immigration legal proceedings or matters and to protect them from mistreatment, exploitation and trafficking, to the greatest extent practicable, in accordance with the TVPRA

[at 8 U.S.C. 1232(c)(5)] and 292 of the Immigration and Nationality Act [at 8 U.S.C. 1362].

(2) ORR may make grants, in its discretion and subject to available resources—including formula grants distributed geographically in proportion to the population of released unaccompanied children—or contracts under this section to qualified agencies or organizations, as determined by ORR and in accordance with the eligibility requirements outlined in the authorizing statute, for the purpose of providing immigration legal representation, assistance and related services to unaccompanied children who are in ORR care, or who have been released from ORR care and living in a State or region.

(3) Subject to the availability of funds, grants or contracts shall be calculated based on the historic proportion of the unaccompanied child population in the State within a lookback period determined by the Director, provided annually by the State.

(e) *Non-retaliation against legal service providers.* ORR shall presume that legal service providers and other legal representatives are acting in good faith with respect to their advocacy on behalf of unaccompanied children and ORR shall not retaliate against a legal service provider or other legal representative for actions taken within the scope of the legal service provider's or representative's responsibilities. For example, ORR shall not engage in retaliatory actions against legal service providers or any other representative for reporting harm or misconduct on behalf of an unaccompanied child or appearance in an action adverse to ORR.

(f) *Resource email box.* ORR shall create and maintain a resource email box for feedback from legal services providers regarding emerging issues related to immediate performance of legal services at care provider facilities. ORR shall address such emerging issues as needed.

**§410.1310 Psychotropic medications.**

(a) Except in the case of a psychiatric emergency, ORR shall ensure that authorized individuals provide informed consent prior to the administration of

psychotropic medications to unaccompanied children.

(1) Three categories of persons can serve as an “authorized consentor” and provide informed consent for the administration of psychotropic medication to unaccompanied children in ORR custody: the child’s parent or legal guardian, followed by a close relative sponsor, and then the unaccompanied child himself if the child is of sufficient age and a doctor has obtained informed consent; and

(2) Consent must be obtained voluntarily, without undue influence or coercion, and ORR will not retaliate against an unaccompanied child or an authorized consentor for refusing to take or consent to any psychotropic medication; and

(3) Any emergency administration of psychotropic medication must be documented, the child’s authorized consentor must be notified as soon as possible, and the care provider and ORR must review the incident to ensure compliance with ORR policies and reasonably avoid future emergency administrations of medication.

(b) ORR shall ensure meaningful oversight of the administration of psychotropic medication(s) to unaccompanied children including reviewing cases flagged by care providers and conducting additional reviews of the administration of psychotropic medications in high-risk circumstances, including but not limited to cases involving young children, simultaneous administration of multiple psychotropic medications, and high dosages. ORR must engage qualified professionals who are able to oversee prescription practices and provide guidance to care providers, such as a child and adolescent psychiatrist.

(c) ORR shall permit unaccompanied children to have the assistance of counsel, at no cost to the Federal Government, with respect to the administration of psychotropic medications.

**§410.1311 Unaccompanied children with disabilities.**

(a) ORR shall provide notice to the unaccompanied children in its custody of the protections against discrimination under section 504 of the Rehabilitation Act at 45 CFR part 85 assured to

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children with disabilities in its custody. ORR must also provide notice of the available procedures for seeking reasonable modifications or making a complaint about alleged discrimination against children with disabilities in ORR's custody. This notice must be provided in a manner that is accessible to children with disabilities.

(b) ORR shall administer the UC Program in the most integrated setting appropriate to the needs of unaccompanied children with disabilities in accordance with 45 CFR 85.21(d), unless ORR can demonstrate that this would fundamentally alter the nature of its UC Program.

(c) ORR shall make reasonable modifications to its programs, including the provision of services, equipment, and treatment, so that an unaccompanied child with one or more disabilities can have equal access to the UC Program in the most integrated setting appropriate to their needs. ORR is not required, however, to take any action that it can demonstrate would fundamentally alter the nature of a program or activity.

(d) Where applicable, ORR shall document in the child's ORR case file any services, supports, or program modifications being provided to an unaccompanied child with one or more disabilities.

(e) In addition to the requirements for release of unaccompanied children established elsewhere in this part and through any subregulatory guidance ORR may issue, ORR shall adhere to the following requirements when releasing unaccompanied children with disabilities to a sponsor:

(1) ORR's assessment under § 410.1202 of a potential sponsor's capability to provide for the physical and mental well-being of the child must necessarily include explicit consideration of the impact of the child's disability or disabilities. Correspondingly, ORR must consider the potential benefits to the child of release to a community-based setting.

(2) In planning for a child's release and conducting post-release services (PRS), ORR and any entities through which ORR provides PRS shall make reasonable modifications in their policies, practices, and procedures if need-

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ed to enable released unaccompanied children with disabilities to live in the most integrated setting appropriate to their needs, such as with a sponsor. ORR is not required, however, to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity. ORR will affirmatively support and assist otherwise viable potential sponsors in accessing and coordinating appropriate post-release community-based services and supports available in the community to support the sponsor's ability to care for a child with one or more disabilities, as provided for under § 410.1210.

(3) ORR shall not delay the release of a child with one or more disabilities solely because post-release services are not in place before the child's release.

### Subpart E—Transportation of an Unaccompanied Child

#### § 410.1400 Purpose of this subpart.

This subpart concerns the safe transportation of each unaccompanied child while in ORR's care.

#### § 410.1401 Transportation of an unaccompanied child in ORR's care.

(a) ORR care provider facilities shall transport an unaccompanied child in a manner that is appropriate to the child's age and physical and mental needs, including proper use of car seats for young children, and consistent with § 410.1304.

(b) When ORR plans to release an unaccompanied child from its care to a sponsor under the provisions at subpart C of this part, ORR shall assist without undue delay in making transportation arrangements. In its discretion, ORR may require the care provider facility to transport an unaccompanied child. In these circumstances, ORR may, in its discretion, either reimburse the care provider facility or directly pay for the child and/or sponsor's transportation, as appropriate, to facilitate timely release.

(c) The care provider facility shall comply with all relevant State and local licensing requirements and state and Federal regulations regarding transportation of children, such as meeting or exceeding the minimum

staff/child ratio required by the care provider facility's licensing agency, maintaining and inspecting all vehicles used for transportation, etc.

(d) If there is a potential conflict between ORR's regulations in this part and State law, ORR shall review the circumstances to determine how to ensure that it is able to meet its statutory responsibilities. If a State law or license, registration, certification, or other requirement conflicts with an ORR employee's duties within the scope of their ORR employment, the ORR employee is required to abide by their Federal duties, subject to applicable Federal religious freedom and conscience protections.

(e) The care provider facility or contractor shall conduct all necessary background checks for individuals transporting unaccompanied children, in compliance with §410.1305(a).

(f) If a care provider facility is transporting an unaccompanied child, it shall assign at least one transport staff of the same gender as the child being transported, to the greatest extent possible under the circumstances.

**Subpart F—Data and Reporting Requirements**

**§410.1500 Purpose of this subpart.**

ORR shall maintain statistical and other data on the unaccompanied children for whom it is responsible. ORR shall be responsible for coordinating with other Departments to obtain some of the statistical data and shall obtain additional data from care provider facilities. This subpart describes information that care provider facilities shall report to ORR such that ORR may compile and maintain statistical information and other data on unaccompanied children.

**§410.1501 Data on unaccompanied children.**

Care provider facilities are required to report information necessary for ORR to maintain data in accordance with this section. Data shall include:

(a) Biographical information, such as an unaccompanied child's name, gender, date of birth, country of birth, whether of indigenous origin, country of habitual residence, and, if volun-

tarily disclosed, self-identified LGBTQI+ status or identity;

(b) The date on which the unaccompanied child came into Federal custody by reason of the child's immigration status, including the date on which the unaccompanied child came into ORR custody;

(c) Information relating to the unaccompanied child's placement, removal, or release from each care provider facility in which the unaccompanied child has resided, including the date on which and to whom the child is transferred, removed, or released;

(d) In any case in which the unaccompanied child is placed in detention or released, an explanation relating to the detention or release;

(e) The disposition of any actions in which the unaccompanied child is the subject;

(f) Information gathered from assessments, evaluations, or reports of the child; and,

(g) Data necessary to evaluate and improve the care and services for unaccompanied children, including:

(1) Data relating to the administration of psychotropic medications. Such information shall include children's diagnoses, the prescribing physician's information, the name and dosage of the medication prescribed, documentation of informed consent, and any emergency administration of medication. Such data shall be compiled in a manner that enables ORR to track how psychotropic medications are administered across the network and in individual facilities.

(2) Data relating to the treatment of unaccompanied children with disabilities. Such information shall include whether an unaccompanied child has been identified as having a disability, the unaccompanied child's diagnosis, the unaccompanied child's need for reasonable modifications or other services, and information related to release planning. Such data shall be compiled in a manner that enables ORR ongoing oversight to ensure unaccompanied children with disabilities are receiving appropriate care while in ORR care across the network and in individual facilities.

### Subpart G—Transfers

#### § 410.1600 Purpose of this subpart.

This subpart provides guidelines for the transfer of an unaccompanied child.

#### § 410.1601 Transfer of an unaccompanied child within the ORR care provider facility network.

(a) *General requirements for transfers.* The care provider facility shall continuously assess unaccompanied children in their care to review whether the children's placements are appropriate. An unaccompanied child shall be placed in the least restrictive setting that is in the best interests of the child, subject to considerations regarding danger to self or the community and runaway risk. Care provider facilities shall follow ORR guidance, including guidance regarding placement considerations, when making transfer recommendations.

(1) If the care provider facility identifies an alternate placement for the unaccompanied child that would best meet the child's needs, the care provider facility shall make a transfer recommendation to ORR for approval within three business days of identifying the need for a transfer.

(2) The care provider facility shall ensure the unaccompanied child is medically cleared for transfer within three business days of ORR identifying the need for a transfer, unless otherwise waived by ORR. For an unaccompanied child with acute or chronic medical conditions, or seeking medical services requiring heightened ORR involvement, the appropriate care provider facility staff and ORR shall meet to review the transfer recommendation. If a child is not medically cleared for transfer within three business days, the care provider facility shall notify ORR, and ORR shall review and determine if the child is fit for travel. If ORR determines the child is not fit for travel, ORR shall notify the care provider facility of the denial and specify a timeframe for the care provider facility to re-evaluate the child for transfer.

(3) Within 48 hours prior to the unaccompanied child's physical transfer, the referring care provider facility

shall notify all appropriate interested parties of the transfer, including the child's attorney of record or DOJ Accredited Representative, legal service provider, or child advocate, as applicable. However, such advance notice is not required in unusual and compelling circumstances, such as the following cases in which notices shall be provided within 24 hours following transfer:

(i) Where the safety of the unaccompanied child or others has been threatened;

(ii) Where the unaccompanied child has been determined to be a runaway risk consistent with § 410.1107; or

(iii) Where the interested party has waived such notice.

(4) The unaccompanied child shall be transferred with the child's possessions and legal papers, including, but not limited to:

(i) Personal belongings;

(ii) The transfer request and tracking form;

(iii) 30-day medication supply, if applicable;

(iv) All health records; and

(v) Original documents (including birth certificates).

(5) If the unaccompanied child's possessions exceed the amount permitted normally by the carrier in use, the care provider shall ship the possessions to a subsequent placement of the unaccompanied child in a timely manner.

(b) *Restrictive care provider facility placements and transfers.* When an unaccompanied child is placed in a restrictive setting (secure, heightened supervision, or residential treatment center), the care provider facility in which the child is placed and ORR shall review the placement at least every 30 days to determine whether a new level of care is appropriate for the child. If the care provider facility and ORR determine in the review that continued placement in a restrictive setting is appropriate, the care provider facility shall document the basis for its determination and, upon request, provide documentation of the review and rationale for continued placement to the child's attorney of record, legal service provider, and/or child advocate.

(c) *Group transfers.* At times, circumstances may require a care provider facility to transfer more than one

unaccompanied child at a time (e.g., emergencies, natural disasters, program closures, and bed capacity constraints). For group transfers, the care provider facility shall follow ORR guidance and the requirements in paragraph (a) of this section.

(d) *Residential treatment center placements.* A care provider facility may request ORR to transfer an unaccompanied child in its care to a residential treatment center (RTC), pursuant to the requirements described at § 410.1105(c). The care provider facility shall review the placement of a child into an RTC every 30 days in accordance with paragraph (b) of this section.

(e) *Emergency placement changes.* An unaccompanied child who is placed pursuant to subpart B of this part remains in the legal custody of ORR and may only be transferred or released by ORR. However, in the event of an emergency, a care provider facility may temporarily change the physical placement of an unaccompanied child prior to securing permission from ORR but shall notify ORR of the change of physical placement, as soon as possible, but in all cases within eight hours of transfer.

### Subpart H—Age Determinations

#### § 410.1700 Purpose of this subpart.

This subpart sets forth the provisions for determining the age of an individual in ORR custody.

#### § 410.1701 Applicability.

This subpart applies to individuals in the custody of ORR. To meet the definition of an unaccompanied child and remain in ORR custody, an individual must be under 18 years of age.

#### § 410.1702 Conducting age determinations.

Procedures for determining the age of an individual must take into account the totality of the circumstances and evidence, including the non-exclusive use of radiographs, to determine the age of the individual. ORR may require an individual in ORR custody to submit to a medical or dental examination, including X-rays, conducted by a medical professional or to submit to other appropriate procedures to verify

their age. If ORR subsequently determines that such an individual is an unaccompanied child, the individual will be treated in accordance with ORR's UC Program regulations in this part for all purposes.

#### § 410.1703 Information used as evidence to conduct age determinations.

(a) ORR considers multiple forms of evidence in making age determinations, and determinations are made based upon a totality of evidence.

(b) ORR may consider information or documentation to make an age determination, including but not limited to:

(1) If there is no original birth certificate, certified copy, or photocopy or facsimile copy of a birth certificate acceptable to ORR, consulting with the consulate or embassy of the individual's country of birth to verify the validity of the birth certificate presented.

(2) Authentic government-issued documents issued to the bearer.

(3) Other documentation, such as baptismal certificates, school records, and medical records, which indicate an individual's date of birth.

(4) Sworn affidavits from parents or other relatives as to the individual's age or birth date.

(5) Statements provided by the individual regarding the individual's age or birth date.

(6) Statements from parents or legal guardians.

(7) Statements from other persons apprehended with the individual.

(8) Medical age assessments, which should not be used as a sole determining factor but only in concert with other factors. If an individual's estimated probability of being 18 years or older is 75 percent or greater according to a medical age assessment, and the totality of the evidence indicates that the individual is 18 years old or older, ORR must determine that the individual is 18 years old or older. The 75 percent probability threshold applies to all medical methods and approaches identified by the medical community as appropriate methods for assessing age. Ambiguous, debatable, or borderline forensic examination results are

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resolved in favor of finding the individual is a child.

**§ 410.1704 Treatment of an individual whom ORR has determined to be an adult.**

If the procedures in this subpart would result in ORR reasonably concluding that an individual is an adult, despite the individual's claim to be under the age of 18, ORR shall treat such person as an adult for all purposes.

**Subpart I—Emergency and Influx Operations**

**§ 410.1800 Contingency planning and procedures during an emergency or influx.**

(a) ORR shall regularly reevaluate the number of standard program placements needed for unaccompanied children to determine whether the number of shelters, heightened supervision facilities, and ORR transitional home care beds should be adjusted to accommodate an increased or decreased number of unaccompanied children eligible for placement in care in ORR care provider facilities.

(b) In the event of an emergency or influx that prevents the prompt placement of unaccompanied children in standard programs, ORR shall place each unaccompanied child in a standard program as expeditiously as possible.

(c) ORR activities during an influx or emergency include the following:

(1) ORR shall implement its contingency plan on emergencies and influxes, which may include opening facilities to house unaccompanied children and prioritization of placement at such facilities of certain unaccompanied children;

(2) ORR shall continually develop standard programs that are available to accept emergency or influx placements; and

(3) ORR shall maintain a list of unaccompanied children affected by the emergency or influx including each unaccompanied child's:

- (i) Name;
- (ii) Date and country of birth;
- (iii) Date of placement in ORR's custody; and

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(iv) Place and date of current placement.

**§ 410.1801 Minimum standards for emergency or influx facilities.**

(a) In addition to the "standard program" and "restrictive placements" defined in this part, ORR provides standards in this section for all emergency or influx facilities (EIFs).

(b) EIFs shall provide the following minimum services for all unaccompanied children in their care:

(1) Proper physical care and maintenance, including suitable living accommodations, sufficient quantity of food appropriate for children, drinking water, appropriate clothing, and personal grooming items.

(2) Appropriate routine medical and dental care; family planning services, including pregnancy tests; medical services requiring heightened ORR involvement; and emergency healthcare services; a complete medical examination (including screenings for infectious diseases) within 48 hours of admission, excluding weekends and holidays, unless the unaccompanied child was recently examined at another ORR care provider facility; appropriate immunizations as recommended by the Advisory Committee on Immunization Practices' Child and Adolescent Immunization Schedule and approved by HHS's Centers for Disease Control and Prevention; administration of prescribed medication and special diets; and appropriate mental health interventions when necessary.

(3) An individualized needs assessment, which includes the various initial intake forms, identification of the unaccompanied child's individualized needs including any specific problems which appear to require immediate intervention, an educational assessment and plan, and whether an indigenous language speaker; a statement of religious preference and practice; and an assessment of the unaccompanied child's personal goals, strengths, and weaknesses.

(4) Educational services appropriate to the unaccompanied child's level of development and communication skills in a structured classroom setting Monday through Friday, which concentrates on the development of basic

academic competencies, and on English Language acquisition. The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas may include such subjects as science, social studies, math, reading, writing, and physical education. The program must provide unaccompanied children with appropriate reading materials in languages other than English for use during leisure time.

(5) Activities according to a recreation and leisure time plan that include daily outdoor activity—weather permitting—with at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (that must not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

(6) At least one individual counseling session per week conducted by trained social work staff with the specific objective of reviewing the child's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each child.

(7) Group counseling sessions at least twice a week.

(8) Acculturation and adaptation services that include information regarding the development of social and interpersonal skills that contribute to those abilities necessary to live independently and responsibly.

(9) Whenever possible, access to religious services of the child's choice.

(10) Visitation and contact with family members (regardless of their immigration status), which is structured to encourage such visitation. The staff must respect the child's privacy while reasonably preventing the unauthorized release of the unaccompanied child.

(11) A reasonable right to privacy, which includes the right to wear the child's own clothes when available, retain a private space for the storage of personal belongings, talk privately on the phone and visit privately with guests, as permitted by the house rules and regulations, receive and send uncensored mail unless there is a reason-

able belief that the mail contains contraband.

(12) Legal services information, including the availability of free legal assistance, and that they may be represented by counsel at no expense to the Government, the right to a removal hearing before an immigration judge, the ability to apply for asylum with USCIS in the first instance, and the ability to request voluntary departure in lieu of removal.

(13) EIFs, whether state-licensed or not, must comply, to the greatest extent possible, with all State child welfare laws and regulations (such as mandatory reporting of abuse), as well as all State and local building, fire, health and safety codes, that ORR determines are applicable to non-State licensed facilities.

(14) EIFs must deliver services in a manner that is sensitive to the age, culture, native language, and complex needs of each unaccompanied child. EIFs must develop an individual service plan for the care of each child.

(c) EIFs shall do the following when providing services to unaccompanied children:

(1) Maintain safe and sanitary conditions that are consistent with ORR's concern for the particular vulnerability of children;

(2) Provide access to toilets, showers and sinks, as well as personal hygiene items such as soap, toothpaste and toothbrushes, floss, towels, feminine care items, and other similar items;

(3) Provide drinking water and food;

(4) Provide medical assistance if the unaccompanied child is in need of emergency services and provide a modified medical examination;

(5) Maintain adequate temperature control and ventilation;

(6) Provide adequate supervision to protect unaccompanied children;

(7) Separate from other unaccompanied children those unaccompanied children who are subsequently found to have past criminal or juvenile detention histories or have perpetrated sexual abuse that present a danger to themselves or others;

(8) Provide contact with family members who were apprehended with the unaccompanied child; and

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(9) Provide access to legal services described in § 410.1309(a).

(10) Provide family unification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the unaccompanied child.

(11) Provide an individualized needs assessment, which includes the collection of essential data relating to the identification and history of the child and the child's family; an assessment of family relationships and interaction with adults, peers and authority figures; and identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in connecting the child with family members.

(12) Provide a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations, information about U.S. child labor laws, and the availability of legal assistance.

(13) Maintain records of case files and make regular reports to ORR. EIFs must have accountability systems in place, which preserve the confidentiality of client information and protect the records from unauthorized use or disclosure.

(d) ORR may grant waivers of standards under paragraph (b) of this section, in whole or in part, during the first six months of an EIF activation, to the extent that ORR determines that the specific waivers requested are necessary because it would be operationally infeasible to comply with the specified standards, and are granted for no longer than necessary in light of operational feasibility, and the waivers are granted in accordance with law. Such waiver or waivers must be made publicly available. Even where a waiver is granted, EIFs shall make all efforts to meet requisite standards under § 410.1801(b) as expeditiously as possible.

**§ 410.1802 Placement standards for emergency or influx facilities.**

(a) Unaccompanied children who are placed in an emergency or influx facility (EIF) must meet all of the fol-

lowing criteria to the extent feasible. If ORR becomes aware that a child does not meet any of the following criteria at any time after placement into an EIF, ORR shall transfer the unaccompanied child to the least restrictive setting appropriate for that child's need as expeditiously as possible. ORR shall only place a child in an EIF if the child:

- (1) Is expected to be released to a sponsor within 30 days;
- (2) Is age 13 or older;
- (3) Speaks English or Spanish as their preferred language;
- (4) Does not have a known disability or other mental health or medical issue or dental issue requiring additional evaluation, treatment, or monitoring by a healthcare provider;
- (5) Is not a pregnant or parenting teenager;
- (6) Would not have a diminution of legal services as a result of the transfer to the EIF; and
- (7) Is not a danger to self or others (including not having been charged with or convicted of a criminal offense).

(b) ORR shall also consider the following factors for the placement of an unaccompanied child in an EIF:

- (1) The unaccompanied child should not be part of a sibling group with a sibling(s) age 12 years or younger;
- (2) The unaccompanied child should not be subject to a pending age determination;
- (3) The unaccompanied child should not be involved in an active State licensing, child protective services, or law enforcement investigation, or an investigation resulting from a sexual abuse allegation;
- (4) The unaccompanied child should not have a pending home study;
- (5) The unaccompanied child should not be turning 18 years old within 30 days of the transfer to an EIF;
- (6) The unaccompanied child should not be scheduled to be discharged in three days or less;
- (7) The unaccompanied child should not have a scheduled hearing date in immigration court or State/family court (juvenile included), and not have an attorney of record or DOJ Accredited Representative;

(8) The unaccompanied child should be medically cleared and vaccinated as required by the EIF (for instance, if the EIF is on a U.S. Department of Defense site); and

(9) The unaccompanied child should have no known mental health, dental, or medical issues, including contagious diseases requiring additional evaluation, treatment, or monitoring by a healthcare provider.

**Subpart J—Availability of Review of Certain ORR Decisions**

**§ 410.1900 Purpose of this subpart.**

This subpart describes the availability of review of certain ORR decisions regarding the care and placement of unaccompanied children.

**§ 410.1901 Restrictive placement case reviews.**

(a) In all cases involving a restrictive placement, ORR shall have the burden to determine, based on clear and convincing evidence, that sufficient grounds exist for stepping up or continuing to hold an unaccompanied child in a restrictive placement. The evidence supporting a restrictive placement decision shall be recorded in the unaccompanied child’s case file.

(b) ORR shall provide an unaccompanied child with a Notice of Placement (NOP) in the child’s native or preferred language no later than 48 hours after step-up to a restrictive placement, as well as every 30 days the unaccompanied child remains in a restrictive placement.

(1) The NOP shall clearly and thoroughly set forth the reason(s) for placement and a summary of supporting evidence.

(2) The NOP shall inform the unaccompanied child of their right to contest the restrictive placement before a Placement Review Panel (PRP) upon receipt of the NOP and the procedures by which the unaccompanied child may do so. The NOP shall further inform the unaccompanied child of all other available administrative review processes.

(3) The NOP shall include an explanation of the unaccompanied child’s right to be represented by counsel at

no cost to the Federal Government in challenging such restrictive placement.

(4) A case manager shall explain the NOP to the unaccompanied child, in a language the unaccompanied child understands.

(c) The care provider facility shall provide a copy of the NOP to the unaccompanied child’s attorney of record, legal service provider, child advocate, and to a parent or legal guardian of record, no later than 48 hours after step-up as well as every 30 days the unaccompanied child remains in a restrictive placement.

(1) Service of the NOP on a parent or legal guardian shall not be required where there are child welfare reasons not to do so, where the parent or legal guardian cannot be reached, or where an unaccompanied child 14 or over states that the unaccompanied child does not wish for the parent or legal guardian to receive the NOP.

(2) Child welfare rationales include but are not limited to: a finding that the automatic provision of the notice could endanger the unaccompanied child; potential abuse or neglect by the parent or legal guardian; a parent or legal guardian who resides in the United States but refuses to act as the unaccompanied child’s sponsor; or a scenario where the parent or legal guardian is non-custodial and the unaccompanied child’s prior caregiver (such as a caregiver in home country) requests that the non-custodial parent not be notified of the placement.

(3) When an NOP is not automatically provided to a parent or legal guardian, ORR shall document, within the unaccompanied child’s case file, the child welfare reason for not providing the NOP to the parent or legal guardian.

(d) ORR shall further ensure the following automatic administrative reviews:

(1) At minimum, a 30-day administrative review for all restrictive placements;

(2) A more intensive 90-day review by ORR supervisory staff for unaccompanied children in secure facilities; and

(3) For unaccompanied children in residential treatment centers, the 30-day review at paragraph (d)(1) of this section must involve a psychiatrist or

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psychologist to determine whether the unaccompanied child should remain in restrictive residential care.

### § 410.1902 Placement Review Panel.

(a) All determinations to place an unaccompanied child in a secure facility that is not a residential treatment center will be reviewed and approved by ORR federal field staff. An unaccompanied child placed in a restrictive placement may request reconsideration of such placement. Upon such request, ORR shall afford the unaccompanied child a hearing before the Placement Review Panel (PRP) at which the unaccompanied child may, with the assistance of counsel at no cost to the Federal Government, present evidence on their own behalf. An unaccompanied child may present witnesses and cross-examine ORR's witnesses, if such child and ORR witnesses are willing to voluntarily testify. An unaccompanied child shall be provided access at the PRP hearing to interpretation services in their native or preferred language, depending on the unaccompanied child's preference, and in a way they effectively understand. An unaccompanied child that does not wish to request a hearing may also have their placement reconsidered by submitting a written request for a reconsideration along with any supporting documents as evidence. Where the unaccompanied child does not have an attorney, ORR shall encourage the care provider facility to seek assistance for the unaccompanied child from a contracted legal service provider or child advocate.

(b) The PRP shall afford any unaccompanied child in a restrictive placement the opportunity to request a PRP review as soon as the unaccompanied child receives a Notice of Placement (NOP). ORR shall permit the unaccompanied child or the unaccompanied child's counsel to review the evidence in support of step-up or continued restrictive placement, and any countervailing or otherwise unfavorable evidence, within a reasonable time before the PRP review is conducted. ORR shall also share the unaccompanied child's complete case file apart from any legally required redactions with their counsel within a reasonable timeframe to be established by ORR to as-

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sist in the legal representation of the unaccompanied child.

(c) ORR shall convene the PRP within 7 days of an unaccompanied child's request for a hearing. ORR may institute procedures to request clarification or additional evidence if warranted, or to extend the 7-day deadline as necessary under specified circumstances.

(d) The PRP shall issue a written decision in the child's native or preferred language within 7 days of a hearing and submission of evidence or, if no hearing or review of additional evidence is requested, within 7 days following receipt of an unaccompanied child's written statement. ORR may institute procedures to request clarification or additional evidence if warranted, or to extend the 7-day deadline as necessary under specified circumstances.

(e) An ORR staff member who was involved with the decision to step-up an unaccompanied child to a restrictive placement shall not serve as a PRP member with respect to that unaccompanied child's placement.

### § 410.1903 Risk determination hearings.

(a) All unaccompanied children in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer, to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released, unless the unaccompanied child indicates in writing that they refuse such a hearing. Unaccompanied children placed in restrictive placements shall receive a written notice of the procedures under this section and may use a form provided to them to decline a hearing under this section. Unaccompanied children in restrictive placements may decline the hearing at any time, including after consultation with counsel.

(b) All other unaccompanied children in ORR custody may request a hearing under this section to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released. Requests under this section must be made in writing by the unaccompanied child, their attorney of

record, or their parent or legal guardian by submitting a form provided by ORR to the care provider facility or by making a separate written request that contains the information requested in ORR's form.

(c) In hearings conducted under this section, ORR bears the burden of proof to establish by clear and convincing evidence that the unaccompanied child would be a danger to self or to the community if released.

(d) In hearings under this section, the unaccompanied child may be represented by a person of their choosing. The unaccompanied child may present oral and written evidence to the hearing officer and may appear by video or teleconference. ORR may also present evidence at the hearing, whether in writing, or by appearing in person or by video or teleconference.

(e) Within a reasonable time prior to the hearing, ORR shall provide to the unaccompanied child and their attorney of record the evidence and information supporting ORR's determination, including the evidentiary record.

(f) A hearing officer's decision that an unaccompanied child would not be a danger to self or to the community if released is binding upon ORR, unless the provisions of paragraph (e) of this section apply.

(g) A hearing officer's decision under this section may be appealed by either the unaccompanied child or ORR to the Assistant Secretary of ACF, or the Assistant Secretary's designee.

(1) Any such appeal request shall be in writing and must be received by ACF within 30 days of the hearing officer decision.

(2) The Assistant Secretary, or the Assistant Secretary's designee, shall review the record of the underlying hearing, and will reverse a hearing officer's decision only if there is a clear error of fact, or if the decision includes an error of law.

(3) If the hearing officer's decision found that the unaccompanied child would not pose a danger to self or to the community if released from ORR custody, and such decision would result in ORR releasing the unaccompanied child from its custody (e.g., because the only factor preventing release was ORR's determination that the unac-

companied child posed a danger to self or to the community), an appeal to the Assistant Secretary shall not effect a stay of the hearing officer's decision, unless the Assistant Secretary issues a decision in writing within five business days of such hearing officer decision that release of the unaccompanied child would result in a danger to self or to the community. Such a stay decision must include a description of behaviors of the unaccompanied child while in ORR custody and/or documented criminal or juvenile behavior records from the unaccompanied child demonstrating that the unaccompanied child would present a danger to self or to the community if released.

(h) Decisions under this section are final and binding on the Department, and an unaccompanied child who was determined to pose a danger to self or to the community if released may only seek another hearing under this section if the unaccompanied child can demonstrate a material change in circumstances. Similarly, ORR may request the hearing officer to make a new determination under this section only if ORR can show that a material change in circumstances means the unaccompanied child should no longer be released due to presenting a danger to self or to the community.

(i) This section cannot be used to determine whether an unaccompanied child has a suitable sponsor.

(j) Determinations made under this section will not compel an unaccompanied child's release; nor will determinations made under this section compel transfer of an unaccompanied child to a different placement. Regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may not be released unless ORR identifies a safe and appropriate placement pursuant to subpart C of this part; and regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may only be transferred to another placement by ORR pursuant to requirements set forth at subparts B and G of this part.

**Subpart K—Unaccompanied Children Office of the Ombuds (UC Office of the Ombuds)**

**§ 410.2000 Establishment of the UC Office of the Ombuds.**

(a) The Unaccompanied Children Office of the Ombuds (hereafter, the “UC Office of the Ombuds”) is located within the Office of the ACF Assistant Secretary, and reports to the ACF Assistant Secretary.

(b) The UC Office of the Ombuds shall be an independent, impartial office with authority to receive reports, including confidential and informal reports, of concerns regarding the care of unaccompanied children; to investigate such reports; to work collaboratively with ORR to potentially resolve such reports; and issue reports concerning its efforts.

**§ 410.2001 UC Office of the Ombuds policies and procedures; contact information.**

(a) The UC Office of the Ombuds shall develop appropriate standards, practices, and policies and procedures, giving consideration to the recommendations by nationally recognized Ombudsperson organizations.

(b) The UC Office of the Ombuds shall make its standards, practices, reports and findings, and policies and procedures publicly available.

(c) The UC Office of the Ombuds shall make information about the office and how to contact it publicly available, in both English and other languages spoken and understood by unaccompanied children in ORR care. The Ombuds may identify preferred methods for raising awareness of the office and its activities, which may include, but not be limited to, visiting ORR facilities, or publishing aggregated information about the type and number of concerns the office receives, as well as giving recommendations.

**§ 410.2002 UC Office of the Ombuds scope and responsibilities.**

(a) The UC Office of the Ombuds may engage in activities consistent with § 410.2001, including but not limited to:

(1) Receiving reports from unaccompanied children, potential sponsors, other stakeholders in a child’s case,

and the public regarding ORR’s adherence to its own regulations and standards.

(2) Investigating implementation of or adherence to Federal law and ORR regulations, in response to reports it receives, and meeting with interested parties to receive input on ORR’s compliance with Federal law and ORR policy;

(3) Requesting and receiving information or documents, such as the Ombuds deems relevant, from ORR and ORR care provider facilities, to determine implementation of and adherence to Federal law and ORR policy;

(4) Preparing formal reports and recommendations on findings to publish, including an annual report describing activities conducted in the prior year;

(5) Conducting investigations, interviews, and site visits at care provider facilities as necessary to aid in the preparation of reports and recommendations;

(6) Visiting ORR care providers in which unaccompanied children are or will be housed;

(7) Reviewing individual circumstances, including but not limited to concerns about unaccompanied children’s access to services, ability to communicate with service providers, parents or legal guardians of children in ORR custody, sponsors, and matters related to transfers within or discharge from ORR care;

(8) Making efforts to resolve complaints or concerns raised by interested parties as it relates to ORR’s implementation or adherence to Federal law or ORR policy;

(9) Hiring and retaining others, including but not limited to independent experts, specialists, assistants, interpreters, and translators to assist the Ombuds in the performance of their duties;

(10) Making non-binding recommendations to ORR regarding its policies and procedures, specific to protecting unaccompanied children in the care of ORR;

(11) Providing general educational information about pertinent laws, regulations and policies, ORR child advocates, and legal services as appropriate; and

(12) Advising and updating the Director of ORR, Assistant Secretary, and the Secretary, as appropriate, on the status of ORR's implementation and adherence to Federal law or ORR policy.

(b) The UC Office of the Ombuds may in its discretion refer matters to other Federal agencies or offices with jurisdiction over a particular matter, for further investigation where appropriate, including to Federal or State law enforcement.

(c) To accomplish its work, the UC Office of the Ombuds may, as needed, have timely and direct access to:

- (1) Unaccompanied children in ORR care;
- (2) ORR care provider facilities;
- (3) Case file information;
- (4) Care provider and Federal staff responsible for children's care; and
- (5) Statistical and other data that ORR maintains.

**§410.2003 Organization of the UC Office of the Ombuds.**

(a) The UC Ombuds shall be hired as a career civil servant.

(b) The UC Ombuds shall have the requisite knowledge and experience to effectively fulfill the work and the role, including membership in good standing of a nationally recognized organization, association of ombudsmen, or State bar association throughout the course of employment as the Ombuds, and to also include but not be limited to having demonstrated knowledge and experience in:

- (1) Informal dispute resolution practices;
- (2) Services and matters related to unaccompanied children and child welfare;
- (3) Oversight and regulatory matters; and
- (4) ORR policy and regulations.

(c) The Ombuds may engage additional staff as it deems necessary and practicable to support the functions and responsibilities of the Office.

(d) The Ombuds shall establish procedures for training, certification, and continuing education for staff and other representatives of the Office.

**§410.2004 Confidentiality.**

(a) The Ombuds shall manage the files, records, and other information of the program, regardless of format, and such files must be maintained in a manner that preserves the confidentiality of the records except in instances of imminent harm or judicial action and is prohibited from using or sharing information for any immigration enforcement related purpose.

(b) The UC Office of the Ombuds may accept reports of concerns from anonymous reporters.

**PART 411—STANDARDS TO PREVENT, DETECT, AND RESPOND TO SEXUAL ABUSE AND SEXUAL HARASSMENT INVOLVING UNACCOMPANIED CHILDREN**

Sec.

411.5 General definitions.

411.6 Definitions related to sexual abuse and sexual harassment.

**Subpart A—Coverage**

411.10 Coverage of ORR care provider facilities.

**Subpart B—Prevention Planning**

411.11 Zero tolerance toward sexual abuse and sexual harassment; Prevention of Sexual Abuse Coordinator and Compliance Manager.

411.12 Contracting with or having a grant from ORR for the care of UCs.

411.13 UC supervision and monitoring.

411.14 Limits to cross-gender viewing and searches.

411.15 Accommodating UCs with disabilities and UCs who are limited English proficient (LEP).

411.16 Hiring and promotion decisions.

411.17 Upgrades to facilities and technologies.

**Subpart C—Responsive Planning**

411.21 Victim advocacy, access to counselors, and forensic medical examinations.

411.22 Policies to ensure investigation of allegations and appropriate agency oversight.

**Subpart D—Training and Education**

411.31 Care provider facility staff training.

411.32 Volunteer and contractor training.

411.33 UC education.