

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

January Contreras
Assistant Secretary
Administration for Children and Families
330 C Street SW
Washington, DC 20201

Jennifer Klein
Executive Director
Gender Policy Council
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

August 19, 2022

Dear Secretary Becerra, Assistant Secretary Contreras, and Executive Director Klein,

In the aftermath of the Supreme Court’s reversal of long-held rights in *Dobbs v. Jackson Women’s Health Organization*, the undersigned 41 organizations urge immediate action to guarantee that all unaccompanied children in the custody of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) have timely access to the full range of reproductive health care, including abortion care. Further, we urge that you take every action necessary to ensure that pregnant youth currently in ORR’s custody may avail themselves of reproductive health care, including abortion care, and that future arriving children also retain such rights in light of state restrictions on reproductive care.

We were encouraged by [President Biden’s commitment to do “all in \[his\] power to protect a woman’s right in states where they will face the consequences of \[the *Dobbs*\] decision”](#) – that is, to protect the right to choose broadly. We are further encouraged by the Biden Administration’s [public expression of support for the rights of unaccompanied children](#) to obtain complete reproductive health, including access to abortion services if they so choose, and will work with you to make those commitments concrete. We detail 18 actions below.

Access to high-quality reproductive health care – including the right to choose to terminate a pregnancy – is fundamental to all unaccompanied children’s best interests. Unaccompanied children have fled their home countries to escape dangers that include extreme violence and sexual exploitation. Many children face ongoing trauma, across their journeys and upon arrival. As legal custodian of these children when they arrive, HHS has the obligation to guarantee that the best interests of pregnant youth are met.

We recognize the measures that ORR has taken, such as its [Field Guidance #21](#) that implements compliance with *Garza v. Hargan* decision requirements. To build on those measures to maintain and safeguard reproductive health care for unaccompanied children, including full access to abortion care, forthcoming policy should include the following.

The Administration for Children and Families (ACF) and ORR should make permanent revisions to ORR policy such that:

- 1. All children in ORR custody have access to the full range of reproductive health care, including contraception and miscarriage and abortion care.**
- 2. Pregnant youth in ORR custody shall not be placed in a U.S. state that bans or significantly restricts abortion access (e.g., bans abortion at fifteen weeks or earlier).**
- 3. Any pregnant youth in ORR custody who requests access to abortion and is in a state that bans or significantly restricts abortion shall be afforded an immediate transfer (and the option to be transferred back), unless the youth affirmatively asserts a preference to stay in the current placement or state after receiving appropriate advisals.**
- 4. Any pregnant youth shall be promptly notified of the right to the full range of reproductive health care, regardless of state restrictions, in language that the youth can understand, in a comfortable and private venue in which the youth may feel free to ask questions (such as non-directive medical counseling), and the delivery point of which information is standardized (e.g., always by an experienced medical professional).**
- 5. Every facility holding unaccompanied children, including emergency, influx, shelter, and foster-care facilities, shall display a standardized set of posters and flyers in English and Spanish that inform pregnant youth of their right to reproductive care while in ORR custody, including the right to access abortion services.**

6. All medical records of pregnant youth remain private and confidential, including but not limited to information regarding the fact of a youth's pregnancy and a youth's decision whether to have an abortion.
7. Disclosure(s) of pregnancy-related medical records without the youth's explicit consent will only be allowed in urgent circumstances, such as if a youth requires urgent medical care and their medical condition prevents them from telling an appropriate medical provider. ORR must monitor all disclosures to ensure that children's medical information is protected and not being disclosed in an unauthorized manner. Youth must be informed of all disclosures, including the recipient of the information and a summary of what was disclosed.
8. Disclosure protections for pregnant youth are rigorous across the ORR network, to include:
 - a. protections from disclosure by HHS contract and grantee staff, outpatient medical caregivers, and PRS workers to sponsors and other individuals who do not require the information in order to provide services to the youth. In the case of sponsors, disclosure related to abortion care should only take place if the sponsor must be made aware of a serious health complication after the youth is released;
 - b. protections from requirements or pressure on youth to disclose information regarding pregnancy or their reproductive decision-making to potential sponsors; and
 - c. protections from requiring disclosure in order for the youth to be released to a potential sponsor in a timely fashion or at all.

ORR Division of Health for Unaccompanied Children (DHUC) should ensure that:

9. DHUC staff verify the administration of pregnancy tests as required by HHS / ACF policy, and should further verify that youth receive test results within 24 hours. Youth must be informed confidentially and in age-appropriate language regarding administration of test, timing, and test results.
10. Pregnant youth whose preferred language is a language other than English or Spanish have access to high-quality medical interpretation and psychosocial-care interpretation for discussions of the youth's reproductive care, granted within three days of a positive pregnancy test.

11. Privacy of medical records is ensured in arrangements with UC care providers, inclusive of both in-house medical care by ORR grantees and outpatient care, with access to information limited to those ORR and provider staff who require access in order to provide care. ORR must monitor all disclosures to ensure that children's medical information is protected and not being disclosed in an unauthorized manner.
12. All pregnant youth receive a referral for appointment of an independent Child Advocate to advocate for and safeguard their best interests while in custody and after release.

ORR Division of Unaccompanied Children's Operations (DUCO) should ensure that:

13. ORR has and maintains a sufficient network capacity of shelters licensed for pregnant and parenting youth in states that do not significantly restrict access to abortion services.
14. Future funding announcements, inclusive of both new awards and competitive renewals, should designate the following as priority states for grantees:

California; Colorado; Connecticut; Delaware; District of Columbia; Hawaii; Illinois; Kansas; Maine; Maryland; Massachusetts; Minnesota; Montana; Nevada; New Hampshire; New Jersey; New Mexico; New York; Oregon; Rhode Island; Vermont; and Washington.
15. Any provider facility that will ensure access to the full range of reproductive-care access, inclusive of abortion care, be so described on the provider profile in the ORR Portal.

ORR should:

16. Integrate the procedures of [Field Guidance #21](#) and any new policy protecting reproductive health access and care into both the ORR Policy Guide and the Manual of Procedures.
17. Provide clear written guidance to medical professionals, other clinicians, case managers, youth care workers, and foster-care staff and families who work with unaccompanied children in shelters or family-based placements located in states that ban or significantly restrict abortion as to what information, formal counseling, informal counsel, and other education they may give to pregnant youth in ORR

custody.

18. Provide clear written guidance to legal services providers who work with unaccompanied children as to their duty to provide full guidance, legal advice, and referrals during legal orientation and individual assessments if a youth states or evinces a desire to obtain further information about reproductive health care, including abortion care.

In closing, we note that abortion restrictions both affect the right of a pregnant youth to access abortion care services and create chilling effects for the many professionals whom pregnant youth rely on to provide medical opinions, counseling, and support at a time of great stress. We urge you to consider and implement the above-mentioned recommendations, as time is of the essence for every youth in need of reproductive care in your custody. We remain committed to assisting ACF and ORR in ensuring that children's rights are met in these matters. Please call on us, collectively or individually, to contribute ideas, weigh consideration, and share input moving forward.

If you have any questions, please do not hesitate to reach out to Mario Bruzzone, Senior Policy Advisor, Women's Refugee Commission (mariob@wrcommission.org); Megan Mack, Director for Immigration Policy, Vera Institute of Justice (mmack@vera.org), Azadeh Erfani, Senior Policy Analyst, National Immigrant Justice Center (aerfani@heartlandalliance.org), Laura Belous, Advocacy Attorney, Florence Immigrant and Refugee Rights Project (lbelous@firrp.org), Jane Liu, Senior Litigation Attorney, Young Center for Immigrant Children's Rights (jliu@theyoungcenter.org).

Sincerely,

Women's Refugee Commission

Vera Institute of Justice

National Immigrant Justice Center

Florence Immigrant and Refugee Rights Project

Young Center for Immigrant Children's Rights

And the undersigned organizations:

Acacia Center for Justice

ACLU

Advocates for Youth

American Academy of Pediatrics

ASISTA

Bold Futures NM

Caminar Latino - Latinos United for Peace and Equity

Catholics for Choice

Center for Law and Social Policy (CLASP)

Church World Service

Freedom Network USA

Futures Without Violence

Guttmacher Institute

HEAL Trafficking

Heartland Human Care Services

Immigrant Alliance for Justice and Equity

Immigration Hub

Justice At Last

Kids in Need of Defense (KIND)

Michigan Immigrant Rights Center

National Center for Youth Law

National Council of Jewish Women

National Family Planning & Reproductive Health Association

National Health Law Program

National Immigration Law Center

National Latina Institute for Reproductive Justice

Oxfam America

Physicians for Reproductive Health

Planned Parenthood Federation of America (PPFA)

RAICES

Sunita Jain Anti-Trafficking Initiative

Tahirih Justice Center

Timber Ridge School

Ujima Inc., The National Center on Violence Against Women in the Black Community

Witness at the Border

WOMANKIND