



ADVANCING AMERICAN FREEDOM

Robin Dunn Marcos
Director, Office of Refugee Resettlement
Department of Health and Human Services
330 C Street, S.W.
Washington, D.C. 20201

RE: Comments regarding the Office of Refugee Resettlement’s Proposed “Unaccompanied Children Program Foundational Rule” RIN: 0970-AC93 (Docket No. 2023-21168)

Dear Director Marcos,

Below are comments from Advancing American Freedom (“AAF”) on the Office of Refugee Resettlement’s proposed “Unaccompanied Children Program Foundational Rule,” published in the Federal Register on October 4th, 2023.

Introduction

Advancing American Freedom (AAF) is a 501(c)(4) non-profit organization that advocates for conservative values and policies by developing innovative policy solutions, strategies, coalitions, and messaging that build upon the accomplishments of the last administration and expand freedom for all Americans.

AAF is deeply concerned that the Office for Refugee Resettlement (ORR) is ignoring the law to implement a nakedly political agenda and promote abortion. In its own words, the ORR “helps new populations maximize their potential in the United States by linking them to critical resources that assist them in becoming integrated members of American society.” However, the Biden Administration is devoting its efforts to facilitating abortions in an illegal manner and infringing upon parental rights to promote gender transition surgeries. The rule also leaves ambiguous the status of crucial First Amendment religious and conscience protections regarding contentious issues that divide the American people.

This rule violates the Hyde Amendment, which states in its current form that no taxpayer funding “shall be expended for any abortion” or “for health benefits coverage that includes coverage of abortion,” except “if the pregnancy is the result of an act of rape or incest; or . . . in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.”

Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. H, §§ 506–07, 136 Stat. 49, 496 (“CAA 2022”).¹ The rule also fails to affirm Religious Freedom Restoration Act (RFRA) protections for medical employees regarding abortions or gender transition surgeries funded by this rule beyond a passing mention in the rule’s preamble.

I. This Rule Flagrantly Disregards the Law in its Overzealous Attempt to Expand Abortion

In its quest to find any possible avenue to promote abortion in light of the Supreme Court’s *Dobbs v. Jackson Women’s Health Association* decision, the Biden Administration has lost sight of the bounds of the law and has twisted itself into knots in its attempts to justify its decisions. Despite *Dobbs* making it clear that there is no national constitutional right to abortion (let alone a right to abortion for noncitizen unaccompanied children), the Office of Refugee Resettlement will continue to facilitate access to abortions, even disregarding state laws in the process. Their intent to support abortions at all costs disregards the longstanding prohibition of federal abortion funding known as the Hyde Amendment, a commonsense provision regarding a crucial moral issue that polarizes the American people.

The Department of Justice has attempted to argue that this rule does not violate the Hyde Amendment because the funding for these ORR programs would not go directly towards the abortion procedure itself. However, such reasoning is farcical. For example, \$100,000 that goes to the ORR in general frees up \$100,000 to spend on abortion procedures that originally would not have been spent. However, the funding outlined in this rule is not general organizational funding. This funding goes specifically towards abortion travel, which directly makes the abortion procedure possible in violation of the Hyde Amendment.

Another cause for concern is that unaccompanied minors, the people who fall under the ORR’s purview, are often from starkly impoverished backgrounds and do not speak English. They would have a hard time communicating their desires to the ORR, rendering them vulnerable to manipulation from the government. Such vulnerability regarding a subject as sensitive as abortion must not be exploited, and the Biden Administration’s enthusiasm for expansive abortion access are concerning here.

The rule’s provisions also facilitate abortion travel across state lines, which shows a lack of respect for state laws and legitimate state interests in protecting innocent life and prompts consideration of potential Tenth Amendment violations of state purview. A bureaucratic agency is not “the people and their elected representatives,” the rightful deciders of abortion policy in America under the Constitution and the *Dobbs* ruling. This rule would preempt rightful federalist division of power between the national and state governments.

¹ Department of Justice, Office of Legal Counsel, *Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions* (Sept. 27, 2022), https://www.justice.gov/d9/2022-11/2022-09-27-hyde_amendment_application_to_hhs_transportation.pdf

II. This Rule Would Harm Vulnerable Minors and Violate Crucial Parental Rights

As mentioned earlier, the ORR's self-defined purpose is to "help... new populations maximize their potential in the United States by linking them to critical resources that assist them in becoming integrated members of American society." This rule inserts scientifically dubious gender ideology to the treatment of already vulnerable minors. Many European nations have taken a step back from their previous pro-child transition policies amid negative consequences.

The rule proposes making "LGBTQI+ status" a factor in an unaccompanied child's placement in § 410.1103(b)(7) and § 410.1210(c)(3). The rule does not elaborate on the detailed implications of how such status impacts placement, but one can fill in the blanks and come to alarming conclusions when studying other recent federal regulations from the Department of Health and Human Services (specifically the Administration for Children and Families), the same agency in charge of ORR. The HHS ACF found that "non-affirmation" of the LGBTQ+ movement is tantamount to child abuse. Under 45 CFR § 410.1103, ORR will likely facilitate medical "gender transitions" for unaccompanied alien children (UACs) in its custody. Conducting irreversible surgeries upon minors vulnerable in several ways (apart from their parents, experiencing the confusion of adolescence, living in an unfamiliar country, and the simple fact that minors are too young to make such a life-altering decision) is radical and reckless. The rule is unclear regarding these provisions: does ORR's definition of a suitable placement home for an unaccompanied child match that of the foster care rule? Would ORR facilitate gender transition procedures for minors? If so, which ones?

The rule mentions consideration of "gender" (undefined), but not "sex" when making placements in § 410.1103(b)(6). Is this a conflation of biological sex with gender identity? Or does this render biological sex irrelevant in the eyes of HHS? If the latter is true, the potential impacts on private spaces are deeply concerning. These policies could place biological men in such spaces with vulnerable women. Asylum shelters are close quarters full of vulnerable people who may not feel comfortable reporting crimes against them to U.S. authorities. The United States border is rife with human trafficking (often done by violent, exploitative cartels), further escalating this problem. What are the safeguards to protect both ORR staff and the children in their care?

Children do not have the mental capacity, wisdom, or life experience necessary to make permanent decisions about their life (especially as drastic as pursuing a gender transition surgery), which explains why parents have proper authority over their children. While these minors are unaccompanied, the same reasoning applies to what decisions the child can make. Even other provisions of this rule account for the minor's immaturity, so the policy of providing access to gender transitions is unwise.

The proposed rule says this regulation will not have an impact on family well-being, which is defined as whether the policy strengthens or erodes family stability and the authority and rights of parents in the education, nurture, and supervision of their children; helps the family perform

its functions; and increases or decreases disposable income. This rule flagrantly violates the first definition of family well-being, and killing an unborn child or transitioning a child will have a negative impact on families. How do these policies pursue a child's best interest? How does taking an innocent life contribute beneficially to "healthcare?" The aforementioned preemption concerns regarding state law apply to parental rights as well. States have an interest in protecting kids from reckless decisions that they are too young to make and parental rights to guide such children. Lastly, the lumping together of intersex (I) conditions with the LGBTQ movement is unwise. Intersex conditions are physical abnormalities, while the rest of the LGBTQ movement relates to issues of identity.

III. This Rule Threatens Constitutional Religious Freedom and Conscience Protections

The rule repeats four times in preamble without explanation that ORR operates the UC Program in compliance with the requirements of the Religious Freedom Restoration Act and other applicable federal conscience protections, as well as all other applicable federal civil rights laws and applicable HHS regulations. However, the regulation itself does not actually reference how it does so. Would ORR staff that have sincerely held religious/conscientious objections to facilitating abortions or gender transition surgeries be able to do so? If so, these protections should be specified within the regulation itself.

Abortion and how to handle transgender issues (especially among youth) are two of America's most emotionally and morally charged social issues, and the government should not spend millions of taxpayer dollars on facilitating them among unaccompanied minors who are too young, confused, desperate, and unfamiliar with the English language to consent to such procedures.

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. This has concerning implications for both conscience protections and federalism. The regulation must be modified to explicitly protect the rights of citizens and individual states.

Conclusion

In this proposed rule, the ORR has failed to alleviate our concerns that this rule infringes upon First Amendment religious freedom rights, Tenth Amendment federalism, parental rights, and the Hyde Amendment's ban on taxpayer funding for abortion. This rule also does not align with the agency's mission of promoting the well-being of the people it serves by facilitating procedures with lifelong consequences among people too young to consent to them.

The conscience rights of ORR staff must be protected, vulnerable children must not be manipulated for ideological ends, the security of private spaces must be ensured, and the religious beliefs of loving parents across America who would care for children of all beliefs and identities well must be respected. The Biden Administration's zeal for expanding access to abortion and youth gender transitions have blinded it to the law and America's most cherished freedoms. For these reasons, AAF demands that this rule be rescinded immediately.