



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

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## **FIELD GUIDANCE – Revised November 10, 2022 (First Issued October 1, 2021)**

### **RE: Field Guidance #21 – Compliance with *Garza* Requirements and Procedures for Unaccompanied Children Needing Reproductive Healthcare**

#### **BACKGROUND**

Congress made the Secretary of the Department of Health and Human Services (HHS) responsible for the care of all unaccompanied children (UC) while in federal custody, *see* 8 U.S.C. § 1232(b)(1). This Field Guidance confirms that ORR staff and care providers must not prevent UC from accessing legal abortion-related services and that ORR staff and care providers must make all reasonable efforts to facilitate access to these services if requested by the UC. This may involve transporting a minor to a state in which abortion is lawful and available, if the minor is currently in a state in which abortion is not lawful or available. This Field Guidance provides instructions to ORR staff on the intake and initial placement of pregnant UC and UC who have experienced sexual violence, as well as the transfer of pregnant UC, including UC seeking an abortion. The guidance applies to staff who are providing direct care to UC at all ORR-funded facilities, including Emergency Intake Sites and Influx Care Facilities.

In addition, care providers and ORR staff must follow the requirements described in the policy memorandum on [Medical Services Requiring Heightened ORR Involvement](#) (“*Garza*”) and its accompanying procedures, except to the extent this guidance provides more specific instruction. The *Garza* policy and procedures provide instructions on requests for abortion care and address confidentiality and notification requirements for UC who are pregnant, considering an abortion, or have had an abortion. If a UC in ORR care experiences a medical emergency, care providers are required to follow emergency procedures outlined in the UC Manual of Procedures (MAP) Section 3.4.5.

While in ORR care and custody, UC have access to family planning services under UC Policy Guide [Section 3.3](#). Such services include the following: pregnancy testing during the Initial Medical Exam (IME); pregnancy testing for a report of sexual activity occurring after the IME, emergency contraception, and comprehensive information about and access to medical reproductive health services. Pregnant minors receive non-directive options counseling and are referred to specialty care (e.g., OB-GYN) for further evaluation and services.

This Field Guidance is consistent with *Garza* requirements.

## INSTRUCTIONS

### Intakes and Initial Placement

This section provides instructions for ORR's Federal Intakes team when processing UC referrals from the Department of Homeland Security (DHS) or another federal agency. These referrals *may or may not* include documentation of a UC pregnancy and/or whether a UC is a victim of a sexual-based crime (e.g., sexual assault, sex trafficking) prior to entering government custody.

A Federal agency (typically DHS) refers UC to ORR via the UC Portal (ORR's online case management system) or email. ORR relies on referral information provided from its Federal agencies in the UC Portal or email to make appropriate initial placements. ORR often receives no pregnancy related information from the referring federal agency, and the information provided may not accurately reflect the UC's health care needs including their pregnancy status. Federal referrals for UC to ORR do not typically include information on requests for abortion made by the UC.

ORR Intakes Team document and review the UC's biographical and apprehension information, as submitted by the referring Federal agency in the UC Portal. Referral information *may* include a UC's pregnancy status, known physical or mental health concerns, and information concerning whether the minor is a victim of trafficking or other crime.

When receiving a DHS referral for UC to ORR, ORR Intakes Team typically attempts to place the UC at a care provider program located in geographical proximity to the area where DHS encountered the UC, taking into consideration the individual needs of the UC (see UC MAP Section 1.3.2).

In the case of any referral of pregnant UC and/or UC who are a victim of sexual-based crimes:

- ORR Intakes Team must prioritize placement of pregnant UC and UC who are victims of sexual-based crimes in states without abortion bans and with broad access to reproductive health care for minors. When bed space in those states is limited, the ORR Intakes Team must use their professional discretion and judgment and available information, to place UC in the least restrictive placement with available bed space, prioritizing facilities that are licensed to care for pregnant UC.
- ORR Intakes Team must take a positive COVID-19 diagnosis or other special need into consideration when identifying appropriate placements for pregnant UC.
- ORR Intakes Team may consult with the on-call Federal Field Specialist (FFS) and/or ORR's Division of Health for Unaccompanied Children (DHUC) on the placement of a UC who is pregnant or at risk for pregnancy as a result of a sexual-based crime if the need arises. For example, this consultation may include planning to secure emergency contraception and sexually transmitted infection testing for the UC, as needed. If there is insufficient information from the referring agency, ORR staff will request that the care provider collect additional medical and pregnancy-related information during the UC's *Intake Assessment* and IME after initial placement (e.g., nature of sexual encounter resulting in pregnancy, gestation timeline, UC's confidentiality preferences, etc.). This information is confidential under UC Policy Guide [Section 5.9.2](#).

## Transfers within the ORR Care Provider Network

This section provides instructions to care provider staff for informing pregnant UC of their reproductive health care options and for transferring UC who are discovered to be pregnant after initial placement to a care provider facility that will allow for access to reproductive healthcare services that are appropriate for that UC.

Transferring UC to access abortion care is consistent with *Garza*.

- The care provider – or FFS, if the program requested a *Garza* exemption (see page 6) – informs the UC that they may access all pregnancy related medical services and options, including abortion (refer to the UC MAP Section 3.4), gives the *Garza Notice* and the *Garza Notice Infographic* to the pregnant UC and reviews it with them orally, in an accessible format appropriate to the age and circumstances of the minor and a language the UC can understand (refer to the UC MAP Section 3.2.2), until the UC acknowledges that understanding.
- If the UC requests an abortion at any point, the care provider must notify ORR via a *Significant Incident Report (SIR)* (refer to the UC MAP Section 3.4.3) and add all health-related information (including but not limited to clinical records, laboratory results, and *Serious Medical Request* forms) in the UC Health tab in UC Portal.
- ORR will, to the greatest extent possible, transfer pregnant UC requesting an abortion to an ORR program that is state-licensed to care for pregnant UC and in an appropriate location to support the UC’s health care needs and access to an appropriate medical provider who is able to legally perform the requested abortion.
- ORR must ensure that the pregnant UC has access to available abortion care they have requested and that the care provider assists in the transportation of the UC for the purpose of an abortion, which may include travel across state lines.
- Consistent with *Garza*, ORR prioritizes the transfer of UC requesting abortion to a state with access to abortion care, in the same manner as ORR would transfer a UC to another care provider to secure appropriate medical services.
  - The only instance in which a transfer may be made to a state that does not provide abortion access is **if** such a transfer will facilitate access to an abortion, such as providing a travel route, because the UC will be placed in a different ORR facility geographically close to lawful abortion care. This may include states with a major airport with routine direct flights to states with abortion access. Travel to access medical services is permissible and routine for UC in ORR care and custody (see ORR Policy Guide Sections [3.4](#), [3.4.3](#) and [3.4.4](#)). If access cannot be facilitated, an additional transfer must be made so that the UC can access abortion care.
- When a transfer is pursued, ORR staff and care provider staff must follow standard policy and procedures in UC Policy Guide [Section 1.4](#) and UC MAP Section 1.4, **including submission of a *Transfer Request* without delay and no later than within 24 hours of the UC’s request for an abortion**. The ORR UC Program Director will make a best interest determination that transfer is necessary in consultation with DHUC, the assigned FFS, and the Child Advocate, if applicable, taking into account the “Medical and Other Special Considerations” listed below.

- A pregnant UC may choose to remain in their current placement, provided that they have been informed of their options consistent with *Garza*, and the potential limitations on abortion they would face by staying at their current placement and provided UC have discussed their choice with their case manager or clinician. The pregnant UC must be informed of time-limiting factors that could impact their access to an abortion should they later request one. In this situation, a UC's decision must be documented in writing in the case file and reported to ORR via *SIR Addendum* and the *Case Review* form, in accordance with UC MAP Section 3.4.3.
- When a UC has been transferred to a state in which abortion is lawful under state law and is actually available for UC, care providers in that state should act in a manner consistent with that state's applicable law relating to abortion. If the care provider becomes aware that the applicable state law would provide no pathway for the UC to lawfully obtain the requested abortion or that the requested abortion is not actually available, the care provider must immediately initiate a *Transfer Request* according to the UC MAP Section 1.4, so that alternative arrangements can be made for placement in another state in which abortion is lawful for the UC and actually available.

ORR will make all reasonable efforts to secure a legal abortion for a pregnant UC who requests the procedure, taking into account the best interest of the UC, and ensuring that all *Garza*-related requirements are followed.

### **Medical and other Special Considerations for Initial Placements, Transfers, and Care**

**This section describes circumstances and considerations that ORR staff and Case Coordinators should take into account for initial placements, transfers, and care of pregnant UC.** This section is intended to highlight special considerations (though not an exhaustive list) if encountered by a UC for possible contingency planning for abortion access.

- Communicable diseases requiring isolation or quarantine
  - Unless there are extenuating circumstances, pregnant UC, who are medically isolated following a COVID-19 or other communicable disease diagnosis or who are quarantined for COVID-19 or other communicable disease, should remain in place at their assigned care provider facility until they have completed the isolation or quarantine period.  
NOTE: Care provider programs should consult with DHUC on questions related to COVID-19 and other communicable diseases.
- Travel during pregnancy
  - Some pregnant UC must be placed or remain in their assigned care provider facility, regardless of available capacity in the national network, if they are past the cutoff stage in gestation for flying, unless ground travel is an appropriate option for that individual case.
  - Some pregnant UC may have medical conditions (e.g., preeclampsia) that may prevent or limit certain modes of travel.

NOTE: Care provider programs should consult with DHUC on questions related to travel during pregnancy.

- Medical Consent
  - If a medical provider requests consent prior to providing medical services for pregnant UC, regardless of whether those services include an abortion, the care provider must immediately elevate the case with the on-call FFS and FFS supervisor. The FFS must consult with DHUC and the UC Policy Unit.
- Miscarriage, stillbirth, and ectopic pregnancy
  - In some circumstances, medical or surgical interventions are necessary for the treatment and well-being of a UC presenting with a condition such as miscarriage, stillbirth or ectopic pregnancy. If a healthcare provider restricts a UC's access to such interventions, the care provider must immediately elevate the case with the on-call FFS and FFS supervisor. The FFS must consult with DHUC and the UC Policy Unit to ensure that ORR complies with its federal responsibility to provide care for the UC when requested, *see* 8 U.S.C. § 1232(b)(1).
- Operational Bed capacity
  - Operational bed capacity is the number of beds available for ORR to designate to a UC across the ORR care provider network, inclusive of Emergency Intake Sites and Influx Care Facilities. ORR Intakes Team takes into consideration the operational bed capacity of ORR's standard network when placing a pregnant UC into a facility.
- Related children, where at least one of the related children is pregnant
  - During the Initial Intakes Assessment, IME, and the UC Assessment, care provider staff must ask the pregnant UC for their preference with regard to abortion access, confidentiality concerning their pregnancy, and transfer to access abortion care, if requested. The care provider must consult with their assigned FFS on whether a transfer to access abortion would separate the related children or if a transfer is possible to avoid separating relative groups. In these cases, ORR will make every effort to keep related children together, while considering the best interests of each child.
- Confidentiality
  - In general, ORR federal staff and care providers must not communicate information about a UC's pregnancy (including the fact of the pregnancy) or UC's decision on whether to have an abortion (before or after the abortion) to individuals other than ORR federal staff and care providers directly involved in the UC's case. Procedures in the UC MAP Section 3.4.7 outline four exceptions to the confidentiality requirements.

- Programs with a *Garza* exemption based on a sincerely held religious objection to abortion
  - ORR and care providers must consider that there are care provider programs that have requested an exemption in complying with the *Garza* requirements, based on a sincerely held religious objection to abortion, and therefore will not assist in providing access to abortion or provide information on abortion-related services. If a grantee requests an exemption from *Garza* requirements, they must email their assigned Project Officer with the request and agree to abide by accommodation protocols where the grantee *immediately* notifies ORR of any pregnant UC.
  - For programs with *Garza* exemptions, FFS are required to deliver the *Garza Notice* and the *Garza Notice Infographic* to the UC orally and in writing, along with other pregnancy-related information required by policy in an accessible format appropriate to the age and circumstances of the minor and in a language the UC can understand (refer to the UC MAP Section 3.2.2), until they acknowledge that understanding. If COVID-19 protocols require something other than an on-site visit (such as a video conference), this must be documented in the case file (along with the rationale for the video visit) and then notify [UCPolicy@acf.hhs.gov](mailto:UCPolicy@acf.hhs.gov). If a UC requests an abortion, ORR will work to ensure this request is met. In addition, if the FFS determines a transfer is in the best interest of the UC, the care provider is required to submit a transfer request without delay and no later than 24 hours of a UC's request for an abortion. The ORR UC Program Director will make a best interest determination that transfer is necessary in consultation with DHUC, the assigned FFS, and the Child Advocate, if applicable.
  
- Imminent Release
  - For cases where a UC has requested an abortion but release to an approved sponsor is imminent, the FFS must elevate the case to their FFS Supervisor, DHUC, and the UC Policy Unit.