May 27, 2025

Toby Biswas
Director of Policy, Division of Unaccompanied Children Policy
Unaccompanied Children Bureau
Office of Refugee Resettlement, Administration for Children and Families
Department of Health and Human Services
Washington, D.C.

[Submitted via Regulations.gov]

Re: Comment from American Academy of Pediatrics, Academic Pediatric Association, American Academy of Child and Adolescent Psychiatry, American College of Physicians, American Pediatric Society, Association of Medical School Pediatric Department Chairs, National Association of Pediatric Nurse Practitioners, Pediatric Policy Council, Society for Adolescent Health and Medicine, Society for Pediatric Research on the Interim Final Rule RIN 0970-AD16.

Dear Mr. Biswas:

On behalf of the American Academy of Pediatrics (AAP), Academic Pediatric Association American Academy of Child and Adolescent Psychiatry, American College of Physicians (ACP), American Pediatric Society, Association of Medical School Pediatric Department Chairs, National Association of Pediatric Nurse Practitioners, Pediatric Policy Council, Society for Adolescent Health and Medicine, and Society for Pediatric Research, we welcome the opportunity to respond to the Interim Final Rule (IFR) RIN 0970-AD16 published on March 25, 2025, by the Office of Refugee Resettlement (ORR) within the Administration for Children and Families at the U.S. Department of Health and Human Services (Docket No. ACF-2025-0003). As medical and mental health clinicians for children and families, we believe the IFR causes extreme harm to children and ORR failed to consider and mitigate these harms when promulgating the IFR. As such, we urge ORR to immediately rescind the IFR and instead prioritize policies that promote the health and well-being of unaccompanied children.

The IFR rescinds prior regulatory provisions that helped ensure unaccompanied children could be safely and quickly united with sponsors and live in community, rather than institutional settings, in alignment with child welfare best practices. Specifically, the IFR rescinds prohibitions on (1) disqualifying sponsors based solely on immigration status, (2) collecting sponsor immigration status information for enforcement purposes, and (3) sharing sponsor immigration status information with enforcement agencies. ORR made the IFR effective immediately without first considering notice and comment and without providing any justification for permitting sponsorship denials based on immigration status

or collecting sponsor information for enforcement purposes. The only justification provided in the IFR is "ORR's authority is limited by 8 U.S.C. 1373(a) and (b)."[i]

If ORR believes that federal law requires it to share sponsor immigration status information with enforcement agencies, it should cease collecting this information altogether. ORR has provided no explanation or justification for why collecting this information is consistent with its statutory mission. In addition, ORR provides no justification for denying sponsors based on immigration status and fails to consider the clear and well-documented harms to children of denying them prompt release to a sponsor. Congregate care settings, such as the ones operated by ORR, are not a substitute for family. Studies looking at the use of congregate care in child welfare find that children in congregate care are much more likely to have a mental health diagnosis than children in other settings.[ii] Conversely, living with family generally improves child and youth well-being, reduces trauma, promotes normalcy and self-esteem, and builds relational normalcy.[iii] Disqualifying sponsors based on immigration status will harm children by denying them the ability to reunify with their parents and relatives, depriving them of the documented benefits of living with family, enrolling in school, and engaging in their community. We urge HHS to rescind the IFR and instead work to promote policies consistent with its mission.

IFR inconsistent with ORR's mission

Congress charged ORR with the placement, care, custody and release of unaccompanied children who arrive in the United States without a parent or legal guardian and without lawful immigration status, transferring these functions from an immigration enforcement agency to ORR. Congress reinforced the child welfare mission of ORR through the Trafficking Victims Protection Reauthorization Act, requiring any federal agency with custody of an unaccompanied child to transfer the child to HHS within 72 hours and mandating that ORR promptly place unaccompanied children "in the least restrictive setting that is in the best interest of the child."

ORR further describes its mission "to promote the health, well-being, and stability of refugees, unaccompanied alien children, and other eligible individuals and families, through culturally responsive, trauma-informed, and strengths-based services."[iv] ORR reiterated this view in its Unaccompanied Children Foundational Rule (the Foundational Rule).[v] In the Preamble to the Foundational Rule, ORR emphasizes its role as a child welfare agency rather than an immigration enforcement agency.

The IFR is antithetical to ORR's statutory mandate and ORR failed to consider the harms to health, well-being, and stability of unaccompanied children that are caused by the IFR. It has been documented that many potential sponsors of unaccompanied children lack lawful immigration status. In 2018, Immigration and Customs Enforcement (ICE) data indicated that approximately 80 percent of sponsors or household members lacked lawful immigration status.[vi] Thus, discriminating against sponsors based on immigration status would prevent ORR from releasing children to their parents or close relatives despite the

requirement in the Foundational Rule that ORR "release a child from its custody without necessary delay" with preference to a parent, legal guardian, or adult relative.

An effect of the IFR is that children, including children who have a parent in the U.S. who is actively seeking to provide care and custody of them, will be forced to remain in government custody for longer periods of time rather than be unified with their parent, despite the parent's ability to provide care for them. We detail why that is harmful to children and increases federal spending below but note here that the IFR is contrary to child welfare best practices that favor prioritizing keeping children with their families, culturally responsive services, trauma-informed care, and providing children with stable, safe, and nurturing environments, among other best practices. Children belong in families in the community, not in government-run congregate care settings. Because ORR failed to consider the inconsistencies of the IFR with child welfare best practices and its own requirements in the Foundational Rule, it should be rescinded immediately.

ORR did not properly consider the harm to children of longer stays in federal custody.

Major medical associations, including the AAP, ACP, and many others, have long documented the harms of detaining children.[vii][viii] Studies have found negative physical and emotional symptoms among detained children and posttraumatic symptoms do not always disappear at the time of release. Young children who are detained may experience developmental delays and poor psychological adjustment, potentially affecting functioning in school.[ix] Qualitative reports about detained unaccompanied immigrant children in the United States found high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems.[x] The levels of posttraumatic stress disorder are much higher in unaccompanied children compared with accompanied immigrants.[xi]

In fact, in its 2019 report on the challenges of ORR care providers in addressing the mental health needs of children in HHS custody, the HHS Office of Inspector General (OIG) found that policy changes in 2018 exacerbated all of these challenges because they resulted in longer stays in ORR custody.[xii] OIG reports that according to ORR facility staff, longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation. One of the six OIG recommendations in the report was that ORR should take all reasonable steps to minimize the time that children remain in ORR custody. While ORR has taken important steps in response to the OIG report to increase its own mental health staffing, the IFR is resulting in longer lengths of stay in custody which are already known to result in higher rates of mental health challenges in children.

The IFR completely fails to account for the foreseeable impact it has had which is that fewer sponsors, including sponsors who parents or close relatives, would come forward to provide care for unaccompanied children for fear of being the subject of immigration enforcement actions. And this is exactly what ORR's own data shows. According to ORR's

monthly discharge data, only 45 children were released to sponsors in the month of April.[xiii] There were declines in the release of children to sponsors in all categories, including large declines for children with category one sponsors, defined by ORR to be a parent or legal guardian.[xiv] ORR's monthly data show an increase in the average number of children in care from March to April 2025 and a concerningly low 30-day average discharge rate of 0.4 in the month of April.[xv]

The IFR is already leading to children experiencing prolonged delays in being reunified with sponsors and remaining in congregate care at great cost to both the government and their own health and well-being. ORR fails to account for this impact in the IFR.

ORR did not properly consider the harm to children of prolonging family separation.

ORR also does not consider the impact the IFR is having on prolonging family separation. Studies overwhelmingly demonstrate the irreparable harm caused by breaking up families. We know that children who have been separated can have a host of health challenges, including developmental delays like those in gross and fine motor skills, regression in behaviors like toileting and speech, as well as constant stomach and headaches.[xvi]

Prolonged exposure to highly stressful situations — known as toxic stress — can disrupt a child's brain architecture and affect his or her short- and long-term health. A parent or a known caregiver's role is to mitigate these dangers. When robbed of that buffer, children are susceptible to a variety of adverse health impacts including learning deficits and chronic conditions such as depression, posttraumatic stress disorder and even heart disease.[xvii]

Children should never be separated from their parents unless there are concerns for the safety of the child at the hand of the parent and a competent family court makes that determination. Nowhere is that more important than in the case of a child needing medical or mental health screening and treatment. Parents know their child's medical history and are often better able to share that history than the child him or herself. Separation from a parent is traumatic to children, causes stress, and has the potential to negatively impact the child's short- and long-term health.

The IFR provides no consideration of the impact it is having on prolonged family separation and, as such, should be rescinded.

IFR's cost to the federal government was not appropriately considered

Lastly, ORR acted inappropriately in issuing the IFR because it failed to appropriately consider the cost implications to the federal government of keeping children in custody while their parents and relatives are fearful to come forward as sponsors because they may be subject to immigration enforcement. Providing institutional care for children is significantly more expensive than releasing children to their parents or other sponsors in

the community. A significant and unnecessary increase in the length of stay for children in ORR custody would result in higher costs to the federal government. These costs were not considered or accounted for in the IFR.

IFR in the context of broader ORR policy changes

ORR hastily issued this IFR without appropriate justification while also making policy changes to proof of identity and proof of income requirements for sponsors via sub-regulatory guidance. Taken together, ORR, through the IFR and policy changes, has created a harmful and unsafe environment for children where children with identified sponsors are languishing in ORR custody with negative consequences for their physical and mental health. This is in direct contradiction to ORR's mandate which is to ensure unaccompanied children are placed in the least restrictive setting that is in their best interest.

As clinicians with extensive expertise in the medical and mental health care of children and for the reasons stated above, we urge ORR to rescind the IFR. All children, regardless of where they were born, deserve to live safely with their families and in their community. If you have any questions regarding these comments, please contact Jeff Hild, JD, Senior Vice President, Advocacy, at jhild@aap.org or 202-347-8600.

Sincerely,

Academic Pediatric Association
American Academy of Child and Adolescent Psychiatry
American Academy of Pediatrics
American College of Physicians
American Pediatric Society
Association of Medical School Pediatric Department Chairs
National Association of Pediatric Nurse Practitioners
Pediatric Policy Council
Society for Adolescent Health and Medicine
Society for Pediatric Research

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[i] https://www.federalregister.gov/documents/2025/03/25/2025-04971/unaccompanied-children-program-foundational-rule-update-to-accord-with-statutory-requirements
[ii] https://acf.gov/sites/default/files/documents/cb/cbcongregatecare_brief.pdf
[iii] https://www.childwelfare.gov/topics/permanency/reducing-use-congregate-care/?top=125
[iv] https://acf.gov/orr/about
[v] https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule
[vi] https://www.congress.gov/crs-product/R43599
[vii] Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).
[viii] https://www.acponline.org/sites/default/files/acp-policy-library/policies/family_detention_position_statement_2018.pdf
[ix] Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

[x] Ibid.
[xi] Linton JM, Green A, AAP COUNCIL ON COMMUNITY PEDIATRICS. Providing Care for Children in Immigrant Families. Pediatrics. 2019;144(3):e20192077
[xii] https://oig.hhs.gov/documents/evaluation/3153/OEI-09-18-00431-Complete%20Report.pdf
[xiii] https://acf.gov/orr/about/ucs/facts-and-data
[xiv] https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.2.1
[xv] https://acf.gov/orr/about/ucs/facts-and-data
[xvi] https://www.congress.gov/116/meeting/house/109140/witnesses/HHRG-116-HM11-Wstate-LintonJ-20190326.pdf
[xvii] Ibid.