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PRO-LIFE
AMERICA

VIA Federal eRulemaking Portal

December 4, 2023

Secretary Xavier Becerra
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Proposed Rule: Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68908 (October 4, 2023), RIN 0970-AC93, Docket ID 2023-21168.

Dear Secretary Becerra,

On October 4, 2023, the Office of Refugee Resettlement (ORR) released a proposed rule that allows taxpayer dollars to fund [“medical services requiring heightened ORR involvement, including access to abortions”](#) for unaccompanied children in the care of the ORR. This is a flagrant violation of federal law and years of precedent regarding the taxpayer funding of abortion. Additionally, by unlawfully facilitating elective abortion, this proposed rule betrays the mandate Congress gave to the ORR to protect the interests of vulnerable unaccompanied children. We vehemently oppose this proposed rule, and we urge the ORR to withdraw it immediately.

Since 1976, federal law has been clear: no taxpayer funding for abortion. This is evident in what is known as the Hyde Amendment. The Hyde Amendment was first enacted for Fiscal Year 1977 by [Public Law 94-439](#) (September 30, 1976), and has been renewed in varied iterations for every fiscal year since. This amendment prohibits, among other programs, all Health and Human Services-funded programs from being used for abortion or health benefits coverage that includes coverage of abortion. This ORR proposed rule violates this longstanding federal law and precedent. The ORR purports that it would permit access to abortion [“in a manner consistent with limitations on the use of Federal funds for abortion.”](#) This is a flat-out contradiction. It is not possible to facilitate abortions or access to abortions (including expenses for travel or lodging for the purpose of obtaining an abortion) while still abiding by federal law under the Hyde Amendment. In the proposed rule they state that the [“ORR will facilitate such access regardless of whether the Federal Government may pay for the abortions under the Hyde Amendment.”](#) This is a blatant disregard for the rule of law and legal precedent. The ORR cites in a [footnote](#) the September 2022 Department of Justice *Memorandum on the Application of the Hyde Amendment* as reasoning for funding the abortion transportation and travel for unaccompanied minors via this proposed rule. Not only is the use of this citation incorrect, but the memorandum itself is incorrect. A restriction on funding for abortion is a restriction on funding for any cost

necessitated by the abortion. Funding the travel for an abortion is in fact funding the abortion. There is no other reason for the travel expenses. Therefore, any funding that goes toward facilitating abortions or access to abortions is a direct violation of the Hyde Amendment and federal law.

Under [6 U.S. Code § 279](#), Congress mandates that the ORR and Department of Health and Human Services ensure “that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child.” The ORR [claims](#) that this proposed rule fulfills this mandate, but that could not be farther from the truth. The ORR via the proposed rule makes the dangerous and politically motivated assumption that access to abortion is what is in the best interest of pregnant unaccompanied children who may be in their custody. Abortion is far from what is in the best interest of vulnerable unaccompanied children. [Studies](#) have shown that abortion can contribute to mental health disorders, substance abuse, and risk of suicide in girls and women. Additionally, both chemical and surgical abortion are associated with high risk of complications. In fact, chemical abortion performed at less than 9 weeks’ gestation is associated with a [5.9% risk of complications](#) that require surgical intervention. If the abortion is performed in the second trimester, the risk of complications requiring surgical intervention [rises to 38.5%](#). Furthermore, [complications resulting in emergency room treatment](#) occur in 5% of women experiencing chemical abortion and 2% of women experiencing surgical abortion, further stressing our health care systems and traumatizing these girls and women. These statistics only scratch the surface of the danger that this proposed rule would put pregnant unaccompanied children in. The proposed rule could also aid human traffickers and other bad actors who may [force their victims to have an abortion](#) to cover their crimes. The victims in this situation would be the vulnerable and often helpless unaccompanied children that the ORR is mandated to protect.

This proposed rule is illegal and dangerous. If finalized, this rule will violate longstanding federal law and years of precedent regarding the taxpayer funding of abortion. Funding the travel for an abortion is funding the abortion. There is no memorandum or word gymnastics on behalf of the current Administration that can change the fact that the Hyde Amendment has been governing HHS funding for the last 47 years and still governs HHS funding to this day. If violating federal law were not enough, the proposed rule betrays the congressional mandate given to the ORR to protect the interests of unaccompanied children in their custody. This proposed rule endangers unaccompanied children and enables bad actors to prey on their vulnerability. The ORR needs to put people over politics. The lives of children should not be used to score political points for an Administration. We oppose this proposed rule, and we urge the ORR to withdraw it immediately.