

Sexual and Reproductive Health Rights in ORR Custody

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Overview

As of the date of this publication, **unaccompanied youth in the custody of the Office of Refugee Resettlement (ORR) are entitled to sexual and reproductive health care such as abortion care and contraception.** Under ORR's policies and federal regulations, ORR is obligated to ensure unaccompanied youth have access to the care they need, regardless of the state in which they are placed or the religious beliefs of a youth's care provider.

Youths' rights to sexual and reproductive health care stem from federal and state laws, regulations, and policies. The main sources discussed in this guide are federal regulations governing ORR (45 C.F.R. § 410.1000 *et seq.*; *id.* § 411.5 *et seq.*) and ORR policies.

This resource explains the sexual and reproductive health care rights that youth in ORR custody are currently entitled to. However, NCYL anticipates that the Trump administration will quickly change ORR policies regarding sexual and reproductive health and may attempt to rescind the ORR Foundational Rule (45 C.F.R. § 410.1000 *et seq.*). We will update this resource accordingly as those changes unfold.

This guide is designed to inform you of what rights your clients have and connect you to relevant resources. This guide does not, and is not intended to, constitute legal advice in a particular case. Examples used throughout the guide are intended to illustrate possible fact scenarios for unaccompanied youth.

Overview

What You Can Do

If your client is facing hurdles accessing sexual and reproductive health care or your client's rights, as outlined here, are being infringed upon, you can:

- **Reach out to the National Center for Youth Law** – We can help identify potential legal violations and brainstorm options for relief. Please contact Mishan Wroe (mwroe@youthlaw.org) and Rachel Smith (rsmith@youthlaw.org).
- **Call the ACLU Reproductive Freedom Project hotline** – For questions related to abortion access in ORR custody, call 212-549-2633 or email Chelsea Tejada (ctejada@aclu.org). The ACLU can provide information about ORR's obligations and next steps to facilitate your client's timely access to abortion care.
- **Contact the program director and Federal Field Supervisor responsible for your client's facility** – Identify the sexual or reproductive health care access issues, citing relevant laws, regulations, and policies, and make specific requests for your client.
- **Report health care concerns to ORR's Division of Health** – The Division of Health for Unaccompanied Children (DHUC) is responsible for overseeing and monitoring the health care of unaccompanied children and youth. DHUC's email is ORRDHUC@acf.hhs.gov.
- **File a complaint with the UC Office of the Ombuds** – The ORR Foundational Rule created 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.
- **In California, file a complaint with the CA Foster Care Ombudsperson** – The Ombudsperson has authority to receive and investigate complaints on behalf of children and youth in licensed ORR placements in California. Cal. Welf. & Inst. Code § 16164(a)(2). Complaints can be submitted through the Ombudsperson's [website](#). For assistance filing a complaint, contact NCYL.

Abortion Care

Under current regulations and policies, **youth in ORR custody have the right to access abortion care**. In some states, youth may also have a right to abortion care under state laws or licensing requirements, which this guide does not cover.

Per ORR's "Garza policy" **neither ORR nor care providers can obstruct or interfere with access to abortion care**. This policy, memorialized in the [Policy Memorandum on Medical Services Requiring Heightened ORR Involvement](#), resulted from the 2020 settlement of *J.D. v. Azar*, No. 17-CV-02122 (D.D.C.) (formerly *Garza v. Hargan*). Since the *Garza* settlement, ORR has implemented this policy and more robust abortion access protections into the agency's other policies and regulations, which are referenced below. See, e.g., 45 C.F.R. § 410.1307(c); [Field Guidance # 21](#).

How do pregnant youth in ORR custody become aware of their pregnancy options?

- Pregnant youth must receive "non-directive options counseling" during which they are informed of their full range of pregnancy options, including ending pregnancy through an abortion or continuing pregnancy to parenting or adoption. 45 C.F.R. §§ 410.1001 (defining "[f]amily planning services" and "[m]edical services requiring heightened ORR involvement"), 410.1307(a); see also [Field Guidance # 21](#) at 1.
- Additionally, all girls aged 13 or older (and other youth on a case-by-case basis) should be provided the Garza Notice and Infographic at orientation. See ORR Manual of Procedures (MAP) § 3.2.2 ("Orientation") & Appendices 3.3, 3.4. The *Garza* Notice and Infographic explain a youth's right to access confidential abortion care. *Id.*
 - A recent version of the MAP is available at acf.hhs.gov/e-reading-room.

Abortion Care

Who provides counseling regarding pregnancy options?

- The individual who provides options counseling will depend on the care provider where the youth is held. Care providers may choose to have medical staff, a mental health clinician, or an off-site physician provide options counseling.
- If the youth's care provider has a religious objection to abortion and will not provide options counseling, the FFS assigned to that care provider will be required to provide or arrange options counseling. See [Field Guidance # 21](#) at 6.
- If your client would benefit from further discussing their options, consider encouraging the care provider to coordinate a visit to a local clinic, such as Planned Parenthood, or a call to the [All-Options](#) free Talkline (1-888-493-0092).

What are the obligations of ORR and care provider staff to facilitate access to abortion care?

- First, care providers must notify ORR within 24 hours of the discovery of a pregnancy or a youth's request for abortion care. 45 C.F.R. § 410.1307(d).
- **ORR cannot prevent youth from accessing abortion care and “must make reasonable efforts to facilitate access to those services” when requested by a youth.** 45 C.F.R. § 410.1307(c)(1); see also [Field Guidance # 21](#) at 1.
- ORR regulations and guidance do not define “reasonable efforts” beyond transportation of the youth. See 45 C.F.R. § 410.1307(c)(1); [Field Guidance # 21](#). “Reasonable efforts” should include permitting a youth to access their counsel and attend court hearings to obtain a judicial bypass order, for example.

Abortion Care

How does a youth's request for an abortion affect where they are placed?

- ORR is required to “prioritize placement of pregnant [youth]” and youth who reported past sexual assault “in states without abortion bans and with broad access to reproductive health care for minors.” [Field Guidance # 21](#) at 2.
- Note that ORR may not be aware of a youth's pregnancy at the time of initial placement. While some youth undergo pregnancy testing in Customs and Border Protection (CBP) custody, not all youth are assessed for medical conditions while detained at the border. **Many youth do not know that they are pregnant until their Initial Medical Exam (IME), which must occur within two days of placement in ORR custody.** See 45 C.F.R. § 410.1307(b)(2). Thus, ORR might initially place pregnant youth who ultimately request abortion care in states with abortion bans.
- After a youth has requested abortion care, **ORR must, “to the greatest extent possible,” place the youth in an appropriate location to support their health care needs,** as discussed next. 45 C.F.R. § 410.1307(c)(1)(i).

How can youth held in a state with abortion restrictions access care?

- If a youth requests abortion care that is not lawfully available in the state where they are detained, ORR must, “to the greatest extent possible,” transfer the youth to an ORR program where they can access that care. 45 C.F.R. §§ 410.1307(c)(1), 410.1001 (defining abortion as a medical service requiring heightened ORR involvement).
- **ORR must provide transportation across state lines if necessary for the youth to access abortion care.** 45 C.F.R. § 410.1307(c)(2). Care providers must assist with transportation. [Field Guidance # 21](#) at 3.
- Care providers must submit a transfer request without delay and no later than 24 hours after a youth requests abortion care. See [Field Guidance # 21](#) at 3. Because many abortion restrictions are based on gestational age, it is critically important that ORR and care providers act expeditiously.

Abortion Care

Sara

Sara is placed in a shelter in Florida and finds out that she is ten weeks pregnant at her IME. She requests an abortion. Florida bans abortion after six weeks, so Sara won't be able to stay in her current placement to receive abortion care. The care provider should notify ORR of Sara's pregnancy and her request for an abortion within 24 hours. ORR should expeditiously transfer Sara to a care provider in a state where she can access abortion care. After Sara receives care, she will likely stay in her new placement, absent special circumstances.

What if a care provider has a religious objection to abortion?

- ORR exempts some care providers from providing information about and/or access to abortion due to the care provider's religious objection. **These care providers must abide by additional protocols to ensure ORR does not obstruct a youth's access to abortion.** See [Field Guidance # 21](#) at 6; see also [Policy Guide § 4.9.4](#).
- If a youth requests abortion care but their care provider has a religious exemption, the FFS assigned to that care provider is required to deliver all required pregnancy-related information "in an accessible format appropriate to the age and circumstances of the minor and in a language the [unaccompanied child] can understand . . . until they acknowledge that understanding." [Field Guidance # 21](#) at 6.
- The FFS will determine if a transfer to another care provider is necessary for the youth to obtain abortion care. The FFS will request that the care provider submit a transfer request without delay and no later than 24 hours after the FFS's determination. [Field Guidance # 21](#) at 6.

Abortion Care

Nadia

Nadia tells care provider staff that she is pregnant after she arrives at a shelter in New York. Nadia isn't sure what she wants to do about her pregnancy. In New York, minors can obtain abortion care without parental involvement. But Nadia's shelter has a religious exemption from ORR, and it will not provide counseling regarding abortion or assist youth in accessing abortion care, if that's what Nadia ultimately chooses. The FFS assigned to Nadia's shelter is responsible for informing Nadia of her range of pregnancy options. If Nadia requests an abortion, the FFS will decide whether a transfer is necessary to obtain care. If transfer is necessary, the FFS will ask the care provider to submit a transfer request within 24 hours.

Who will cover the costs of abortion care?

- It is generally the responsibility of ORR and the care provider, not the youth or their sponsor, to coordinate payment for health care services. See 45 C.F.R. § 410.1307(a), (b)(1); [Policy Guide § 3.4.9](#).
- However, federal appropriations restrictions (known as the Hyde Amendment) prohibit ORR from paying for abortion care except where the pregnancy is a result of rape (including statutory rape) or incest, or where the pregnancy endangers the life of the pregnant person. See [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#).
- Some care providers are able to cover the costs of abortion care and abortion funds may also be able to help. Some abortion funds work directly with clinics while others assist patients themselves. For more information, visit the [National Network of Abortion Funds](#) website or contact the ACLU Reproductive Freedom Project.

Abortion Care

How does accessing abortion care affect release to a sponsor?

- If a youth has requested abortion care but will be imminently released to their sponsor, the FFS will elevate the case to the FFS Supervisor, DHUC, and the UC Policy Unit to determine whether abortion care will be provided prior to release. See [Field Guidance # 21](#) at 6.
- If the youth has the option to obtain abortion care in custody before being released to their sponsor, **a trusted adult (e.g., child advocate, counselor, or attorney) should counsel the youth about the pros and cons of obtaining an abortion pre- or post-release**, including by informing them about laws affecting minors' access to abortion in the state where they will live. For assistance, see **Appendix: Resources**.

Consent and Confidentiality

Many laws and regulations impact the confidentiality of and access to medical information regarding minors. This guide is not intended to provide comprehensive information about minor consent and confidentiality laws that may affect your client's access to abortion care or the privacy of their medical information.

For resources regarding minor consent and confidentiality laws, see **Appendix: Resources**.

Will my client's parent, guardian, or sponsor be notified of their decision to have an abortion?

- ORR and care providers are generally prohibited from communicating information about a youth's pregnancy (including the fact of the pregnancy) or decision whether to have an abortion to individuals other than staff or the youth. See [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 3-4.
- ORR federal staff may communicate information regarding a serious health complication arising from an abortion to the youth's sponsor if ORR makes a good-faith determination that the youth may require follow-up care after release. See [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 3-4.
- ORR's good-faith finding regarding the necessity of disclosure to the sponsor, as well as attempts to first obtain the youth's consent to disclosure, must be documented in the youth's case file. See [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 3-4.

What if my client is detained in a state with a parental involvement law?

- Many states have parental involvement laws that require a minor's parent or guardian to be notified prior to obtaining abortion care, or that require a parent or guardian's written consent to the abortion.
- ORR's regulations and policies do not require parental involvement in a youth's decision to obtain abortion care. However, parental involvement laws in the state where the youth is held will apply. See [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 2-3.

Consent and Confidentiality

- ORR's policy is that neither ORR nor the care provider may serve as the guardian consentor for the youth to receive abortion care. [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 2.
- **If the youth seeking abortion care does not wish to notify their parents, ORR cannot require parental notification.** In a state with a parental involvement law, the remaining options are for the youth to obtain a "judicial bypass" or be transferred to a state without parental involvement requirements for abortion care. See [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 2-3.
- **A judicial bypass is an order from a judge waiving the parental consent or notification requirement, and it is available in states with parental involvement laws.** ORR and care provider staff are prohibited from obstructing access to judicial bypass proceedings. [Policy Memorandum: Medical Services Requiring Heightened ORR Involvement](#) at 3.
 - For questions about judicial bypass proceedings, you or your client may call If/When/How's [Repro Legal Helpline](#) at 844-868-2812. The abortion provider will also likely have information about how to navigate the judicial bypass process.
- Even if a youth is willing to give parental notification or ask for parental consent regarding their decision to obtain abortion care, they may still need to obtain a judicial bypass order, because it may not be possible for the youth's parents to provide the type of identification or notarized documentation required by many state laws.

Gabriela

Gabriela learns that she is pregnant during her IME at a shelter in Michigan. Gabriela requests an abortion. In Michigan, a minor can lawfully obtain abortion care, but only with the written consent of one parent or guardian. ORR will not provide consent as Gabriela's guardian for the abortion. If Gabriela does not want to disclose her decision to have an abortion to a parent or guardian, she can seek a judicial bypass order to waive the consent requirement. ORR cannot prevent her from obtaining a judicial bypass. ORR may also decide to transfer Gabriela to another state in which minors may lawfully access abortion without parental involvement.

Ongoing Sexual and Reproductive Health Care

What are my client's rights to receive ongoing sexual and reproductive health care?

- ORR must ensure that youth in custody are provided access to family planning services. 45 C.F.R. § 410.1307(a); [Policy Guide § 3.3](#).
- “Family planning services include, but are not limited to, Food and Drug Administration (FDA)-approved contraceptive products (including emergency contraception), pregnancy testing and non-directive options counseling, sexually transmitted infection (STI) services, and referrals to appropriate specialists.” 45 C.F.R. § 410.1001; [Policy Guide § 3.3](#).
 - ORR does not categorize abortion care as a family planning service; abortion falls within “medical services requiring heightened ORR involvement.” 45 C.F.R. § 410.1001.
- Youth may also have sexual and reproductive health rights under state child welfare laws and licensing requirements, which care providers are required to follow. See 45 C.F.R. § 410.1302(a), (b); [Policy Guide § 3.1](#).
 - For example, youth detained in California have the express right to:
 - Participate in decisions regarding their health care, such as choosing their own health care provider, when possible, at age 12 and older.
 - Obtain, possess and use contraception.
 - Obtain, possess, and use medications for the prevention or treatment of sexually transmitted diseases, at age 12 and older.
 - Consent to abortion care, without the consent or knowledge of any adult, at any age.
 - Cal. Welf. & Inst. Code § 16001.9(a); Cal. Code Regs. tit. 22, § 84072(d); Cal. Health & Safety Code § 1530.91(c) (stating that Cal. Welf. & Inst. Code § 16001.9 applies to children in ORR programs).

Ongoing Sexual and Reproductive Health Care

Is my client entitled to use contraception while they are in custody?

- Youth in custody have the right to access FDA-approved contraceptive products. 45 C.F.R. §§ 410.1001 (defining “[f]amily planning services”), 410.1307(a).
- **FDA-approved contraceptives** include:
 - emergency contraception (“Plan B”)
 - oral contraceptives (“the pill”);
 - barrier contraceptives, such as condoms;
 - intrauterine devices (IUDs);
 - the birth control implant;
 - contraceptive injections.¹
- For more information about contraception, see **Appendix: Resources**.

1. U.S. Food and Drug Administration, *Birth Control*, [fda.gov/consumers/womens-health-topics/birth-control](https://www.fda.gov/consumers/womens-health-topics/birth-control) (last accessed Dec. 5, 2024).

Can youth in ORR custody obtain a prescription for pre-exposure prophylaxis (PrEP)?

- PrEP HIV prevention medication should qualify as a treatment that care providers should arrange for youth as appropriate, based on their right to services for sexually transmitted infections. See 45 C.F.R. §§ 410.1001, 410.1307.
- NCYL is not aware of youth in ORR custody requesting PrEP, but youth should know they are entitled to this medical care and if it is being denied, please reach out to us.

Miriam

Miriam is a 14-year-old in an ORR shelter in Virginia. She experiences severe menstrual cramps and wants to know whether she can receive a prescription for the birth control pill to help with the painful condition. Miriam’s physician should discuss all appropriate treatment options with her, including the birth control pill. If Miriam wants to take the birth control pill at her physician’s recommendation, the care provider cannot deny access to this prescription on the basis that they do not provide birth control.

Ongoing Sexual and Reproductive Health Care

Do unaccompanied youth have a right to access sexual health education?

- ORR’s regulations and policies do not expressly discuss sexual health education (“sex ed”), but **unaccompanied youth should have access to sex ed through their right to “comprehensive information about . . . medical reproductive health services”** and other family planning services. [Policy Guide § 3.3](#); 45 C.F.R. § 410.1307(a).
- In some states, youth may be entitled to access sex ed under state child welfare laws and licensing requirements. For example:
 - In California, shelters must allow access to and assist youth in “accessing age-appropriate, medically accurate information . . . about reproductive health care, and the prevention, diagnosis and treatment of pregnancy and sexually transmitted diseases and infections.” Cal. Code Regs. tit. 22, § 84075(c); see *also* Cal. Welf. & Inst. Code § 16001.9(a)(24)(A); Cal. Code Regs. tit. 22, § 84072(d)(31).
- There may be sex ed providers in your state that provide programming for youth in the foster system and have programs that would work in ORR settings as well. For assistance connecting with a local sex ed provider, contact NCYL.

Sexual Health Care After Sexual Assault

What sexual health care should my client receive after reporting a sexual assault that occurred prior to arriving in ORR custody?

- Upon placement, care providers conduct a risk assessment which includes gathering information about previous sexual assaults a youth may have experienced. 45 C.F.R. § 411.41; [Policy Guide § 4.8.1](#).
- If the youth discloses previously experiencing sexual assault, **the care provider “must ensure that the UC is immediately referred to a qualified medical or mental health practitioner”** for follow-up as appropriate. The evaluation must occur **within 72 hours** of the referral. 45 C.F.R. § 411.91; see also [Policy Guide § 4.8.2](#).
- Medical follow-up should include emergency contraception as appropriate. See 45 C.F.R. §§ 410.1001, 410.1307(a) (ORR must ensure youth are provided emergency contraception under definition of family planning services); [Policy Guide § 3.3](#) (same).

What sexual health care should my client receive if they reported a sexual assault that occurred in ORR custody?

- The youth must receive “timely, unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections (STI) prophylaxis” as appropriate. 45 C.F.R. § 411.92(a); see also [Policy Guide § 4.9.1](#).
- The care provider must provide access to treatment and services regardless of whether the youth names the perpetrator or cooperates with any investigation. 45 C.F.R. § 411.92(b).
- The care provider must provide pregnancy testing as necessary. 45 C.F.R. § 411.93(d). If the youth becomes pregnant, the care provider “must ensure that the [youth] receives timely and comprehensive information about all lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.” *Id.*; see also [Policy Guide § 4.9.2](#).

Resources

For technical assistance related to youth in ORR custody, contact Mishan Wroe (mwroe@youthlaw.org) and Rachel Smith (rsmith@youthlaw.org) at NCYL. Below is a list of additional resources that may be useful to you and/or your client when navigating access to sexual and reproductive health care.

For resources for pregnant and parenting youth, see [Guide: Rights of Pregnant and Parenting Youth in ORR Custody](#).

Contraception Options

Bedsider • bedsider.org (English/Spanish)

Reproductive Health Access Project: Your Birth Control Choices Fact Sheet

reproductiveaccess.org/resource/birth-control-fact-sheet

Languages: English, Amharic, Chinese (Simplified and Traditional), French, Hindi, Portuguese, Spanish, Vietnamese

Clinic Locator

Planned Parenthood - Find a Health Center

plannedparenthood.org/health-center

Pregnancy Options Support

All-Options

all-options.org

1-888-493-0092 (Mon-Fri 10-1, Sat-Sun 10-6 ET) (English/Spanish)

All-Options offers unbiased, judgment-free peer counseling for support regarding abortion, adoption, infertility, parenting, and pregnancy loss.

Faith Aloud Spiritual Care Line

faithaloud.org

1-888-717-5010 (Mon, Wed and Fri 11-6 ET, Sat-Sun 12-3 ET)

A program of All-Options, the Faith Aloud Spiritual Care Line offers support with spiritual concerns about abortion or pregnancy decisions through counselors from diverse faith backgrounds.

Resources

Abortion Access Resources

ACLU Reproductive Freedom Project

Garza Hotline: 212-549-2633

(English/Spanish)

ACLU RFP can provide information about ORR's obligations and next steps to facilitate your client's timely access to abortion care. Leave a voicemail for the hotline or email Chelsea Tejada at ctejada@aclu.org for urgent matters.

Repro Legal Helpline

reprolegalhelpline.org

844-868-2812 (English/Spanish/Arabic, with interpreters for other languages)

If/When/How's helpline provides free and confidential legal services to answer questions about abortion, miscarriage, labor, and delivery. The helpline can answer your questions about judicial bypass and connect youth to local lawyers for judicial bypass hearings.

TeenHealthLaw.org

The TeenHealthLaw.org website has a compendium of state and federal laws governing minors' consent for health care and the confidentiality of their health information. This resource does not provide information specific to ORR custody but can help you learn about your client's ability to consent to different types of health care by state. **For assistance related to minor consent and confidentiality laws, email health@youthlaw.org.**

I Need An A

ineedana.com

This website has information about abortion access options. I Need An A does not provide information specific to ORR custody but it can help inform you of the abortion access options available to your client based on their state and age.

National Network of Abortion Funds

abortionfunds.org

NNAF's website has a directory of abortion funds that provide financial and logistical support related to abortion care.

[Texas] Jane's Due Process

janesdueprocess.org

866-999-5263 (24/7) (English/Spanish)
Jane's Due Process provides funding and practical support for youth in Texas seeking abortion care. Jane's Due Process is familiar with navigating abortion access for youth detained in or recently released from ORR custody.