

# Rights of Children Prescribed Psychotropic Medications in ORR Custody

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# Overview

If a child in the custody of the Office of Refugee Resettlement (ORR) is prescribed psychotropic medication, ORR must obtain **informed consent** from an authorized family member before giving the child the medication, except in emergency situations. ORR must also ensure **meaningful oversight** of the administration of psychotropic medications to children across its network.

If your client is prescribed psychotropic medications while in ORR custody, they have legal rights under the following:

## U.S. Constitution

- Due Process Clause of the Fifth Amendment

## Regulations

- 45 C.F.R. § 410.1310 (ORR Foundational Rule)

## Court Orders

- *Lucas R. Psychotropic Medications Settlement* (Psych Meds Settlement) (rolling implementation)

This Guide is designed to explain what rights your clients have and what sources of law undergird these rights.

# Overview

## What You Can Do

If you have concerns regarding your client's psychotropic medications, you can:

- **Reach out to the National Center for Youth Law** – We can help identify potential legal violations and suggest options for relief. Please contact Mishan Wroe ([mwroe@youthlaw.org](mailto:mwroe@youthlaw.org)) and Diane de Gramont ([ddegramont@youthlaw.org](mailto:ddegramont@youthlaw.org)).
- **Contact the program director and Federal Field Supervisor responsible for your client's facility** – Identify what concerning practices are occurring, citing relevant laws, regulations, and policy provisions, and make specific requests for your client.
- **Report concerns to ORR's Division of Health** – The Division of Health for Unaccompanied Children (DHUC) is responsible for providing oversight of the administration of psychotropic medications across the ORR system. See [Psych Meds Settlement § IX](#). DHUC's email is [ORRDHUC@acf.hhs.gov](mailto:ORRDHUC@acf.hhs.gov).
- **File a complaint with the UC Office of the Ombuds** – The ORR Foundational Rule creates a UC Office of the Ombuds with the authority to receive and investigate complaints regarding ORR's adherence to federal law and ORR regulations and standards. See [45 C.F.R. § 410.2002](#). Complaints can be submitted through the UC Office of the Ombuds [website](#) or by email at [UC.Ombuds@acf.hhs.gov](mailto:UC.Ombuds@acf.hhs.gov).
- **Consider filing litigation to enforce your client's rights** – Reach out to Mishan Wroe ([mwroe@youthlaw.org](mailto:mwroe@youthlaw.org)) and Diane de Gramont ([ddegramont@youthlaw.org](mailto:ddegramont@youthlaw.org)) at the National Center for Youth Law if you would like assistance finding counsel for your client.

# Psychotropic Medication Basics

## What are psychotropic medications?

- Psychotropic medications are a type of medication that treat a mental, emotional, or behavioral condition and affect a person's behavior, mental processes, and/or emotions/moods. [45 C.F.R. § 410.1001](#).
- Examples of common psychotropic medications include prescription medications for depression, anxiety, or inability to sleep. [45 C.F.R. § 410.1001](#).

## Miriam

Miriam has severe anxiety that is often exacerbated by loud and crowded environments. A psychiatrist has prescribed medication to ease her symptoms of anxiety. In addition to medication, Miriam should receive therapy for her anxiety and the care provider should consider reasonable modifications to the program to take into account her triggers, such as permitting her to take a walk outside when she feels overwhelmed.

## Under what circumstances may my client be prescribed psychotropic medication?

- Psychotropic medications should be used to treat psychiatric conditions only after a diagnostic assessment by a qualified licensed healthcare provider, as part of a treatment plan aligned with the child's diagnosis, and at safe dosages in line with dosing guidelines. See [Psych Meds Settlement Preamble, §§ III.A, V.A.1](#).
- Psychotropic medications can have significant side effects and these potential side effects should be discussed as part of the informed consent process and periodically re-assessed. See [Psych Meds Settlement Preamble, § III.A](#).
- Psychotropic medications should never be used as punishment for disruptive or inappropriate behavior, for the convenience of staff members, or as a substitute for adequate staffing or programming to meet the child's needs. See [Psych Meds Settlement Preamble](#).

# Psychotropic Medication Basics

## Is my client entitled to additional services and supports in addition to psychotropic medication?

- A child prescribed psychotropic medications very likely qualifies as a child with a disability entitled to an individualized service plan and reasonable modifications. See [42 U.S.C. § 12102\(1\), \(4\)\(A\)](#); [45 C.F.R. §§ 84.1\(b\), 84.4\(a\)\(2\), \(c\)\(2\), \(d\)](#); [45 C.F.R. § 410.1311\(c\)](#); [ORR Policy Guide § 3.8.3](#).
- For more information on the rights of children with disabilities in ORR custody, see [Guide to Rights of Children with Disabilities](#).

# Informed Consent

## When is ORR required to obtain informed consent for psychotropic medications?

- Except in emergencies, ORR must obtain informed consent before an unaccompanied child is given psychotropic medication. See [45 C.F.R. § 410.1310\(a\)](#).
- ORR must also obtain new informed consent before increases in the dosage of a psychotropic medication beyond specified dosage guidelines. See [Psych Meds Settlement § III.A.2](#).

### Elias

Elias is 15 years old and was prescribed medication to help with symptoms of depression. He does not want his father to serve as his consentor because of a history of abuse and he has indicated this in writing. Elias's mother passed away but his grandmother has applied to be his sponsor. ORR should contact his grandmother to obtain informed consent for Elias's medication.

## Who can provide informed consent?

- ORR must seek consent from an authorized consentor, in the following order of preference: (1) a child's parent or legal guardian; (2) a close relative sponsor; or (3) an unaccompanied child if the child is 16 or 17 years old and able to provide informed consent. See [45 C.F.R. § 410.1310\(a\)\(1\)](#); [Psych Meds Settlement §§ I, II.B](#).
- If no authorized consentor is available, ORR can seek concurrence from the Centralized Concurrence Unit (CCU) overseen by a licensed psychiatrist. [Psych Meds Settlement §§ I, II.C, VIII](#). The Psych Meds Settlement includes more detail on what it means for a consentor to be "unavailable," such as an inability to contact the consentor after multiple outreach attempts and limited child welfare exceptions. See [Psych Meds Settlement § II.B](#).

# Informed Consent

## What information will the authorized consenter receive to inform their decision?

- The child's case manager or clinical staff must speak to the authorized consenter and explain, among other things, the child's diagnosis, the purpose of the medication, the risks and potential side effects of the medication, the alternatives to the medication, and their right to withhold or withdraw consent at any time. [Psych Meds Settlement § III.A.4.](#)
- This information must be explained in a language the consenter understands. [Psych Meds Settlement § III.A.4.](#)
- After the authorized consenter provides verbal consent, the care provider must send them a written confirmation of the information discussed and instructions to provide written consent. [Psych Meds Settlement § III.C.](#)
- Every six months, the care provider must remind the authorized consenter that they have the right to withdraw consent and to request information about the psychotropic medication. [Psych Meds Settlement § III.D.](#)



# Denial of Consent

## What happens if a parent, legal guardian, or close relative sponsor denies consent?

- If the parent, legal guardian, or sponsor consenter denies their consent, the care provider can seek consent from the child if the child is 16 or 17 years old and capable of providing informed consent. [Psych Meds Settlement §§ I.S.; IV.A.](#)
- In limited circumstances, the care provider can ask the Centralized Concurrence Unit (CCU) overseen by a licensed psychiatrist to override a denial of consent by a parent, legal guardian, or sponsor. To override a denial of consent, the CCU must find that administering the medication is in the child's best interest and that the failure to take the prescribed medication is likely to lead to material harm or impairment to the child or others. [Psych Meds Settlement § IV.B.](#)

## Leo

Leo is 13 years old and has trouble sleeping because of his post-traumatic stress disorder. He was prescribed a strong sleep medication but his mother denied consent to give Leo the medication because she is worried he will become dependent on the medication. The CCU found that although it would be in Leo's best interest to take the medication, failure to take the medication will not substantially harm Leo or anyone else. The CCU will not override the denial of consent and Leo will not be given the medication.

## What happens if the child is the authorized consenter and denies consent?

- If there is no available parent, legal guardian, or close relative sponsor and a child 16 or 17 years old denies consent, the child's decision cannot be overridden. [Psych Meds Settlement § IV.D.](#)



# Denial of Consent

## Are children and authorized consenters protected from retaliation for refusing consent?

- Under federal regulations, “[c]onsent must be obtained voluntarily, without undue influence or coercion, and ORR will not retaliate against an unaccompanied child or an authorized consentor for refusing to take or consent to any psychotropic medication.” [45 C.F.R. § 410.1310\(a\)\(2\)](#).
- Authorized consenters must be informed that the care provider will not delay or deny a child’s step down or release because the consentor denied or withdrew consent to psychotropic medications. [Psych Meds Settlement § III.A](#).
- If not taking medication leads a child to engage in behaviors that pose a risk to themselves or others, ORR or the care provider can take actions in response to those behaviors, including changing the child’s placement. But any adverse actions cannot be based directly on the refusal to take or consent to medication. [Psych Meds Settlement § III.D.2](#).

# Child's Involvement in Medication Decisions

## Will my client be consulted about whether they want to take psychotropic medication?

- If a child is 14 years old or older, the care provider must inform the child about the medication, including its purpose and potential side effects, listen to the child's reactions or concerns, offer the child a chance to speak with the prescribing healthcare provider, and seek the child's agreement to take the medication. [Psych Meds Settlement § V.A.](#)
- If a parent, legal guardian, or close relative sponsor provides informed consent for a child to take medication, their decision will control even if the child disagrees. [Psych Meds Settlement § V.A.](#)
- If they feel comfortable doing so, a child of any age should discuss their views on their medication with their parent, legal guardian, or sponsor consentor. A child can also ask to speak to the prescribing health care provider about any questions or concerns.

## How can my client learn more about what medication they are taking or who provided consent for their medication?

- A child, their attorney, and/or their child advocate can request to see information about the child's medication and documentation of verbal and written consent. [Psych Meds Settlement § III.D.5.](#)

### Dominic

Dominic is 15 years old and has been prescribed an antidepressant for major depressive disorder. Dominic has no living parent or legal guardian but his adult sister has applied to be his sponsor. Dominic's sister provided informed consent for Dominic to take this medication and Dominic agreed to take the medication after discussing it with his clinician. After several weeks of taking the medication, Dominic told his sister that the medication makes him very drowsy and he no longer wants to take it. Dominic's sister can withdraw her consent and request the medication be discontinued at any time. She can also contact the prescribing psychiatrist to ask questions about Dominic's medication, side effects, and possible alternatives.

# Emergencies and Hospitalizations

## Can my client be given a psychotropic medication without informed consent in an emergency?

- Informed consent is not required prior to the administration of psychotropic medications in a psychiatric emergency. [45 C.F.R. § 410.1310\(a\)](#).
- To qualify as an emergency, there must be a situation where the failure to administer a psychotropic medication poses a threat of imminent death or substantial bodily harm to the child or others. [Psych Meds Settlement § VI.A](#).
- The emergency exception cannot be used for routine or ongoing administration of a medication to a child. [Psych Meds Settlement § VI.A](#).

## What must happen after an emergency administration of psychotropic medication?

- “Any emergency administration of psychotropic medication must be documented, the child's authorized consentor must be notified as soon as possible, and the care provider and ORR must review the incident to ensure compliance with ORR policies and reasonably avoid future emergency administrations of medication.” [45 C.F.R. § 410.1310\(a\)\(3\)](#).
- The child, their case manager, and their clinician must meet within a week of the emergency administration to discuss how to meet the child's needs without emergency medication. [Psych Meds Settlement § VI.A](#).

# Emergencies and Hospitalizations

## Who will be notified if my client is admitted to a psychiatric hospital?

- The child's parent, legal guardian, or sponsor must be notified as soon as practicable, and no later than one week after admission, each time a child is admitted to a hospital for psychiatric treatment. [Psych Meds Settlement § III.D.4](#); [ORR Policy Guide § 5.8.11](#).
- The child advocate, if any, should also be notified of a child's hospitalization. See [ORR Policy Guide § 5.8.11](#).
- The child's attorney should be notified within 48 hours of all incidents involving law enforcement at the care provider facility. [ORR Policy Guide § 5.8.11](#).

# Legal Representation and ORR Oversight

## Can I represent my client with regards to the administration of psychotropic medications?

- A child in ORR custody has the right to assistance of counsel with respect to the administration of psychotropic medications, although the government is not required to fund this representation. [45 C.F.R. § 410.1310\(c\)](#).
- The child, their attorney, and/or their child advocate can request to see information about the child's medication and documentation of verbal and written consent. [Psych Meds Settlement § III.D.5](#).
- ORR cannot retaliate against a legal service provider for reporting concerns related to a child's psychotropic medications or taking a position adverse to ORR in relation to the child's medication. [45 C.F.R. § 410.1309\(e\)](#).

## Who is responsible for overseeing the administration of psychotropic medications to children in ORR custody?

- ORR's Division of Health for Unaccompanied Children (DHUC) is responsible for providing meaningful oversight of the administration of psychotropic medications to children in ORR custody. [45 C.F.R. § 410.1310\(b\)](#); [Psych Meds Settlement § IX](#).

### Sandra

Sandra is 17 years old, has bipolar disorder, and has been prescribed an antipsychotic medication. Her parents passed away and her sponsor is a distant relative. After a discussion with her psychiatrist, Sandra provided her own informed consent to take the antipsychotic medication. Sandra can withdraw this consent at any time and the CCU will not be able to override Sandra's decision. In addition, because she is a child consenting to an antipsychotic, Sandra's care provider must flag her case for ORR's Division of Health and the Division of Health must review her case.

# Legal Representation and ORR Oversight

## When will ORR's Division of Health review an individual child's case?

- DHUC must review cases flagged by a care provider. [45 C.F.R. § 410.1310\(b\)](#). Care providers are required to flag cases where an unaccompanied child consents to an antipsychotic or to three or more psychotropic medications. [Psych Meds Settlement §§ III.D.3, IX.A](#). Care providers can also flag cases where they have any other concerns regarding psychotropic medications.
- DHUC must also conduct retrospective reviews “of the administration of psychotropic medications in high-risk circumstances, including but not limited to cases involving young children, simultaneous administration of multiple psychotropic medications, and high dosages.” [45 C.F.R. § 410.1310\(b\)](#). Further, DHUC must annually review cases where the CCU overrides a denial of consent by the parent, legal guardian, or sponsor consentor. [Psych Meds Settlement § IX.B](#).

## FOR MORE INFORMATION, CONTACT NCYL

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