

February 23, 2015

The Honorable Sylvia Mathews Burwell
United States Department of Health and Human Services
Office of Refugee Resettlement
370 L'Enfant Promenade SW., 8th Floor West
Washington, DC 20024

RE: Comments on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, 79 FR 77767 (December 24, 2014)

Dear Secretary Burwell:

The signatories respectfully submit these comments regarding the Department of Health and Human Services's (HHS) interim Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children. The signatories appreciate the efforts that HHS is making to address sexual abuse of migrant children in the care of the Office of Refugee Resettlement (ORR).

Unaccompanied migrant children are at extreme risk for sexual abuse. Far too many of them left their country of origin due to sexual abuse and/or have been sexually abused on their way to the U.S. Many of these children are also particularly vulnerable to coercion on the part of staff and are highly reluctant to report abuse for fear of being removed from the U.S. as retaliation. Prior to the release of the interim standards, HHS was doing far too little to recognize and address these risk factors. As demonstrated by media reports last year, these dynamics have resulted in widespread abuse of children in ORR custody.

While the interim standards provide many helpful ways to address this abuse, they do not, in several areas, go far enough. First, the interim standards are directed at individual care provider facilities. As many facilities are part of larger care provider networks, HHS needs to also require that certain responsibilities are carried out network-wide. For example, all instances of abuse in a facility should be reported to a central contact within the network. This way, patterns of abuse can be tracked network-wide and global changes in policy and practice can be implemented as needed in several facilities at one time. This will increase the positive outcome of any policy change and potentially prevent abuse from occurring at other facilities within a network.

Second, the interim standards do not provide enough immigrant-specific information to youth during "UC education" or after a report of abuse. For instance, migrant youth should be explicitly told that staff at care provider facilities cannot make it easier for the youth to stay in the U.S. in exchange for sexual contact or make it harder for the youth to stay in the U.S. if a youth rejects coercion to engage in sexual contact. Also, after a report of sexual abuse, a care provider facility should be required to connect a youth who has been abused or who has participated in a criminal investigation with a legal service provider who can explain the youth's rights under the U nonimmigrant status program.

Third, the interim standards rely too heavily on the Justice Department's juvenile PREA standards to address sexual abuse and harassment in secure care provider facilities. The Justice Department standards, not created with migrant children in mind, fail to include important protections for immigrants and do not require appropriate reporting to HHS. HHS does not need to require these facilities to implement the entirety of the final standards. Instead, HHS can identify those standards from its own final rule that will augment the Justice Department's standards and require these facilities to comply with them as well. For instance, secure care facilities should follow the monitoring and data collection review provisions in Subparts H and K. Migrant youth in these facilities should also have the right to speak to a legal service provider after an incident of sexual abuse as explained above.

Fourth, HHS should provide a number of stronger protections for youth who are, or who are perceived to be, transgender or intersex. The interim standards correctly require that transgender and intersex youth be asked whether they would prefer to be searched by male or female staff. HHS should also require that care provider facilities honor a youth's wishes in this regard, absent exigent circumstances. HHS additionally requires care provider facilities to make individualized placements of transgender and intersex youth. The final standards should explicitly prohibit any facility from automatically making housing placements based on anatomy or sex identified at birth. Instead, HHS should require that youth be housed according to their gender identity absent the youth's objections or the facility's legitimate and specific safety concerns about doing so.

Fifth, the Section by Section discussion in the final standards should remove any mention of a care provider facility relying on religious or moral objections in order to opt-out of providing UCs with, or referring UCs to, specific medical services covered by Subsection J. ORR has a legal obligation to provide UCs with timely, unimpeded access to all legally permissible services and it should be done in a manner that is respectful and non-stigmatizing. The specific services outlined in Subsection J are a core part of an effective response to a report of sexual abuse. This is why no such "opt-out" language can be found in the final PREA standards promulgated by the Departments of Justice or Homeland Security, and why it should be removed here. To the degree that care provider facilities are, under existing grants or contracts, able to seek alternatives to providing any care or referrals mandated by Subsection J, the final standards should include robust safeguards to ensure UCs get the health care services they are entitled to.

And lastly, the signatories urge ORR to add language that will ensure robust administrative and criminal investigations follow any report of abuse. In some instances, local child protective services, law enforcement or state licensing agencies are able to conduct effective and comprehensive investigations on behalf of migrant children in ORR custody. However, too often these agencies refuse to investigate incidents involving federal detainees or close investigations prematurely simply because a child has left the state where the abuse took place. ORR must be required to monitor local investigations and request full reports of any administrative or criminal findings in order to determine if an investigation was conducted competently and completely. In recognition of past failures, HHS should also require ORR to make sure that any MOUs or operational agreements with appropriate federal administrative or criminal investigative agencies include a commitment to conduct investigations when local and state entities are unable or incompetent to do so.

The above comments should not take away from the good work done by HHS and ORR staff in drafting the interim rule. The signatories' offer these recommendations because we believe their adoption will help the Department better reach our shared goal: "Sexual violence and abuse are an assault on human dignity and have devastating, lifelong mental and physical effects on an individual. HHS is committed to an absolute zero tolerance policy against sexual abuse and sexual harassment in its care provider facilities and seeks to ensure the safety and security of all UCs in its care."¹

Sincerely,

American Civil Liberties Union
Campaign for Youth Justice
Center for Constitutional Rights
Florida Justice Institute
Human Rights Defense Center
Immigration Counseling Service
International CURE
Metropolitan Community Churches and Global Justice Institute
National Coalition of Anti-Violence Programs
New York State Coalition Against Sexual Assault
The Public Committee for the National Center on Domestic and Sexual Violence
Texas Association Against Sexual Assault
Washington Lawyers Committee for Civil Rights and Urban Affairs

¹ *Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children*, Department of Health and Human Services, Interim Final Rule, December 24, 2014.