



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Refugee Resettlement | 330 C Street, S.W., Washington, DC 20201
www.acf.hhs.gov/programs/orr

FIELD GUIDANCE – October 1, 2021

RE: Field Guidance #21 – Compliance with *Garza* Requirements for Pregnant Unaccompanied Children in Texas

BACKGROUND

As of September 1, 2021, a Texas law known as Texas Senate Bill 8¹ (SB 8) went into effect. SB 8 effectively outlaws most pre-viability abortions in Texas. Inconsistent with federal law, SB 8 provides a limited exception for medical emergencies, but it does not provide exceptions for pregnancies resulting from sexual assault or incest. (If a child in ORR custody experiences a medical emergency, care providers are required to follow emergency procedures outlined in the UC Manual of Procedures (MAP) Section 3.4.5 Responding to Medical Emergencies.)

SB 8 has implications for the Office of Refugee Resettlement (ORR), its care providers, and for unaccompanied children (UC) who are pregnant and seeking an abortion.

In general, ORR care providers are required to comply with state law governing access to abortion. In addition, care providers (unless the care provider program has a *Garza* exemption, as mentioned below) and ORR staff must follow the requirements described in the policy memorandum on [Medical Services Requiring Heightened ORR Involvement](#) (“*Garza*”) and its accompanying procedures. The *Garza* policy provides instructions on requests for abortions and addresses confidentiality and notification procedures for UC who are pregnant, considering an abortion, or have had an abortion.

This Field Guidance provides instructions to ORR staff on intakes, placement, and transfers of pregnant persons who are UC, as well as guidance to care providers in Texas (including Emergency Intakes Site personnel) for when they discover a UC in their care and custody is pregnant. (Note use of the term “care provider” in this Field Guidance refers to staff at all ORR-funded facilities, including Emergency Intake Site facilities, who are providing direct care to UC.)

This Field Guidance is consistent with *Garza* requirements.

INSTRUCTIONS

Intakes and Initial Placement

This section provides instructions for ORR’s Intakes team when processing referrals from Federal agencies, regarding UC who are pregnant or who were referred to ORR with documentation that the UC is a victim of a sex crime (e.g., sexual assault, sex trafficking) prior to entering government custody.

¹ See Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021)

When it receives a referral, ORR Intakes typically attempts to place UC at a care provider program located in geographical proximity to the area where U.S. Department of Homeland Security (DHS) apprehended the UC, taking into consideration the individual needs of the UC (see UC MAP Section 1.3.2 ORR Designates Placements).

However, due to SB 8, the following procedures should be followed:

- A Federal agency (usually DHS) refers UC to ORR via the UC Portal (ORR's online case management system) or email. (Note that ORR relies on referral information provided from its Federal partners to make appropriate initial placements.)
- ORR Intakes documents and reviews 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 child is a victim of trafficking or other crime.
- ORR Intakes must, to the greatest extent possible, identify available and appropriate bed space at a licensed care provider facility outside of the state of Texas by reviewing the "Capacity Management" tab in the UC Portal.
- ORR Intakes must, to the greatest extent possible, place pregnant UC referred to ORR in a program that is licensed to care for pregnant UC.
- ORR Intakes must take a positive COVID-19 diagnosis into consideration when identifying appropriate placements for pregnant UC.
- ORR Intakes should consult with the on-call Federal Field Specialist (FFS) Supervisor 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 sex crime, if the need arises.

Transfers within the ORR Care Provider Network

This section provides instructions to care provider staff for informing pregnant UC of their reproductive rights, and for transferring UC who are discovered to be pregnant after initial placement in a care provider facility in Texas.

(Note that pregnancy screening is part of the Initial Medical Exam and results are received within two (2) business days.)

- The care provider – or FFS, if the program requested a *Garza* exemption – informs UC of their right to access all pregnancy related medical services and options, including abortion (refer to the UC MAP Section 3.4 Health Services), gives the Garza Notice to the child and reviews it with them orally, in an accessible format and a language child can understand (refer to the UC MAP Section 3.2.2 Orientation), until the child acknowledges that understanding.
- If the UC requests an abortion at any point, the care provider must notify ORR via a Significant Incident Report (refer to the UC MAP Section 3.4.3 Requests for Health Care Services, including

Serious Medical Services Requiring Heightened ORR Involvement), and add the information in the UC Health tab in UC Portal.

- Care providers should submit a Transfer Request without delay and **no later than within 24 hours** following UC MAP Section 1.4 Transfers within the ORR Care Provider Network. Transfer will be made unless ORR determines that transfer is not in the child's best interest.
- A pregnant UC may choose to remain in their current placement in Texas, provided they have been informed of their rights consistent with *Garza*, and the potential limitations on abortion they would face in Texas; and provided they have discussed their choice with their case manager or clinician. In this situation, UC's decision must be documented in writing in the case file.

Medical and other Special Considerations for Initial Placements and Transfers

This section describes circumstances and considerations that ORR staff and Case Coordinators should take into account for both initial placements and transfers of pregnant UC. (Note that this is not an exhaustive list of considerations.)

- 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 Texas 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 Texas, 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.
- Bed Capacity
 - ORR Intakes should take into consideration the overall bed capacity of ORR's licensed network when placing a pregnant UC into a facility.
- Specialized placements
 - For transfers, Case Coordinators should place pregnant UC requesting an abortion in an ORR program outside of Texas that is licensed to care for pregnant UC.
- 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 Maintaining Health Care Records and Confidentiality outline four exceptions to the confidentiality requirements.
- Programs with a *Garza* exemption based on a sincerely held religious or moral objection to abortion
 - ORR Intakes and Case Coordinators, who manage transfers, must consider that there are national care provider programs who have requested exemptions to comply with the *Garza* requirements based on a sincerely held religious or moral objection to abortion, and therefore will not facilitate access to abortion or provide information on abortion-related services.
 - For programs with *Garza* Exemptions, FFS are required to deliver the Garza Notice to the UC orally and in writing, along with other pregnancy-related information required by policy in an accessible format and a language the child can understand (refer to the UC MAP Section 3.2.2 Orientation), until the child acknowledges that understanding . In addition, if FFS determines and requests a transfer of the child to another care provider facility, the care provider is required to submit a transfer request **without delay and no later than 24 hours**, if requested by the FFS.
- Imminent Release
 - For cases where a UC has requested an abortion but release to an approved sponsor is imminent, the FFS should elevate that case to their FFS Supervisor, DHUC, and the Division of Policy and Procedures.