



December 23, 2021

The Honorable Ron DeSantis  
Governor of Florida  
400 S. Monroe Street  
Tallahassee, FL 32399

The Honorable Shevaun Harris  
Secretary of the Department of Children and Families  
2415 N. Monroe Street  
Tallahassee, FL 32303

Re: September 28, 2021 Executive Order and December 10, 2021 Emergency Rule

Dear Governor DeSantis and Secretary Harris:

I write regarding Florida Department of Children and Families' (DCF) December 10, 2021 Emergency Rule 65CER21-3, entitled "Standards for Unaccompanied Alien Children (UAC) Homes and Unaccompanied Refugee Minor Programs" (the Rule). The Rule implements Governor DeSantis's September 28, 2021 Executive Order No. 21-223 (EO 21-223). Specifically, I seek clarification regarding certain provisions of the Rule and to request that DCF (or the relevant state agency) provide a copy of any draft cooperative agreement regarding UAC referenced in the Rule. Given the significant adverse impact on the Office of Refugee Resettlement's ability to carry out its federal statutory functions to provide care and shelter for unaccompanied noncitizen children (UC), I request a written response no later than Thursday, December 30, 2021.

As you are aware, citing various aspects of federal immigration policy, EO 21-223 directed DCF to "[d]etermine whether the resettlement of unaccompanied alien children in Florida from outside of the state constitutes 'evidence of need' under section 409.175(5)(b)(1), Florida Statutes, sufficient to justify the award of a license under Florida law to family foster homes, residential child-caring agencies, or child-placing agencies that seek to provide services for unaccompanied alien children." EO 21-223 further directed DCF to amend Florida Administrative Code Rule 65C-46.022, Standards for Unaccompanied Alien Children (UAC) Homes and Unaccompanied Refugee Minor Programs, in the event DCF determined there is no evidence of need. Specifically, upon such a determination, EO 21-233 required DCF to alter its licensing and renewal standard such that DCF may "not grant or renew any license for any family foster home, residential child-caring agency, or child-placing agency that applies to house unaccompanied alien children in Florida and shall prohibit family foster homes, residential child-caring agencies, or child-placing agencies that already house unaccompanied alien children in Florida from accepting additional unaccompanied alien children."

The Rule includes DCF's determination that:

[T]he planned and organized resettlement, by the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services, of UAC or URM from outside of Florida does not constitute evidence of need as required for issuance or renewal of a license for a child-caring agency that seeks to provide services to such UAC or URM unless such resettlement is governed by a cooperative agreement, evidenced by or through an approved State Plan, contract, or a memorandum of understanding, between the State of Florida and the United States Government in which the State of Florida is entitled, at a minimum, to advance notice and meaningful consultation before the resettlement of such UAC or URM to Florida. In the absence of such cooperative agreement, no license shall be issued or renewed with respect to any child-caring agency that applies to provide services for UAC or URM resettling to Florida[.]

65C-46.022(2). In addition to prohibiting the issuance or renewal of licenses in the absence of a cooperative agreement, the Rule purports to bar ORR's currently licensed grantees from accepting any new referrals from ORR until the cooperative agreement is in place. *See* 65C-46.022(2) (“[A]ny child-caring agency providing such services under a current license to UAC or URM who have already resettled in Florida shall not take placement of any additional UAC or URM until a cooperative agreement is entered.”). Like EO-21-223, DCF based this determination on disagreements over various aspects of federal immigration policy. *See generally* Rule, Preamble ¶¶ 1-4 & nn. 1-11. Among other things, DCF ties its determination to assertions that the Federal Government does not “actively coordinate[] or consult[] with the States of Florida” or DCF “on the UAC that are resettled in Florida,” that there is not “meaningful, if any, advance notice” or “meaningful consult[ation]” on the transportation, number, or placement of UAC,” and that the State has “no opportunity to object” to such transportation or resettlement of UAC. *Id.* ¶ 5. Further, DCF cites an alleged lack of “information on the background, criminal history, immigration status, status of removal proceedings, or the sponsors of the UAC brought to Florida.” *Id.* ¶ 6.

We have a number of questions and concerns regarding the Rule, but, in the interest of reaching an amicable resolution, we would like to better understand the terms of the proposed agreement.<sup>1</sup> The Rule refers to “advance notice and meaningful consultation before the resettlement of UAC or URM in Florida.” 65C-46.022(2). With respect to advance notice, does Florida intend that a cooperative agreement would require ORR to provide notice of rosters identifying individual unaccompanied children (“UC”) before they are brought into the State? We also seek clarification regarding what Florida considers “meaningful consultation.” The Rule’s preamble suggests that Florida believes it has a right to consent or object to the placement of unaccompanied children in Florida. *See* Preamble, p.2 (“All of this occurred without advance

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<sup>1</sup> The Rule references a cooperative agreement between the Federal Government and the State regarding unaccompanied refugee minors. But the placement of URM implicates an entirely different statutory scheme. *See* 8 U.S.C. § 1522 (requiring consultation with States and others about placement of URM).

notice to the Department and without the State's consent. The State is given no opportunity to object to the transportation or resettlement of UAC in Florida.”). We wish to make clear that while we are open to providing needed information for Florida to understand the policies and procedures under which ORR places unaccompanied non-citizen children in ORR-funded shelters and other facilities, HHS could not agree to allow Florida or any other state to require individualized review in each case before children are placed in a facility.

Furthermore, we require clarity regarding how DCF intends to enforce violations of the Rule's stop-placement directive. Based on our understanding of Florida's regulatory framework, DCF may initiate administrative proceedings to revoke or suspend the license of any ORR grantee who violates state licensing standards, including the new provisions of 65C-46.022. *See generally* 65C-46.014(3) (Administrative Action for Existing Child-Caring Agencies), 65C-46.024(4) (Corrective Action Plans). Does DCF intend to suspend or revoke the licenses of ORR grantees who continue to accept referrals from ORR in the absence of a cooperative agreement? If DCF proceeds to revoke ORR grantees' licenses (or otherwise refuse to renew their licenses), would you exempt ORR facilities from the State's licensing scheme, which currently requires residential childcare facilities to be licensed by DCF? *See, e.g.*, 26 TAC § 745.115 (exempting ORR grantees from Texas's licensing scheme for residential childcare facilities).

HHS has successfully collaborated with other state governments, and welcomes the opportunity to work with Florida to address issues of concern and to explore improved information sharing about federal policies and procedures to help Florida better understand federal operations that will be carried out within its borders. Because of the serious, immediate implications for ORR operations in Florida, HHS requests that you provide written responses to the questions above, along with a complete draft of a proposed cooperative agreement no later than December 30, 2021. Absent significant clarification, the approach reflected in the emergency rule raises serious legal concerns and if we cannot resolve this matter amicably, HHS will pursue all available options, including referring the matter to the Department of Justice, to ensure ORR remains able to fulfill its statutory duties for the vulnerable children that Congress has placed in its custody and care.

Respectfully,



Mark Greenberg  
Deputy General Counsel