

December 4, 2023

Submitted via <https://www.regulations.gov/commenton/ACF-2023-0009-0001>

Toby Biswas  
Director of Policy, Unaccompanied Children Program  
Office of Refugee Resettlement  
Administration for Children and Families  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**Re: Unaccompanied Children Program Foundational Rule, Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS); 88 Fed. Reg. 68908; RIN 0970-AC93; ACF-2023-0009**

Dear Mr. Biswas,

We write on behalf of the undersigned organizations in response to the Office of Refugee Resettlement's (ORR) Notice of Proposed Rulemaking on the Unaccompanied Children Program Foundational Rule<sup>1</sup> ("proposed rule") to address the sections of the proposed rule that relate to home studies and post-release services (PRS).

Our organizations have extensive experience providing services to and advocacy on behalf of unaccompanied children with respect to their reunification with sponsors, including home studies, and with respect to post-release services. Collectively, we have deep experience in the areas of constitutional due process rights, the ORR release and reunification process, child development, child migration, language and cultural competency, and service provision for unaccompanied children prior to and following release from ORR custody. We have seen how important it is for children's wellbeing that children be released promptly to sponsors who then receive support in their new family and community environments. We are also aware of the risks of exploitation for unaccompanied minors, and the risks associated with government surveillance of immigrant families.

Importantly, our comments' narrow focus does not constitute an endorsement of other segments of the proposed rule, many of our organizations have joined or written separate comments providing stakeholder input on those sections.

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<sup>1</sup> Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68908 (Oct. 4, 2023) (to be codified at 45 C.F.R. pt. 410).

Our organizations appreciate ORR's consideration of our comments, and we encourage ORR to consider the discrete changes proposed here to improve and strengthen the home study process and the provision of post-release services.

For any questions or concerns, please contact Paola Fuentes Gleghorn at [pfuentesgleghorn@cwsglobal.org](mailto:pfuentesgleghorn@cwsglobal.org) for Church World Service or Anne Kelsey at [akelsey@theyoungcenter.org](mailto:akelsey@theyoungcenter.org) for the Young Center for Immigrant Children's Rights.

Sincerely,

Acacia Center for Justice  
Advocates for Basic Legal Equality, Inc (ABLE)  
Alianza Americas  
Americans for Immigrant Justice  
Angry Tias and Abuelas of the RGV  
Asian Pacific Institute on Gender-Based Violence  
Capital Area Immigrants' Rights (CAIR) Coalition  
Catholic Charities Baltimore, Esperanza Center  
Center for Law and Social Policy  
Central American Resource Center - CARECEN- of California  
Child and Adolescent Psychiatrist  
Church World Service  
Community Legal Services in East Palo Alto  
Cornell Asylum & Convention Against Torture Appellate Clinic  
Diocesan Migrant and Refugee Services Inc/Estrella del Paso  
Florence Immigrant & Refugee Rights Project  
Florida Legal Services, Inc.  
Freedom Network USA  
Grassroots Leadership  
HIAS Pennsylvania  
Hope Border Institute  
Houston Immigration Legal Services Collaborative  
Human Rights Initiative of North Texas  
Immigrant Defenders Law Center (ImmDef)  
Immigrant Legal Defense  
Immigration Counseling Service  
International Rescue Committee  
Just Neighbors  
Justice in Motion  
Juvenile Law Center  
La Raza Centro Legal

Law Office of Daniela Hernandez Chong Cuy  
Law Office of Miguel Mexicano PC  
Lawyers for Good Government  
Legal Services for Children  
Los Angeles Center for Law and Justice  
LSN Legal LLC  
Lutheran Social Services of the National Capital Area (LSSNCA)  
Martinez & Nguyen Law, LLP  
Migration Matters  
National Immigrant Justice Center  
National Immigration Law Center (NILC)  
OneAmerica  
Physicians for Human Rights - Student Advisory Board  
Project Lifeline  
Safe Passage Project  
Save the Children  
The Immigration Project  
United We Dream  
VECINA  
Witness at the Border  
Young Center for Immigrant Children's Rights

*Signing in their personal capacity; institution identified solely for affiliation purposes*

Jennifer Moore, University of New Mexico School of Law

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## **SUBSTANTIVE COMMENTS REGARDING HOME STUDIES AND POST-RELEASE SERVICES UNDER THE PROPOSED FOUNDATIONAL RULE**

### **I. Home Studies should be used judiciously without unnecessarily prolonging a child's stay in federal custody.**

The Trafficking Victims Protection Reauthorization Act (TVPRA) requires a home study be performed before the release of an unaccompanied child in certain circumstances.<sup>2</sup> However, they can be intrusive and undermine individual and family privacy. For example, requiring FBI fingerprint background checks on everyone in the home presents an unacceptable and unnecessary invasion of privacy for some. In our experiences with children and families with whom we work, it is not uncommon for undocumented sponsors to be forced to move in cases where they live with other adults who may not be willing to cooperate, or the undocumented sponsors may be deterred from sponsoring a child because of fears of interacting with government actors. In addition, we have seen home studies marred by bias and paternalism, leading to unnecessary delays, confusion, and harm to children awaiting release to sponsors. Further limits in the regulatory language are essential to ensure that these practices are reduced or eliminated.

We recommend that home studies required by the TVPRA due to trafficking concerns be limited to cases where there has been a formal designation by the Office of Trafficking in Persons (OTIP). In our experience, providers and ORR staff have an overly broad perspective of trafficking, leading to home studies that derail sponsorships for reasons not related to the safety of the child.

In addition, home studies should be recommended but not mandatory in circumstances where a child may be released 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; or where the child is 12 years old or younger and being released to a non-relative sponsor. These types of home studies are not required under the TVPRA, and the regulations should not go beyond the TVPRA here. We have seen ORR define “non-relative” very broadly, including for example, godparents or family friends that are essentially like kin, to the detriment of the child’s well-being. The proposed rule should leave space for ORR to make common sense decisions based on the individual circumstances of the child in situations where home studies that are not mandatory under the TVPRA.

We are also concerned that proposed § 410.1204(c) uses language on discretionary home studies that is overly expansive. The regulations use “is likely to provide additional information which could assist in determining” sponsor suitability. A home study *could* assist in determining sponsor suitability in nearly every case. Home studies should only be used in the most serious

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<sup>2</sup> See 8 U.S.C.1232(c)(3)(B).

circumstances due to their intrusive nature and the risk of causing unnecessary delays to release and reunification. We recommend ORR adopt the more limiting language we suggest below.

We also recommend ORR adopt policies that tailor the scope of the home study to the reason that it is required. For example, if a home study is required based on a child's disability, the home study should be limited in scope to uncover only information relevant to what services, supports, referrals, or information that ORR and its home study and PRS providers can give to the sponsor to meet the child's disability-related needs. ORR should not require FBI fingerprint background checks of other adults in the home in home studies related to disability.

Relatedly, we recommend that the proposed rule include an explicit requirement that decision-making around home studies take into consideration the effect that prolonged custody and separation from family will have on the wellbeing of the child. Particularly when mental health or behavioral health issues are the identified trigger for the home study, it is often actually the traumatizing effects of detention, and detention fatigue, that are causing those health issues. Requiring a home study, and thereby prolonging the child's detention, only makes things worse.

Finally, we strongly urge ORR to include time limits on the home study process in the final rule to mitigate the tendency of home studies to prolong the reunification process and the child's time in custody. At a minimum, ORR should codify the time limits in the current version of the Policy Guide, which require the home study report to be completed within 10 days.<sup>3</sup>

### **Recommendation 1: § 410.1204**

(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. [ADD]: **The goal of the home study is to ensure a safe placement for the child.**

(b) [ADD]: **Neither ORR nor home study providers shall discriminate during the home study process on the basis of race, color, ethnicity, national origin, age, disability, gender, religion, preferred language, income-level or socioeconomic status, affectional or sexual orientation, gender identity or expression, parental status, birth status, or marital, civil union, or domestic partnership status. Home study providers must receive training on bias and cultural competency before carrying out home studies.**

<sup>3</sup> Off. of Refugee Resettlement, ORR Unaccompanied Children Program Policy Guide § 2.4.2, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.4.2> (current as of Mar. 28, 2023).

**(c)** ORR requires 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 [ADD]: **has been designated as** ~~is~~ a victim of a severe form of trafficking in persons [ADD]: **by the Office of Trafficking in Persons (OTIP)**;

(ii) A ~~special-needs~~ child with a disability (as defined in 42 U.S.C. 12102);

(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 proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.

[ADD]: **(d) ORR recommends home studies under the following circumstances:**

**(1)** 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.

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

~~(e)~~ [ADD]: **(e)** ORR may, in its discretion, initiate home studies if it determines that a home study is [ADD]: **necessary** likely to **obtain** ~~provide~~ additional information which could assist in determining [ADD]: **to determine** that the potential sponsor is able to [ADD]: **provide a safe placement for** ~~care for the health, safety, and well-being of the unaccompanied child.~~

~~(d)~~ [ADD]: **(f)** The care provider must inform the potential sponsor [ADD]: **and the child, in their preferred languages,** whenever a home study is conducted, explaining the scope and purpose of the study and answering [ADD]: **their** ~~the potential sponsor's~~ questions about the process. In addition, the home study report, as well as any subsequent addendums if created, will be provided to the potential sponsor if the release request is denied.

~~(e)~~ [ADD]: **(g)** An unaccompanied child for whom a home study is conducted [ADD]: **or recommended** shall [ADD]: **have the opportunity** to receive post-release services as described at § 410.1210.

**[ADD]: (h) When ORR identifies circumstances that would trigger a home study, they must refer the case to a home study provider within 48 hours.**

**(i) The home study provider must accept the home study referral from ORR and staff the case with a case manager within three (3) calendar days of ORR's referral. The home study provider must contact the care provider within 24 hours of home study referral acceptance, and must also contact the sponsor to schedule the home visit within 48 hours of referral acceptance. The home study provider must submit its written report within ten (10) calendar days of receipt of the referral.**

**(j) Delay in completing a home study shall not delay the release of a child to a sponsor.**

**(k) Before ORR decides whether or not to take any action as a result of a home study, the agency must weigh the benefit of that action against the risk of prolonging the child's custody and the impact that prolonged custody and separation from family will have on the wellbeing of the child.**

## **II. Post-Release Services must promptly be offered to all children and sponsors as voluntary services they can access with language assistance as needed.**

We applaud ORR's commitment to provide PRS to all children by FY 2025. Robust PRS should be offered on a voluntary basis to all unaccompanied children. We strongly urge ORR to keep investing in the further capacity of PRS providers to be able to meet that goal. ORR should make public a plan for expanding the PRS program to provide universal PRS by 2025, including increasing funding and PRS provider capacity.

Post-release services are vital to ensure children have access to education, medical and mental healthcare, legal representation, and other services after release from ORR custody. Through child-centered, trauma-informed, culturally, and linguistically competent case management, these services support safe and stable home placements where children can learn, grow, and thrive. The services also provide support to new caregivers and facilitate integration with local communities. ORR must guarantee language access in PRS, ensuring that the entire process can take place in the child and their sponsor's preferred language(s).

- a. *Post-Release Services must be voluntary, and ORR must work with sponsors and children to remove barriers to access.*

We know that support services work best when individuals and families choose to participate. This is true of PRS and should be reflected in the final rule.

Because many sponsors are undocumented or under-documented, they and their families live in fear of potential immigration enforcement actions and/or family separation. Many sponsors' past experiences and current immigration statuses lead them to view mandatory PRS as a direct connection to immigration, law, or child welfare enforcement agencies who will cause disruption and trauma to their families rather than the stability and support that PRS seek to provide. As written, the rule may incentivize families to avoid PRS out of fear of permanent family separations, rather than availing themselves of the critical services PRS provides. Language clarifying that PRS are voluntary may help mitigate some of these fears and promote active participation in PRS.

Additionally, many sponsors and their families face numerous challenges, including jobs that are demanding and inflexible, caring for children, managing their or their family-members' health needs, complying with immigration enforcement requirements, and preparing immigration cases for themselves and/or family members, among many other things. PRS should provide support and services to sponsors and children without causing them stress or imposing unrealistic demands on them. The benefit of any PRS must outweigh the additional obligations and responsibilities it imposes on its beneficiaries. Ensuring that PRS is voluntary (and thus requiring services to be accessible and valuable such that already burdened families will choose to take advantage of them) is essential.

Therefore, the final rule should reflect that while ORR must offer PRS<sup>4</sup>, the sponsor's and/or child's decision to participate in PRS is voluntary. For example, while we strongly support the requirement that PRS providers assist sponsors with obtaining medical insurance and assisting with appointments where needed, the phrasing "*shall* assist the sponsor in making and keeping medical appointments" in § 410.1210(b)(7) is unnecessarily invasive for the family and does not allow PRS providers to prioritize resources for families that need this kind of assistance. Some sponsors can or already have navigated medical care management and therefore do not require additional assistance. However, the language requires the PRS provider to provide assistance. Changing "shall" to "may" or "as needed" allows the provider to assist based on their discretion, resources, and the needs of the child and sponsor.

In some instances, a child may be unable or unwilling to obtain consent from their sponsor or guardian to receive PRS (e.g., LGBTQ+ youth over 14 requesting mental health care or other community-based services). In such instances, it is important for PRS care providers to honor the child's privacy in order to allow the child to voluntarily access the services they need.

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<sup>4</sup> Under the TVPRA, the "The Secretary of Health and Human Services shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency." 8 U.S.C. § 1232(c)(3)(B)



## Recommendation 2: § 410.1210

(a) *General.* . . .

(2) ORR shall conduct PRS, during the pendency of removal proceedings, 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.

**[ADD]: Sponsor and child participation in PRS is voluntary. ORR shall work with sponsors and/or children to remove barriers to participation in PRS.**

(b)(7) *Medical services.* PRS providers [ADD] may ~~shall~~ assist the sponsor in obtaining medical insurance for the unaccompanied child if available, [ADD] **applying for patient assistance or charity care programs**, and in locating medical providers that meet the individual needs of the unaccompanied child and the sponsor [ADD] **as needed**. 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.

(b)(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 [ADD] **or their sponsor**.

**[ADD] (b)(13) For children 14 years of age and older who are unable or unwilling to obtain consent from their sponsor to specialized or medical services, PRS providers shall respect a child's right to privacy and confidentiality by working directly with them to identify and access those services, as necessary.**

b. *PRS must be offered to all unaccompanied children upon release.*

We applaud ORR's commitment to offer PRS for unaccompanied children for whom a home study was conducted pursuant to § 410.1204. ORR should set and make public a plan for achieving universal voluntary PRS by 2025. That plan must ensure that there are PRS providers based in all geographic areas where children are released to sponsors. Voluntary PRS is one of the most vital tools for protecting children against exploitation, and ORR should prioritize its funding and implementation.

In alignment with ORR's current practice, if a child wishes to receive or continue receiving PRS but the child's sponsor chooses not to do so, ORR should continue to make PRS

available to the child through coordination between the PRS provider and the ORR Project Officer (PO). ORR’s previous policy was that if a sponsor declined to receive PRS, even if the child wanted to receive PRS, the PRS provider had to close that case. As we have previously stated, we know that support services work best when they are voluntary. We appreciate this new safeguard to ensure that children’s best interests are preserved, without forcing the sponsor to receive services they do not want or cannot manage. To support this, ORR needs to create guidelines related to ensuring a child can make meaningful decisions about receiving PRS when the sponsor has decided not to participate. ORR should provide specific regulations requiring the recorded affirmative participation of unaccompanied children in the decision-making process to receive PRS. These guidelines should include protections PRS providers will provide when delivering PRS services to a child whose sponsor has chosen to not receive PRS, including ways to ensure that PRS providers can safely and confidentially, if necessary, maintain contact with a child.

Under current funding levels and PRS provider capacity only about 50% of children receive PRS.<sup>5</sup> This creates a long waitlist of children waiting to receive PRS. Given the current limited capacity of PRS, ORR must create clear internal guidelines for PRS providers to prioritize PRS services for certain categories of unaccompanied children. That prioritization should take into consideration both child welfare concerns, and the unique challenges that immigrant children face. If ORR proposes prioritizing non-mandatory PRS according to the list provided in § 410.1210(c), we urge ORR to add pregnant and parenting children to the list of unaccompanied children to prioritize for receiving PRS.

### Recommendation 3: § 410.1210

(a) *General.* . .

(3) ~~To the extent that ORR determines appropriations are available, and in its discretion, ORR may~~ [ADD]: **provide** ~~conduct~~ PRS in additional cases, [ADD]: **prioritizing those that involve** ~~involving~~ unaccompanied children with mental health or other needs who could benefit from ongoing assistance from a community-based service provider. ORR shall determine the level and extent of PRS, ~~if any,~~ [ADD]: **provided to each unaccompanied child** based on the needs of the unaccompanied children and the sponsors ~~and the extent appropriations are 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 [ADD]: **and sponsor** and in a way they effectively understand [ADD]: **and that accounts for preferred** spoken language, reading comprehension, or disability to

<sup>5</sup> Off. of Refugee Resettlement, *Fact Sheets and Data*, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#Home%20Studies%20and%20Post-Release%20Services> (current as of Oct. 13, 2023).

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.~~

(c) PRS for unaccompanied children requiring additional consideration. Additional unaccompanied children may be referred to PRS based on their individual needs, including, but not limited to:

...

**[ADD] (11) Unaccompanied children who are pregnant or parenting**

### Recommendation 4

ORR should create guidelines ensuring that a child can make meaningful and confidential decisions about receiving PRS when the sponsor has decided not to participate, consistent with the applicable state and federal law, while protecting parents' constitutional right to make decisions concerning the care, custody, and control of their children.

*c. PRS must begin promptly.*

For released children who are required by the TVPRA to receive PRS, having PRS start no later than 30 days after release is too long of a wait. Based on consultation with PRS providers, starting PRS no later than 14 days after release is manageable and appropriate.

### Recommendation 5: § 410.1210

(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 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 start no later than ~~30~~ **[ADD] 14** days after release.

(2) For a released unaccompanied child who is referred by ORR to receive PRS but is not required to receive PRS following a home study, the PRS provider shall to the greatest extent practicable start services within two (2) days of accepting a referral **[ADD] and no later than 30 days after release or referral.**

### **III. PRS must be limited to the expertise and skills of PRS providers and refer to local service providers for all services outside of the PRS providers' area of expertise.**

#### *a. Guardianship*

PRS providers are not legal professionals and should use extreme caution when giving advice that could implicate a child's legal rights and immigration status. This is especially true around issues of custody and guardianship. Many UCs are eligible for Special Immigrant Juvenile Status, which requires a state court to issue certain factual findings, often at the outset of a custody or guardianship proceeding. As advocates, we have seen well-meaning community service providers advise children and their relatives to seek custody or guardianship without emphasizing (or knowing) that it is essential to do so in consultation with an immigration attorney. Because of this, many young people unknowingly lose their best and least traumatic avenue to immigration relief and citizenship.

Likewise, because family and custody laws are state-specific, issuing a federal regulation addressing guardianship is likely to create confusion in states where the term has different meanings for children and adults, and in states that use different terms (e.g., custody) to refer to an adult's legal responsibility to care and make decisions for a child. We urge ORR to exclude this requirement from the final rule to avoid sowing confusion and to avoid causing PRS providers to unknowingly prejudice children's immigration cases.

In addition, we recognize that when issues arise after a child has been released to a sponsor that lead to child protective services (CPS) involvement with a case, misunderstandings can arise about the life circumstances of unaccompanied children and their relationship with their sponsor. CPS workers often do not understand the difference between sponsorship and legal guardianship or custody and they may not be familiar with the unique challenges faced by unaccompanied children. These circumstances can lead CPS workers to make recommendations that cause further harm to unaccompanied children, including prejudicing their immigration cases, as described above.

ORR should not attempt to resolve potential issues that may arise with CPS when a sponsor is not a legal guardian or custodian by codifying a requirement that PRS providers give the sponsor information about the benefits of obtaining legal guardianship of the unaccompanied child. Instead, ORR can help resolve these issues by providing more training to CPS workers on the challenges faced by unaccompanied children, the process for reunification with sponsors, and information on the difference between sponsorship and legal guardianship or custody. It can also work with legal service providers to provide education about important immigration relief available to unaccompanied children, and how CPS workers can support children in seeking that relief. In addition, ORR should create a hotline that CPS workers can call with questions related

to unaccompanied children and their unique situations and challenges, including questions about sponsorship and legal custody.

b. *Employment*

Unaccompanied children of legal working age often seek employment opportunities so that they can earn money to support themselves and their families, who likely remain in danger or face other adverse situations. Legal work permits help ensure that these children can obtain safe and legal work. It is critical that these children are also provided with education and support so that they can continue to attend school and pursue safe and healthy work opportunities that are appropriate for minors. Our organizations' experiences working with unaccompanied children has shown time and again that the most effective way to protect children from exploitative labor is to support them and their families in their communities. Support includes ensuring that children and families are connected to legal service providers who can provide assistance if a child ends up in an exploitative job.

c. *Trauma Assessments*

The preamble states that, "During the assessment, PRS providers should also identify any traumatic events and symptoms by using validated screening measures developed for use when screening and assessing trauma in children."<sup>6</sup> We find this concerning and outside the scope of PRS caseworkers' work. Under current ORR policy, "PRS caseworkers who have direct contact with released children must be at least 21 years of age, highly proficient in Spanish or have access to qualified interpreters and have at least one year of experience working with children."<sup>7</sup> ORR is potentially asking an individual with limited work experience and limited education and training related to behavioral sciences to assess something as complicated as childhood trauma. Also, PRS caseworkers do not have the ability to provide support and follow-up in situations where screening measures uncover trauma, which may increase the severity of symptoms, except in level 3 PRS support, which can include clinical services. It would be unethical for caseworkers to screen for trauma if they do not have the ability to support the client.

## **Recommendation 6**

ORR should create a hotline that CPS workers can call with questions related to unaccompanied children and their unique situations and challenges, including questions about sponsorship and legal custody.

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<sup>6</sup> 88 Fed. Reg. 68934.

<sup>7</sup> Off. of Refugee Resettlement, ORR Unaccompanied Children Program Policy Guide § 6.7.1, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-6#6.7.1> (current as of Oct. 6, 2023).

## Recommendation 7: § 410.1210

(b) *Service areas.* . . .

(3) *Guardianship.* If the sponsor is not a parent or legal guardian of the unaccompanied child, then the PRS provider shall provide the sponsor information [ADD] **and assist interested sponsors to obtain legal representation to legally formalize their care-giving relationship with the child.** ~~about the benefits of obtaining legal guardianship of the unaccompanied child.~~ If the sponsor is interested in becoming the unaccompanied child's legal guardian, then t [ADD] **The PRS provider [ADD] shall counsel the sponsor and/or unaccompanied child to consult with an immigration attorney prior to formalizing a caregiving relationship through guardianship or custody, and** may assist the sponsor in [ADD]**obtaining legal services** identifying the legal resources to do so.

(6) *Employment.* PRS providers shall educate sponsors on U.S. child labor laws and requirements. [ADD] **For unaccompanied children of legal working age who wish to work and are eligible for work authorization, PRS providers shall also connect such children to legal service providers to help them obtain work authorization and understand legal protections against labor exploitation.**

(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. [ADD] **If the PRS provider suspects that the released child has experienced traumatic events and is experiencing the symptoms of trauma, the PRS provider shall refer that child to trauma-informed, culturally and linguistically appropriate mental health services.**

*d. Feedback regarding “levels” of PRS as outlined in the ORR Policy Guide.*

In the preamble to the proposed rule, ORR seeks feedback on expanding PRS and on various “levels” of PRS.<sup>8</sup> ORR states that it is considering an option in which Level One PRS would include safety and wellbeing virtual check-ins; Level Two PRS would cover case management services; and Level Three PRS would include intensive home engagements. We

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<sup>8</sup> 88 Fed. Reg. 68934-35.

generally agree with current ORR Policy Guide descriptions of the three levels of PRS<sup>9</sup> and would welcome the opportunity to work with ORR to make certain needed changes to the current ORR Policy Guide articulation of PRS. We believe that these three levels of PRS will be beneficial to unaccompanied children and make delivering PRS services more manageable and accessible for PRS providers.

However, Level One PRS should not be described as safety and wellbeing checks. As we will also mention further on in our comment, safety and wellbeing checks should be a service that is distinct from PRS. The goal of PRS should be to support the child and the sponsor to ensure the child's unique needs are met and to facilitate integration with local communities. In addition, safety and well being checks alone are not sufficient for all children. Children at all levels of PRS may need basic support accessing community resources and their sponsors may need support with school enrollment, address updating with various government entities, etc. The qualifying characteristic of Level One should be that the complexity of a child's case and situation allows case management to be done virtually instead of in person. The services for Level One should not be limited to a safety and wellbeing check.

Generally, we believe many more unaccompanied children would benefit from receiving Level Two PRS. All children and sponsors who would like a PRS case manager that would provide referrals and connections to community resources for the child and sponsor for at least six months should be able to do so, including in-home visits if desired by the sponsor and/or child.

*e. ORR must strengthen PRS privacy protections for children and their sponsors.*

Proposed § 410.1210(i) is not specific enough to provide adequate protection for children and sponsors. Insufficient privacy protections for children and their sponsors are likely to be a significant barrier to engagement in PRS. First, as in other sections relating to privacy throughout the rule, the PRS sections should specify that neither children nor sponsor's information or data will be shared with any third parties, including law and immigration enforcement entities. Second, ORR should proactively demonstrate its commitment to privacy protection by mandating written request or consent of the child and/or sponsor who is the subject of the information before records are released, or by subpoena. This must be understood to include case management and counseling notes and records.

In addition, while we agree that there is good reason for ORR to have ultimate responsibility for securing the safeguarding of some of unaccompanied children's records, such as case files maintained by PRS providers, the same approach may not be appropriate for ownership of all types of records. Many of the undersigned organizations are direct providers of

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<sup>9</sup> Off. of Refugee Resettlement, ORR Unaccompanied Children Program Policy Guide § 6.3, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-6#6.3> (current as of Oct. 6, 2023).

different types of services for unaccompanied children. As such, we recognize that different providers are subject to different laws and best practices concerning the ownership of children's records. For instance, some records maintained by legal services providers are protected by attorney-client privilege and cannot be shared with ORR; likewise, national and state policies may apply to children's medical information to preserve the confidentiality of sensitive personal information. Therefore, we recommend that PRS providers only provide aggregated non-identifying data to ORR, and that PRS case files should not be considered the property of ORR.

Without these suggested changes, children's and sponsors' vulnerability and openness to engage with ORR in the reunification process and to engage with PRS can easily be weaponized. Such protections codify ORR's clear mandate as a child welfare entity rather than as an arm or extension of law or immigration enforcement entities.

### **Recommendation 8: § 410.1210(i)**

(2)(iii) PRS providers may not release records to any third party, **[ADD] including law and/or immigration enforcement entities,** without prior approval from ORR **[ADD] and written request or consent by the subject of the information contained therein (child and/or sponsor) or by subpoena.**

...

(3)(i) PRS providers shall have written policy and procedures in place that **[ADD] comply with § 410.1210 (i)(2)(iii) and that** protects the sensitive information of released unaccompanied children from access by unauthorized users **[ADD] in accordance with federal laws requiring national standards for protecting sensitive and restricted data.**

- f. PRS providers need additional time and guidance around filing a Notice of Concern and other documentation.

We request that ORR clarify the purpose of requiring PRS providers to submit Notifications of Concern (NOC) after a child is released from ORR care and custody. We have questions about what ORR intends to do with NOCs given that they do not have custody of a child post release.

In addition, too short of a turnaround time to submit these NOCs to ORR consumes valuable time in the immediate future after a concern is identified when PRS caseworkers are coordinating and executing an intervention with the child and family and child protective services (CPS), law enforcement, and/or other appropriate investigative agencies. In order to allow caseworkers to properly carry out an intervention with the child and family, report it to the



appropriate investigative agencies, document the incident for ORR in a case note and a NOC, we recommend the turnaround time to be 3 business days.

Currently, the regulatory text of § 410.1210(i)(4)(i) does not specify the kinds of situations where ORR would expect PRS providers to file an NOC. An abbreviated version of the list described in the preamble<sup>10</sup> and in § 6.8.6 of the ORR Policy Guide could also be included in the regulatory text. The list below represents the situations in which we feel it would be appropriate for PRS providers to file an NOC.

Additionally, PRS providers conveyed that they need fourteen (14) days from the completion of services to upload all PRS documentation is more manageable and appropriate than seven (7) days.

### **Recommendation 9: § 410.1210 (i)(1)(ii)**

(i)(1)(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)~~ **[ADD] fourteen (14)** days of completion of the services.

### **Recommendation 10**

ORR should clarify the purpose of requiring PRS providers to submit Notifications of Concern (NOC) after a child is released from ORR care and custody.

### **Recommendation 11: § 410.1210(i)(4)(i)**

(i)(4)(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).~~

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<sup>10</sup> 88 Fed. Reg. 68979.

**[ADD] PRS providers must submit a NOC when documenting certain reason(s) for concern:**

1. Emergencies (death of a released child, destruction of property following a natural disaster, illness or injury requiring immediate hospitalization, etc.);
2. Human trafficking concerns;
3. Abuse (including sexual abuse), abandonment, neglect, and maltreatment;
4. Kidnapping, disappearances, or a runaway;
5. PRS provider unable to make contact with released child within 30 days of release or referral acceptance; and/or,
6. PRS provider is providing services on an ongoing case and loses contact with the child and there are clear, imminent safety concerns.

PRS providers are mandatory reporters and must report certain circumstances to the appropriate authorities (including law enforcement and child protective services). PRS providers must train staff on State-specific mandated reporting laws for all states where PRS is being provided and have written procedures for meeting State-mandated reporting requirements (i.e., reporting suspected neglect, maltreatment, abuse and/or sexual abuse).

**Recommendation 12: § 410.1210(i)(4)(ii)**

(i)(4)(ii) PRS providers shall document and submit NOCs to ORR within 24 hours **[ADD] 3 business days** of first suspicion or knowledge of the event(s).

*g. ORR must provide additional staff to conduct Safety and Well Being follow up check-ins.*

We support ORR’s exclusion of Safety and Well Being Follow Up Calls (SWB) from the proposed rule to allow for continued improvement and adaptation of the system, as explained in the preamble to the proposed rule.<sup>11</sup> Additionally, we recommend that ORR commit to providing various means of communication for SWB calls and call them “SWB checks” rather than limiting them to phone calls. In our experience, many sponsors and/or children do not have stable or constant phone service or phone numbers. Frequently, they prefer to communicate via SMS text or other texting services like WhatsApp. ORR should continue to refine SWB checks to optimize accessibility, cultural competency, trust building, and connection to requested services.

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<sup>11</sup> 88 Fed. Reg. 68934.

Furthermore, SWB checks should be a service that is distinct from PRS. To be effective, SWB checks should provide an opportunity to children and/or sponsors to communicate with a neutral individual to request assistance, a change in PRS provider or services, or to decline services. Additionally, at the current funding level of PRS, there is not enough capacity to meet the needs of all children who require PRS services. Adding SWB checks to the services provided by PRS providers would further strain capacity for children who request and/or require more intensive services and could exacerbate the already lengthy waitlist for services. Additionally, without additional PRS funding, adding SWB checks to PRS provider responsibilities will make the important goals of universal voluntary PRS even more unattainable. ORR must either fund additional PRS providers to conduct such checks or use ORR staff trained similarly to PRS providers to conduct the SWB checks. Personnel who conduct the SWB checks should be proficient in languages other than English used commonly by unaccompanied children and their sponsors and have access to qualified interpreters. They should have experience working with youth and immigrant families. Additionally, they should be trained in a foundational knowledge of child welfare principles, family preservation, child and adolescent development, trauma-informed care, cultural competency and unconscious biases, and issues related to forced migration.

To support the iterative process of improving and expanding PRS, we urge ORR to hold monthly stakeholder feedback listening sessions with at least one representative from each PRS provider to discuss proposed policy changes and to receive feedback from PRS providers on those changes. In addition, ORR should solicit feedback in written formats such as surveys, questionnaires, digital “suggestion boxes,” etc. and respond to that feedback in a timely manner. Because PRS providers implement ORR directives and policies and know best how they will impact the services provided to unaccompanied children and their sponsors, they are well situated to communicate to ORR what is working well and what needs to be improved or changed. They also have useful perspectives that could alert ORR to potential issues that could result from a proposed policy or directive.

#### **IV. Conclusion**

We thank ORR for the opportunity to comment on the proposed rule. We are encouraged by the provisions that support the prompt reunification and release of unaccompanied children and that improve the post-release services that children and sponsors receive. The changes we offer to the proposed rule would further strengthen these provisions. We urge ORR to adopt our recommendations and improve protections for youth in the final rule.