

February 23, 2015

Office of Refugee Resettlement
Department of Health and Human Services
370 L'Enfant Promenade SW, 8th Floor West
Washington, DC 20024

Attn: Elizabeth Sohn

Submitted electronically at www.regulations.gov

Re: Standards To Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment
Involving Unaccompanied Children, Docket ID: ACF-2015-0002

The undersigned organizations submit the following in response to the Interim Final Rule published in the Federal Register on December 24, 2014, proposing standards and procedures to prevent, detect, and respond to sexual abuse and sexual harassment involving unaccompanied children (UCs) in the Department of Health and Human Services Office of Refugee Resettlement (ORR) care-provider facilities. We do not address here the entirety of the rule, which seeks to achieve the important goal of increasing the safety of the vulnerable children in ORR care. Rather, we limit the scope of these comments to the provision in the Section- by-Section discussion of Subpart J of the interim rule proposing ways for ORR to work with contractors or grantees with religious or moral objections to providing certain services.

We thank ORR for its commitment “to providing resources and referrals for the full range of legally permissible services to UCs who need them, helping to facilitate access to these options, and doing so in a timely fashion and in a manner that respects the diverse religious and cultural backgrounds of UCs.” However, we write to object to ORR’s willingness to allow organizations, based on religious or moral objections, to opt out of providing or referring for specific services to which UCs are legally entitled. ORR should strike this language.

The opt-out provisions ORR proposes will be invoked by organizations opposed to providing referrals for contraception and abortion, among other services.¹ Yet, the government is legally obligated to provide medical care, including reproductive health services, to the youth in its care, without exception.² ORR serves an extremely vulnerable population, including children who have experienced sexual assault and abuse, in their home countries, en route to the U.S, and possibly even in ORR facilities. Thus, it is imperative that ORR’s final rule ensures that access to all legally permissible medical services is *actually* provided—not just theoretically available—to UCs in a timely, unimpeded manner that is both respectful and non-stigmatizing.

This is so not only because the failure to ensure real access to services harms minors in ORR’s care, but also because this harm falls almost entirely upon girls who are the primary recipients of

¹ *ACLU of Mass. v. Sebelius*, 821 F. Supp. 2d 474, 476-77 (D. Mass. 2012), *vacated as moot sub nom., ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44 (1st Cir. 2013). See also Sarah Posner, *Blurred Lines at the Border*, American Prospect (Oct. 14, 2013), <http://prospect.org/article/blurred-lines-border>.

² *Flores v. Reno*, No. CV 85-4544- RJK(Px) (C.D. Cal. Jan. 17, 1997).

most, if not all, of the services to which some grantees may object. Allowing an organization to deny such services is discrimination and the government may not fund discrimination or provide funding to private organizations that engage in it.³

Placing UCs in the care of grantees or contractors who are unwilling to provide those services, however, necessarily creates barriers to access that can be nearly insurmountable. This is true even under the workaround scenarios that ORR suggests. Options (1) and (2) propose that organizations objecting to providing certain services should only serve as sub-grantees or as members of a consortium, so that other organizations without objections are able to provide UCs with those particular services. While on paper, these two options may appear to provide some level of protection to this vulnerable population, it's unrealistic to expect most UCs to be able to actually access care that their providers object to under these alternatives. These children are isolated and usually have limited English skills, and the facility staff is their only source of information about health care options. Even if these options were workable, they also have the effect of stigmatizing UCs who seek care by sending the message that their primary caretakers disapprove of the services they need.

Option (3) is even worse—it would require a grantee to notify a federal agency if a UC in its care requires services to which it objects. Even on paper, it is clear that this process cannot be implemented in a way that ensures that all necessary services are made accessible to all UCs in a timely and unimpeded manner that is respectful and non-stigmatizing. It would mean that UCs, during what is a difficult time, are handed off to a federal employee who is a total stranger. This would almost certainly result in unacceptable delay—especially problematic when it comes to services like emergency contraception, which is only effective if taken within a few days of unprotected intercourse.

ORR should ensure that its grants and programs operate as intended. Grantees and contractors should fulfill their duties as required to meet the program's objectives. This includes providing UCs the full range of medical care they are entitled to in a timely manner and in settings that protect and preserve their privacy and dignity.

Finally, because existing contracts or grant agreements may allow providers to refuse to provide or refer for services mandated by Subsection J of the rule, ORR must establish procedures that will to the greatest extent possible protect UCs' access to all services to which they are entitled. To this end, ORR must require any team of contractors or grantees to disclose whether any provider organizations on the team have refused or intend to refuse to provide or refer for certain services. If objections exist, ORR must put a plan in place to guarantee access and must monitor the situation closely.

We thank you for the opportunity to comment on this important effort.

Sincerely,

³ *E.g., Norwood v. Harrison*, 413 U.S. 455, 465-66 (1973); *see also, e.g., Christian Legal Soc'y v. Martinez*, 130 S. Ct. 2971, 2986 (2010) (Student group seeking government subsidy "may exclude any person for any reason if it forgoes the benefits.").

American Civil Liberties Union
American Humanist Association
Americans United for Separation of Church and State
Anti-Defamation League
Bend the Arc Jewish Action
Catholics for Choice
Center for Inquiry
Center for Reproductive Rights
Coalition of Labor Union Women
CORPUS
DignityUSA
Family Equality Council
FORGE, Inc.
Institute for Science and Human Values, Inc.
Interfaith Alliance
The Los Angeles LGBT Center
Marriage Equality USA
Methodist Federation for Social Action
NARAL Pro-Choice America
National Abortion Federation
National Asian Pacific American Women's Forum
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Latina Institute for Reproductive Health
National LGBTQ Task Force
National Women's Law Center
Nehirim
Planned Parenthood Federation of America
Population Connection Action Fund
The Public Rights / Private Conscience Project at Columbia Law School
Religious Coalition for Reproductive Choice
Reproductive Health Technologies Project
Secular Coalition for America
Secular Policy Institute
Society for Humanistic Judaism
Women's Alliance for Theology, Ethics and Ritual (WATER)