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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 411**

**RIN 0970-AC61**

**Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment  
Involving Unaccompanied Children**

**AGENCY:** Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Interim final rule (IFR).

**SUMMARY:** This IFR proposes standards and procedures to prevent, detect, and respond to sexual abuse and sexual harassment involving unaccompanied children (UCs) in ORR's care provider facilities.

**DATES:** This IFR is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. ORR care provider facilities must be in compliance with this IFR by June 24, 2015 but encourages care provider facilities to be in compliance sooner, if possible. HHS will work with facilities to implement and enforce the standards contained in this rule. Comments on

this IFR must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit comments to the Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., 8<sup>th</sup> Floor West, Washington, DC 20024, Attention: Elizabeth Sohn, or electronically via the Internet at <http://www.regulations.gov>. If you submit a comment, please include your name and address, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address above, but please submit your comments and material by only one means. A copy of this IFR may be downloaded from <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Sohn, Policy Analyst, Division of Policy, Office of Refugee Resettlement, Administration for Children and Families by e-mail at [UACPolicy@acf.hhs.gov](mailto:UACPolicy@acf.hhs.gov) or by phone at (202) 260-6829. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

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## **I. Submission of Comments**

Comments should be specific, address issues raised by the interim final rule, propose alternatives where appropriate, explain reasons for any objections or recommended changes, and reference the specific action of the interim final rule that is being addressed. Additionally, we will be interested in comments that indicate agreement with proposed policies. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the Final Rule.

## **II. Executive Summary**

This interim final rule provides standards to prevent, detect, and respond to sexual abuse and sexual harassment in Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) care provider facilities housing unaccompanied children<sup>1</sup> (UCs). Sexual violence and abuse are an assault on human

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<sup>1</sup> This interim final rule uses the term “unaccompanied child” in place of the statutory term “unaccompanied alien child,” but it retains the statutory meaning. An unaccompanied alien child is defined in Section 462(g)(2) of the

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.

The standards set forth in this interim final rule build on the ORR UC Program policies and procedures and respond to section 1101(c) of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (VAWA 2013). VAWA 2013 directs the Secretary of HHS to issue “a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody” of unaccompanied children.

ORR carefully considered all recommendations made by the National Prison Rape Elimination Commission’s (NPREC) report in developing this rule, which covers the eleven categories used by the NPREC to discuss and evaluate prison rape prevention and elimination standards. The eleven categories include: prevention planning, responsive planning, training and education, assessment for risk of sexual victimization and abusiveness, reporting, official response following a UC report, ORR incident monitoring and evaluation, interventions and discipline, medical and mental care, data collection and review, and audits and corrective actions. HHS tailored each provision under these categories to the UC population and the nature of ORR care provider facilities, which differ greatly from typical confinement facilities and prisons. Most ORR care provider facilities are shelters, group homes, and residential therapeutic

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Homeland Security Act of 2002 as a child: (1) who has no lawful immigration status in the United States; (2) who has not reached 18 years of age; and (3) with respect to whom there is no parent or legal guardian in the United States or there is no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. 279(g)(2).

centers. The standards were modified to protect children and be culturally sensitive, given the background of most UCs.

### **III. Background**

Congress passed the Prison Rape Elimination Act (PREA), Pub. L. 108-79, in July 2003 in order to address the often overlooked crime of rape in Federal, State, and local prisons and to analyze the incidence and effect of prison rape in order to provide information, resources, recommendations, and funding to protect individuals from the crime. Some of the key purposes of the statute were to “develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape,” and to “increase the available data and information on the incidence of prison rape.” 42 U.S.C. 15602(3)-(4). PREA defines the term “prison” to mean “any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes (A) any local jail or police lockup; and (B) any juvenile facility used for the custody or care of juvenile inmates.” 42 U.S.C. 15609(7). The term “inmate” is defined in PREA to mean “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.” 42 U.S.C. 15609(2).

PREA established the National Prison Rape Elimination Commission (NPREC) to “carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States” and to recommend to the Attorney

General national standards for the reduction of prison rape. 42 U.S.C. 15606. The statute directed the Attorney General to publish a final rule adopting “national standards for the detection, prevention, reduction, and punishment of prison rape...based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission...and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.” 42 U.S.C. 15607(a)(1)-(2).

The NPREC released its recommended national standards in a report (the NPREC report) dated June 23, 2009. The NPREC’s report and recommended national standards are available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>. The NPREC set forth four sets of recommended national standards for eliminating prison rape and other forms of sexual abuse. Each set applied to one of four confinement settings: (1) adult prisons and jails; (2) juvenile facilities; (3) community corrections facilities; and (4) lockups. The NPREC report recommended supplemental standards for facilities with immigration detainees as well as tailored standards for facilities with juveniles.

#### **A. Department of Justice Rulemaking**

In response to the NPREC report, the Attorney General established a PREA Working Group to review each of the NPREC’s proposed standards and to assist him in the rulemaking process. The Working Group included representatives from a wide range of DOJ components, including the Access to Justice Initiative, the Federal Bureau of Prisons (including the National

Institute of Corrections), the Civil Rights Division, the Executive Office for United States Attorneys, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Justice Programs (including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime), the Office on Violence Against Women, and the United States Marshals Service. The Working Group conducted an in-depth review of the standards proposed by the NPREC, which included a number of listening sessions with key stakeholders.

On March 10, 2010, DOJ published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input on the NPREC's proposed national standards. In general, commenters to the DOJ ANPRM supported the broad goals of PREA and the overall intent of the NPREC's recommendations. Commenters, however, were sharply divided as to the merits of a number of standards. Some commenters, particularly those whose responsibilities involve the care and custody of inmates or juvenile residents, expressed concern that the NPREC's recommended national standards implementing PREA would impose unduly burdensome costs on already tight State and local government budgets. Other commenters, particularly advocacy groups concerned with protecting the health and safety of inmates and juvenile residents, expressed concern that the NPREC's standards did not go far enough, and, therefore, would not fully achieve PREA's goals.

After reviewing public input on the ANPRM, DOJ published a Notice of Proposed Rulemaking (NPRM) on February 3, 2011 that proposed national PREA standards, solicited

public comments, and posed 64 specific questions on the proposed standards and accompanying economic analysis.

DOJ received over 1,300 comments to the NPRM from a broad range of stakeholders. Commenters provided general assessments of the DOJ's efforts as well as specific and detailed recommendations regarding each standard. Following the NPRM's comment period, DOJ issued a final rule setting national standards to prevent, detect, and respond to prison rape at Federal, State, and, local confinement facilities. 77 FR 37106 (June 20, 2012). The final rule reflected a considered analysis of the public comments and a rigorous assessment of the estimated benefits and costs of full nationwide compliance with the standards.

## **B. Application of PREA Standards to Other Federal Confinement Facilities**

DOJ's NPRM interpreted PREA as binding only on facilities operated by the Federal Bureau of Prisons and extended the standards to U.S. Marshals Service (USMS) facilities under other authorities of the Attorney General.<sup>2</sup> 76 FR 6248, 6265. Numerous commentators criticized this interpretation of the statute. In light of those comments, DOJ re-examined whether PREA extends to Federal facilities beyond those operated by DOJ and concluded that PREA does, in fact, encompass any Federal confinement facility "whether administered by [the] government or by a private organization on behalf of such government." 42 U.S.C. 15609(7).

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<sup>2</sup> While not "binding" on State and local facilities, both the DOJ's NPRM and the DOJ final rule "applies" to State and local facilities and facilities operated on their behalf. See 77 FR 37106, 37107.

In its final rule, DOJ further concluded that, in general, each Federal department is accountable for and has the statutory authority to regulate the operations of its own facilities and, therefore, is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. 77 FR 37106, 37113. Thus, given each department's various statutory authorities to regulate conditions of confinement, DOJ stated that Federal departments with confinement facilities will work with the Attorney General to issue rules or procedures consistent with PREA.

### **C. The Presidential Memorandum on Implementing the Prison Rape Elimination Act**

On May 17, 2012, the President issued a Presidential Memorandum confirming the goals of PREA and directing Federal agencies with confinement facilities to propose rules or procedures necessary to satisfy the requirements of PREA within 120 days of the Memorandum. In the Memorandum, the President established that sexual violence, against any victim, is an assault on human dignity and an affront to American values. The President stated that PREA encompasses all Federal confinement facilities, including those operated by executive departments and agencies other than DOJ, whether administered by the Federal Government or by a private organization on behalf of the Federal Government. In addition, the Memorandum states that each agency is responsible and accountable for the operations of its own confinement facilities, as each agency has extensive expertise regarding its own facilities, particularly those housing unique populations. Thus, each agency is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own

employees, and the safety of persons in its custody. To advance PREA's goals, the President directed all agencies with Federal confinement facilities to work with the Attorney General to propose any rules or procedures necessary to satisfy the requirements of PREA.

In response to the Presidential Memorandum, the Department of Homeland Security (DHS) issued a NPRM on standards to prevent, detect, and respond to sexual abuse and assault in confinement facilities in accordance with PREA on December 19, 2012. 77 FR 75300. DHS issued its PREA final rule on March 7, 2014. 79 FR 13100.

To implement the principles laid out in the Presidential Memorandum, ORR began drafting procedures appropriate for its care provider facilities. ORR maintains a continuum of care that ranges from group homes, shelters, therapeutic care provider facilities, and residential treatment centers. ORR also provides grants for a limited number of beds at State and local juvenile facilities to house a small population of UCs in secure placements. ORR refers to these facilities as "secure care provider facilities."

All non-secure ORR care provider facilities are subject to State and local licensing standards for juvenile residential facilities, unless they are operating on Federal property. All care provider facilities subject to State and local licensing standards will have outside entities in addition to ORR overseeing and regulating them. ORR care provider facilities are mostly group homes and shelters that provide a wide array of services. UCs move around freely in a supervised environment, and most care provider facilities do not maintain secure perimeters. Many care provider facilities are run by nonprofit-grantees and located in residential

neighborhoods. UCs must be provided with a level of privacy like having personal clothes, personal effects, and privacy when changing, using the restroom, and showering. UCs receive daily educational services, weekly group and individual counseling, an individualized service plan, and many other services that follow accepted child welfare principles. HHS, with its expertise with child welfare issues and UC populations, has policies and procedures in place to protect the safety and security of UCs in accordance with State and local licensing standards, and includes many of the standards set forth by DOJ and DHS in their respective final rules.

ORR is strongly committed to protecting UCs from sexual abuse and sexual harassment and to follow the principles laid out in the Presidential Memorandum. ORR began creating and implementing a comprehensive training for all care provider facility staff on preventing and responding to sexual abuse and sexual harassment. As ORR's non-secure care provider facilities are not obligated to follow DOJ's rule, ORR also began drafting supplemental policies and procedures that applied many of the standards set forth by the DOJ rule and the NPREC's recommended standards modified for the UC population to these facilities. Finally, ORR directed all of its secure care providers to follow DOJ's final rule, since these facilities are State and local juvenile facilities. As of May 2013, less than 1.5 percent of ORR's UC total bed space is reserved for secure placement.

#### **D. Violence Against Women Reauthorization Act of 2013**

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, contained a provision applying PREA to custodial facilities operated by HHS. VAWA 2013

requires HHS to publish a final rule adopting national standards to prevent, detect, and respond to rape and sexual assault. These national standards are to apply to all care provider facilities that maintain custody of UCs as defined in the Homeland Security Act of 2002 (6 U.S.C. 279(g)) and give due consideration to the recommended national standards provided by the NPREC report. Additionally, HHS is required to regularly assess compliance with the standards adopted and include the results of the assessments in performance evaluations of care provider facilities.

In response to VAWA 2013, HHS is proposing the following standards for the prevention, detection, and response to sexual abuse and sexual harassment of UCs in all ORR care provider facilities, except secure care providers and traditional foster care homes as described in the rule.

#### **IV. Discussion of the Interim Final Rule**

##### **A. ORR Standards**

Sexual abuse and sexual harassment are an assault on human dignity and have devastating lifelong psychological and physical effects on an individual. ORR is committed to child welfare best practices and protecting the safety and security of UCs, and, therefore, has implemented a zero tolerance policy against sexual abuse and sexual harassment. Through the standards set forth below, ORR seeks to further articulate its expectations of care provider facilities to fully protect and prevent the sexual abuse and sexual harassment of UCs.

ORR reviewed and considered all NPREC recommended standards and focused on the standards for juvenile facilities and supplemental standards for immigration detainees in creating this rule. ORR also recognizes that DOJ and DHS have done a considerable amount of work to develop and implement policies and practices for use in confinement facilities. Thus, ORR used the framework created by the NPREC recommendations along with DOJ and DHS' respective rules in conjunction with its own expertise in child welfare issues and the UC population's specific needs to create its standards. ORR also had to consider the practicability of applying the standards to its care provider facilities, as all care provider facilities are grantees, sub-grantees, or contractors of ORR. ORR's standards ultimately seek to include child welfare best practices, other best practice standards, and applicability to ORR's continuum of care.

## **B. Section by Section Discussion**

Sections 411.5 and 411.6 define key terms used in the standards set forth in this Part, including definitions related to sexual abuse and sexual harassment. Many of the definitions are the same as those found in the DOJ rule and the DHS rule. ORR also examined the definitions used by the NPREC and made adjustments for applicability to minors. Certain terms used by the NPREC, DOJ, or DHS do not appear in ORR's standards, because the terms are not relevant to the types of care provider facilities utilized by ORR or the term is sufficiently clear that it does not require defining. Below is an explanation for key definitions modified or added by ORR.

The standards define a "care provider facility," which refers to any ORR-funded program that is licensed, certified, or accredited by an appropriate State or local agency to provide

housing and services to UCs. Care provider facilities include a range of residential facilities, such as shelters, group homes, residential treatment centers, and therapeutic care provider facilities. Emergency care provider facilities are included in this definition but may or may not be licensed, certified, or accredited by an appropriate State or local agency. This licensing, certification, or accreditation has no bearing on the applicability of these rules as they are still defined as care provider facilities.

“Emergency” refers to a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

“Emergency care provider facility” is a type of care provider facility that is opened to provide temporary emergency shelter and services for UCs during an influx. Emergency care provider facilities may or may not be licensed by an appropriate State or local agency. Because of the temporary and emergency nature of emergency care provider facilities, they are often either not licensed or are exempted from licensing requirements by State and local licensing agencies. Emergency care provider facilities may also be opened on Federal properties, in which case, the care provider facility would not be subject to State or local licensing standards.

“Gender” refers to the attitudes, feelings, and behaviors that a given culture associates with a person’s biological sex. This term is not to be confused with “sex,” which is defined below. The definitions for the terms “gender,” “gender identity,” and “sex” were taken from the American Psychological Association’s (APA) *Guidelines for Psychological Practice with*

*Lesbian, Gay, and Bisexual Clients*, adopted by the APA Council of Representatives, February 18-20, 2011.<sup>3</sup>

“Gender identity” refers to one’s sense of oneself as a male, female, or transgender.

“Law enforcement” is defined in these standards to refer to the traditional use of the term, such as a police officer or a federal law enforcement officer. ORR sought to clarify that it does not have its own enforcement officers, so when “law enforcement” is used in the regulations, ORR is referring to Federal, State, and local law enforcement agencies.

“Limited English proficient” (LEP) refers to individuals for whom English is not the primary language and who may have a limited ability to read, write, speak, or understand English.

A “secure care provider facility” refers to a care provider facility with a physically secure structure and staff responsible for controlling violent behavior. ORR contracts with and provides grants to State and local juvenile facilities to house a small percentage of UCs that pose a danger to self or others or have been charged with having committed a serious criminal offense.

“Sex” refers to a person’s biological status and is typically categorized as male, female, or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

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<sup>3</sup> <http://www.apa.org/pi/lgbt/resources/guidelines.aspx>

“Sexual Assault Forensic Examiner” (SAFE) refers to a “medical practitioner” who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

“Sexual Assault Nurse Examiner” (SANE) refers to a registered nurse who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

The definition for “sexual harassment” was modified to include harassment via phone calls, emails, texts, social media messages, pictures sent or shown, and other electronic communications in addition to verbal comments and gestures.

“Special needs” is defined in the rule as any mental and/or physical condition that requires special services and treatment by staff.

“Traditional foster care” refers to a type of care provider facility where a UC is placed with a family in a community-based setting. The State or local licensed foster family is responsible for providing basic needs in addition to responsibilities as outlined by the State or local licensed child placement agency, State and local licensing regulations, and any ORR policies related to foster care. The UC attends public school and receives on-going case management and counseling services. The care provider facility facilitates the provision of additional psychiatric, psychological, or counseling referrals as needed. Traditional foster care may include transitional or short-term foster care as well as long-term foster care provider

facilities. This type of placement is analogous to the domestic foster care system in the United States.

The definition for an “unaccompanied child” comes from section 462(g)(2) of the Homeland Security Act (Pub. L. 107-296).

“Youth care worker” as defined in this interim final rule refers to employees whose primary responsibility is for the supervision and monitoring of UCs at care provider facilities. Youth care workers are not law enforcement officers, but provide supervision analogous to supervisors at a domestic group home.

### **Subpart A – Coverage**

Section 411.10 sets forth the applicability of this Part to all ORR care provider facilities. This Part covers the standards for detecting, preventing, and responding to sexual abuse and sexual harassment at care provider facilities as required under VAWA 2013 but excludes secure care provider facilities and traditional foster care homes.

Secure care provider facilities are State and local juvenile confinement facilities that ORR contracts with or to whom ORR provides a grant to house a small population of UCs that pose a danger to self or others or have been charged with committing a serious criminal offense. ORR requires its secure care provider facilities to follow DOJ’s National Standards to Prevent, Detect, and Respond to Prison Rape, so they are not subject to this rule.

Traditional foster care refers to community based foster care placements and services for UCs in ORR custody. UCs in traditional foster care reside in licensed foster homes, attend public school, and receive community-based services. Therefore, it is not practicable or necessary to extend the standards set forth here to traditional foster care homes, and they are excluded from this Part. UCs, however, may be placed in transitional foster care where they receive services at an ORR care provider facility but sleep in individual foster care homes at night. In these instances, the ORR care provider facility providing services to UCs during the day are subject to these standards but the foster home is not.

The National Prison Rape Elimination Commission was created to make recommendations for confinement facilities where inmates do not have regular access to non-prison staff and opportunities to receive help from the outside community if they are sexually abused. UCs in foster homes, however, go to public schools, receive services in the community, and routinely interact with other adults outside the foster home who would be in a position to report suspected abuse or provide aid to the UC. All foster homes are also licensed by State and local licensing authorities and are subject to licensing standards and reporting requirements.

Under paragraph (b), emergency care provider facilities are subject to every section in this Part except: (1) section 411.22(c); (2) section 411.71(b)(4); (3) section 411.101(b); (4) sections 411.102(c), (d), and (e); and (5) Subpart L. Emergency care providers are typically opened during an influx of UCs. In these instances, emergency care provider facilities are quickly erected in order to meet the immediate shelter needs of UCs and include basic care

services. The standards that exempt emergency care provider facilities all refer to data reporting, document retention, or audit requirements that cover a prolonged period of time. Emergency care provider facilities are temporary in nature and would not be able to provide data for prolonged periods of time, remain open long enough to retain documents, or remain open long enough to receive an audit. Instead of retaining documents for ten years, for example, the emergency capacity care provider would transfer all documents to ORR or another care provider facility when it closed.

Generally, because emergency care provider facilities are opened in times of emergency and in a time-sensitive manner, it may not be possible for emergency care provider facilities to abide by the standards set forth in this rule immediately upon opening. Instead, emergency care provider facilities must implement the standards within fifteen (15) days of opening. The Director, however, may, using unreviewable discretion, also waive or modify a specific section for a particular emergency care provider facility for good cause, subject to an agreement in which the provider will be in compliance within the most rapid timeframe feasible. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification. For example, it may be impracticable to implement certain provisions within fifteen (15) days at particular emergency care provider facilities and some may require additional time.

Paragraph (c) states that for the purposes of this Part, the terms related to sexual abuse and sexual harassment refer specifically to the sexual abuse or sexual harassment of UCs that occur at an ORR care provider facility while in ORR care and custody. A number of UCs in ORR care have been sexually abused prior to entering ORR custody. ORR has clinicians and case workers on staff to work with UCs on these issues. For the purposes of the standards set forth here, however, incidents of past sexual abuse and sexual harassment or sexual abuse and sexual harassment that occur in any context outside of ORR care and custody are not within the scope of this regulation unless explicitly stated otherwise.

### **Subpart B – Prevention Planning**

Section 411.11 covers the zero tolerance policy that ORR and all care provider facilities must have and the requirement that ORR and care provider facilities have a Prevention of Sexual Abuse Coordinator and a Compliance Manager, respectively. ORR is committed to a zero tolerance policy against sexual abuse and sexual harassment and will make every effort to ensure that UCs are safe and secure while in ORR care. Paragraphs (a) and (c) require ORR and care provider facilities to establish a zero tolerance policy toward all forms of sexual abuse and sexual harassment that outlines ORR and the care provider facility's approach to preventing, detecting, and responding to such misconduct. ORR will review and approve each care provider facility's written policy to ensure that the policies are in compliance with the standards set forth in this Part. Paragraphs (b) and (c) require ORR and care provider facilities to employ or designate an existing employee as a Prevention of Sexual Abuse (PSA) Coordinator and a Prevention of Sexual Abuse Compliance Manager, respectively. The PSA Compliance Manager does not need

to be “management” but must have the time, access, and authority to question staff, managers, and supervisors in order to guide implementation of the care provider facility’s policies and procedures and effectuate change. The PSA Coordinator, however, must be an upper-level, ORR-wide position. Upper-level refers to any position that has supervisory responsibilities and may conduct responsibilities ORR-wide.

Section 411.12 (a), (b), and (c) require that all organizations that contract, grant, or sub-grant with ORR or a care provider facility that provides residential services to UCs must, as part of the contract or cooperative agreement, adopt and comply with the provisions set forth in this Part. In addition, all new contracts, contract renewals, and grants must have provisions that allow monitoring and evaluation of the contractor, grantee, or sub-grantee to ensure that they are complying with these provisions.

Section 411.13 covers the standards for sufficient supervision and monitoring of UCs in order to prevent sexual abuse and sexual harassment. Ensuring staffing plans are sufficient and that the physical layout of a care provider facility does not place UCs at risk are important safeguards in preventing incidents of sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to develop, document, and make its best efforts to comply with a staffing plan that provides for adequate levels of staffing, and, where applicable under State and local licensing standards, video monitoring, to protect UCs from sexual abuse and sexual harassment. Staffing ratios should be as small as possible to allow for proper monitoring and supervision. All care provider facilities are highly encouraged to use video monitoring to supplement direct youth care worker supervision but must do so in accordance with State and local licensing standards.

Paragraph (b) requires care provider facilities to consider the physical layout of the facility, the composition of the UC population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse and sexual harassment, and any other relevant factors in determining adequate levels of supervision and determining the need for video monitoring. Video monitoring equipment, however, may not be placed in any bathroom, shower or bathing areas, or other area where UCs routinely undress. Care provider facilities are required to review the sexual abuse and sexual harassment incident reviews conducted in accordance with section 411.101 when considering the factors listed in paragraph (b) of this section to determine adequate levels of staff supervision and the need for video monitoring.

Many of ORR's care provider facilities already have video monitoring capabilities; ORR understands, however, that such technology may not be financially feasible for all care provider facilities, nor is video monitoring permitted to the same extent under different State and local licensing standards. It is not possible for ORR to create one set of requirements for monitoring and supervising UCs for all care provider facilities but wants care provider facilities to make best efforts to meet and exceed the standards set forth.

Paragraph (c) requires care provider facility staff, preferably supervisory staff, to conduct frequent unannounced rounds to monitor UCs and staff in order to identify and deter sexual abuse and sexual harassment. Care provider facilities should conduct the unannounced rounds during all shifts, including both night and day shifts. Care provider facilities must prohibit staff from alerting other staff that rounds are occurring unless an announcement is related to the

legitimate operational functions of the care provider facility. For example, before entering a restroom, staff must announce themselves to ensure the UC's privacy.

Section 411.14 governs the standards related to cross-gender viewing and searches. Generally, ORR care provider facilities rarely conduct pat-down searches. In accordance with State and local licensing standards, care provider staff are often restricted from physically restraining UCs except in very limited circumstances. ORR also discourages physically restraining UCs and, instead, encourages the use of de-escalation techniques. Paragraph (a) prohibits cross-gender pat-down searches except in exigent circumstances as defined in the definitions section. For a UC who identifies as transgender or intersex, the ORR care provider facility must ask the UC to identify the gender of staff with whom he/she would feel most comfortable conducting the search. Paragraph (b) requires care provider facilities to conduct all pat-down searches in the presence of one additional care provider facility staff member unless there are exigent circumstances, document any pat-down searches conducted, and report such searches to ORR in accordance with ORR policies and procedures. The care provider facility must explain in detail why a pat-down search was required, how it was conducted, who was present during the search, the circumstances of the situation, and the outcome of the search. Paragraph (c) prohibits all strip searches and visual body cavity searches of UCs. These types of searches are not necessary for the types of care provider facilities ORR has and are strictly prohibited. Paragraph (d) requires that care provider facilities allow UCs to shower, perform bodily functions, and change clothing without being viewed by any staff, except: in exigent circumstances; when such viewing is incidental to routine room checks; is otherwise appropriate in connection with a medical examination or medically-related monitored bowel movement; if a

UC under age 6 needs assistance with such activities; if a UC with special needs is in need of assistance with such activities; or the UC requests and requires assistance. Care provider facilities may have UCs with special needs in their facilities who may not be able to perform bodily functions, clothe, or bathe themselves. In these cases, care provider facilities must provide a staff member of the same gender as the UC to assist with such activities.

If the UC's sex is unknown, paragraph (e) prohibits care provider facilities from searching or physically examining the UC for the sole purpose of determining the UC's sex. Instead, care provider facility staff members should engage in conversations with the UC or review medical records. Staff must be culturally aware and sensitive to the UC when conducting such conversations. If necessary, care provider facilities may learn of a UC's sex as part of a broader medical examination conducted in private by a medical practitioner. The medical examination may not be conducted for the sole purpose of determining the UC's sex, but must be part of a broader medical examination conducted for other medical purposes.

Paragraph (f) requires care provider facilities to train youth care worker staff in the proper procedure for conducting pat-down searches, including cross-gender pat-down searches as well as searches of transgender and intersex UCs in a professional and respectful manner. Trainings should instruct youth care worker staff how to conduct a pat-down search in the least intrusive manner possible and that is consistent with security needs and existing ORR policy, including consideration of youth care worker staff safety.

Section 411.15 addresses the standards for the accommodation of UCs with disabilities and UCs who are limited English proficient. These standards are important for the UC population, as most UCs do not speak, read, or write English and may be illiterate. All care provider facilities have bilingual staff and are required to provide or access quality interpretation services, but it is important to take additional steps for UCs who do not speak the language of the majority of UCs. Paragraph (a) requires care provider facilities to take appropriate steps to ensure that UCs with disabilities have an equal opportunity to participate in or benefit from all aspects of the care provider's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Disabilities include but are not limited to UCs who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, mental, or speech disabilities. Care provider facilities must take steps that include, when necessary to ensure effective communication with UCs who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation both receptively and expressively, using any necessary specialized vocabulary. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment are translated and provided in formats or through methods that ensure effective communication with UCs with disabilities, including UCs who have intellectual disabilities, limited reading skills, or who are blind or have low vision. Care provider facilities must ensure that all communication and services provided and related to the care provider facility's prevention, detection, and response to sexual abuse and sexual harassment policies are available, understood, and accessible to all UCs.

Paragraph (b) requires that all care provider facilities take appropriate steps to ensure that UC who are limited English proficient have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including steps to provide quality in-person or telephonic interpretive services and quality translation services that enable effective, accurate, and impartial interpretation and translation, both receptively and expressively, using any necessary specialized vocabulary. Care provider facilities must provide services in a language appropriate to the UC and utilize qualified translators and translation services, as needed. All care provider facilities are required under ORR policies and procedures to have English and Spanish bilingual staff as well as access to qualified translators and translation services available for UC who speak a language other than English or Spanish. Upon admission to a care provider facility, care provider facility staff must assess and identify the language needs of each UC as part of the intake assessment process. Paragraph (c) requires care provider facilities to provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation by someone other than another UC in matters relating to allegations of sexual abuse and sexual harassment. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment, including notification, orientation, and instruction not provided by ORR, are translated either verbally or in written form into the preferred languages of UCs. Generally, ORR care provider facilities translate into Spanish all documents provided to UC. If the unaccompanied child speaks a language other than English or Spanish, the document is verbally translated to the unaccompanied child using an in-person qualified translator or telephonic interpretation services.

Section 411.16 covers standards for the hiring and promotion of care provider facility staff. In order to emphasize the importance of background checks for care provider facility staff, ORR sets forth standards for care provider facilities to follow regarding thorough background checks, periodically updating criminal background records checks, and creating an affirmative duty for staff to disclose misconduct in order to identify individuals who have committed, may have committed or are committing sexual misconduct. Generally, State and local licensing standards have strict requirements for background checks for all employees at a juvenile residential facility and have a list of crimes and offenses that bar applicants from employment.

Paragraph (a) prohibits care provider facilities from hiring, promoting, or enlisting the services of any staff, contractor, or volunteer who may have contact with UCs and who has engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution, or care provider facility; who has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity. Paragraph (b) places an affirmative duty on the care provider facilities to ask all applicants who may have contact with UCs considered for hire or promotion about previous misconduct described in paragraph (a) of this section. Care provider facilities must ask applicants either in written applications or during interviews for hiring or promotions. Care provider facilities also must ask current employees, regardless of whether the employee is eligible for a promotion, in interviews or written self-evaluations conducted as part of reviews of current employees about any misconduct described in paragraph (a). In addition, care provider facilities must impose upon all employees a continuing affirmative duty to disclose any such misconduct. Care provider facilities, consistent

with law, must make their best efforts to contact all prior institutional employers of an applicant to obtain information on substantiated allegations of sexual abuse or sexual harassment or any resignation during a pending investigation of alleged sexual abuse or sexual harassment.

Paragraph (c) requires care provider facilities to conduct a background investigation before hiring new staff who may have contact with UCs to determine whether the candidate is suitable for employment with minors in a residential setting. State and local licensing standards also require background investigations for all staff working at a child care facility, but the extent and scope of the background investigations differ State by State. At a minimum, ORR requires that background investigations include criminal background records checks, Child Protective Services checks, and periodic criminal background records check updates every five (5) years. The care provider facility should look at any convictions, administrative findings, or a history of offenses on a candidate's background investigation to determine if a candidate would be suitable to work with children in a residential setting. Upon ORR request, the care provider facility must submit all background investigation documentation for each staff member and the care provider's conclusions regarding the investigation. Paragraph (d) requires care provider facilities to also perform a background investigation for all potential contractors and volunteers who may have contact with UCs and provide documentation of those investigations and the care provider's conclusions to ORR upon request. Paragraph (e) mandates all care provider facilities to conduct a criminal background records check at least every five years for current employees, contractors, and volunteers who may have contact with UCs or otherwise have a system in place to capture such information. Paragraph (f) states that material omissions by staff, contractors, or volunteers

regarding such misconduct or the provision of materially false information by the applicant or staff will be grounds for termination or withdrawal of an offer of employment as appropriate.

Paragraph (g) requires care provider facilities to provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer for whom such employee has applied to work, unless it is prohibited by law to provide such information. Paragraph (h) requires care provider facilities that contract with an organization to provide residential services and/or other services to UCs to require the contractor to also follow the requirements of this section for the organization and its staff.

Section 411.17 covers the standards for care provider facilities when upgrading facilities and technologies. The purpose of this section is to ensure that care provider facilities take into account how physical and technological changes may affect a UC's vulnerability to sexual abuse and sexual harassment and the care provider facility's ability to protect the UC. Under paragraph (a), when a care provider facility is planning to design or acquire any new facility or make any substantial expansions or modifications of an existing facility, the care provider facility, as appropriate, must consider the effect of the design, acquisition, expansion, or modification on its ability to protect UCs from sexual abuse and sexual harassment. Under paragraph (b), when installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a care provider facility, the care provider facility, as appropriate, must consider how such technology may enhance its ability to protect UCs from sexual abuse and sexual harassment.

The NPREC recommends that facilities, generally, must use video monitoring systems and other cost-effective and appropriate technology to supplement sexual abuse prevention, detection, and response efforts. ORR highly encourages but does not require care provider facilities to use video monitoring systems. However, ORR requires care provider facilities to consider the use of video monitoring in §411.13. ORR's care provider facilities are subject to State and local licensing standards, which differ with regard to video monitoring and how it may be used. Most ORR care provider facilities already utilize video monitoring in some form, but it is also not financially feasible for all care provider facilities to have video monitoring systems. ORR care provider facilities have strong supervision ratios for UCs, which allows for proper monitoring and supervision even if there is no video monitoring.

The NPREC also recommends that facilities assess, at least annually, the feasibility of and need for new or additional monitoring technology and develop a plan for securing such technology. ORR does not require an annual assessment, because video monitoring is not integral in care provider facilities to actually supervise UCs. Youth care worker staff ratios must be at or above State and local licensing standards for child residential facilities, which are very strong ratios. A typical State or local licensing required staffing ratio of adult youth care worker to UC is 1:8 during the day and 1:12 at night. Video monitoring is also subject to State and local licensing standards. Although ORR strongly encourages all care provider facilities to use video monitoring technology and update it as necessary, State and local licensing standards and financial limitations may limit its use and continuous update to the latest technology, respectively.

## **Subpart C – Responsive Planning**

Section 411.21 lists the responsibilities of care provider facilities with regard to victim advocacy, access to counselors, and forensic medical examinations. In order to provide crisis intervention and counseling services to meet the specific needs of sexual abuse and sexual harassment victims, paragraph (a) requires care provider facilities to develop procedures to best utilize community resources and services to provide expertise and support to UC victims. All care provider facilities must establish procedures to make available to UC victims outside victims services following incidents of sexual abuse and sexual harassment that occur within the care provider facility. The care provider facility must attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available or if the UC prefers, the care provider facility must provide a licensed clinician on staff to provide crisis intervention and trauma services for the UC. However, staff members are not to conduct forensic examinations regardless of whether they are qualified or community-based staff members. The outside or internal victim advocate must provide, at a minimum, emotional support, crisis intervention, information, and referrals to the UC victim.

When it is medically appropriate and necessary for evidence to be collected, paragraph (b) requires the care provider facility to arrange, with the UC's consent, for an alleged UC victim to undergo a forensic medical examination as soon as possible and that is performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where

possible. If SAFEs or SANEs cannot be made available, the examination may be performed by a qualified medical practitioner. Care provider facility staff must inform UCs of the availability of forensic medical examinations and request their consent to have a forensic medical examination, where appropriate, completed as soon as possible after the incident. Paragraph (c) requires that, upon the UC victim's request, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered at a hospital conducting a forensic examination, must be allowed to the extent possible for support during a forensic examination and investigatory interviews. Paragraph (d) requires that care provider facilities, to the extent possible, request that the investigating agency follow the requirements of paragraphs (a) through (c) of this section in order to provide for the needs of UCs.

The NPREC recommends that the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The recommendations go on to describe what to include in the protocol. Since ORR does not conduct administrative or criminal investigations, it does not include this recommendation. Instead, all allegations are referred to outside investigators, such as local law enforcement, Child Protective Services, and State and local licensing agencies, and the investigating agency collects any evidence as necessary. ORR does require in section 411.64 that first responders ensure that all crime scenes are preserved and protected until the appropriate authority arrives to collect any evidence.

Section 411.22 sets standards to ensure that all allegations of sexual abuse and sexual harassment are investigated. ORR and care provider facilities must immediately report all

allegations of sexual abuse and sexual harassment to outside investigating agencies as soon as an allegation is made. Such investigating agencies include local and State law enforcement, local and State Child Protective Services, and local and State licensing agencies. ORR and care provider facilities are not enforcement agencies and do not have the authority to conduct criminal investigations. Upon receiving an allegation, ORR will monitor and evaluate the care provider facility to ensure that ORR policies and procedures and relevant legal authorities were followed, including compliance with the standards set forth in this section, as well as any ways in which the facility might improve its practices and procedures. If the care provider failed to report an incident to the appropriate outside agencies, ORR will report any lapse in reporting to the local or State licensing agency, local or State Child Protective Services, and local or State law enforcement agency. If the care provider failed to report an incident to ORR or follow ORR policies and procedures, ORR will issue corrective actions and may terminate or suspend its grant or contract with the care provider facility for failing to comply with ORR requirements. ORR and care provider facilities do not conduct internal investigations regarding the substance of the allegation, because they do not want to interfere or influence an investigation by law enforcement, Child Protective Services, or the State or local licensing agency.

Under paragraph (a), ORR and care provider facilities must ensure that every allegation of sexual abuse and sexual harassment is immediately referred to all appropriate investigating agencies, including law enforcement agencies, Child Protective Services, State or local licensing agencies, and to ORR according to ORR policies and procedures. All allegations must be referred for investigation regardless of how the allegation is reported or who makes the report, including reports from third-parties and anonymous reporters. Care provider facilities must

remain informed of ongoing investigations and fully cooperate with outside investigators as necessary. Paragraph (b) requires care provider facilities to maintain or attempt to enter into a memorandum of understanding or other agreement with law enforcement agencies, with designated State or local Child Protective Services, and with the State or local licensing agency responsible for conducting sexual abuse and sexual harassment investigations, as appropriate. Care provider facilities are required to maintain a relationship with these agencies to ensure investigations are conducted and completed in a timely manner. Care provider facilities must maintain a copy of the agreement or documentation showing attempts to enter into an agreement. Paragraph (c) requires all care provider facilities to maintain documentation of all reports and referrals of allegations of sexual abuse and sexual harassment for at least ten years.

Under paragraph (d), ORR will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding.

Under paragraph (e), allegations of sexual abuse that occur at emergency care provider facilities operated on Federal properties must be reported to the Department of Justice in accordance with ORR policies and procedures and any memoranda of understanding. Emergency care provider facilities operating on Federal properties and within Federal buildings may not be subject to State or local licensing standards.

The NPREC also recommends that facilities investigate all allegations of sexual abuse and ensure that investigations are carried through to completion, regardless of whether the

alleged abuser or victim remains at the facility and regardless of whether the source of the allegation recants his or her allegation. ORR did not include this recommendation, because ORR does not conduct investigations regarding the substance of an allegation. Instead, as stated in the previous paragraphs, ORR requires that all care provider facilities refer all allegations, regardless of how an allegation is made or who it comes from, to the proper investigating authorities. ORR and care provider facilities have no control over whether law enforcement, Child Protective Services, or a State or local licensing agency conducts an investigation. Both ORR and care provider facilities, however, must attempt to remain informed of ongoing investigations and fully cooperate as necessary. ORR also will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding. Additionally, ORR will monitor and evaluate the care provider facility to ensure that ORR policies and procedures and relevant legal authorities were followed, including compliance with the standards set forth in this section, as well as any ways in which the facility might improve its practices and procedures.

The NPREC goes on to recommend that an agency maintain or attempt to enter into a written memorandum of understanding or other agreement with the authority responsible for prosecuting violations of criminal law as well as maintain documentation of such agreements. ORR does not include this standard in this rule, because ORR does not conduct administrative or criminal investigations. The investigating agency is in a better position to refer cases to prosecutors after completing an investigation and determining if there is sufficient evidence to refer a case to prosecuting authorities.

## **Subpart D – Training and Education**

Section 411.31 covers the standards for training staff on sexual abuse and sexual harassment-related policies and procedures. Staff training is integral to implementing the standards in this Interim Final Rule and truly preventing, detecting, and properly responding to sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to train or require the training of all employees who may have contact with UCs on their responsibilities under these standards, including any medical or mental health care personnel who are staff members of the care provider. The NPREC recommends that employees receive training, including investigators. ORR does not require these trainings for investigators because neither ORR nor care provider facilities employ investigators. All allegations are referred to outside investigators. ORR will, however, encourage care provider facilities through its policies and procedures to make efforts to provide training for investigators and outside medical and mental health care practitioners not employed by care provider facilities. Training topics must include, at a minimum: the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment; the right of UCs and staff to be free from sexual abuse and sexual harassment and from retaliation for reporting sexual abuse and sexual harassment; definitions and examples of prohibited and illegal sexual behavior; recognition of situations where sexual abuse or sexual harassment may occur; recognition of physical, behavioral, and emotional signs of sexual abuse and methods of preventing and responding to such occurrences; how to avoid inappropriate relationships with UCs; how to communicate effectively and professionally with UCs, including UCs who are lesbian, gay, bisexual, transgender, questioning, or intersex;

procedures for reporting knowledge or suspicion of sexual abuse and sexual harassment as well as how to comply with relevant laws related to mandatory reporting; the requirement to limit reporting of sexual abuse and sexual harassment to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes; cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior and appropriate terms and concepts to use when discussing sex, sexual abuse, and sexual harassment with a culturally diverse population; sensitivity and awareness regarding past trauma that may have been experienced by UCs; and knowledge of all existing resources for UCs both inside and outside the care provider facility that provide treatment and counseling for trauma and legal advocacy for victims. Paragraph (b) requires that these trainings be completed within six months of the effective date of these standards, and care provider facilities must provide refresher training and information as appropriate. Under paragraph (c), care provider facilities must document that staff and employees who may have contact with UCs have completed the training.

Section 411.32 discusses the standards for volunteer and contractor training on sexual abuse and sexual harassment-related policies and procedures. As stated in the previous section, volunteer and contractor training is incredibly important in implementing the standards in this Interim Final Rule. In particular, volunteers and contractors may not be familiar with standard child welfare practices and sexual abuse and sexual harassment issues, so it is important to provide complete and thorough training to any volunteer or contractor who may have contact with UCs. Paragraph (a) requires care provider facilities to ensure that all volunteers and contractors who may have contact with UCs are trained on their responsibilities under the care

provider facility's sexual abuse and sexual harassment prevention, detection, and response policies and procedures as well as any relevant Federal, State, and local laws. Paragraph (b) allows care provider facilities to decide the level and type of training that is provided to volunteers and contractors based on the services they provide and the level of contact they will have with UCs. All care provider facilities, however, must provide all volunteer and contractors with training on the care provider facility's zero tolerance policies and procedures regarding sexual abuse and sexual harassment and inform them on how to report such incidents. Paragraph (c) requires care provider facilities to maintain written documentation that contractors and volunteers who may have contact with UCs have completed the required training.

Section 411.33 addresses the requirements for educating UCs on the care provider facility's zero tolerance policies. ORR realizes that UCs are minors who may not understand what sexual abuse or sexual harassment are, so educating UCs is an important component that is of the utmost importance to preventing sexual abuse and sexual harassment. Additionally, care provider facilities must ensure that the orientation is provided in such a way that the UC comprehends what he/she is being told or given.

ORR requires under paragraph (a) that all care provider facilities must ensure that during the orientation and periodically thereafter UCs are notified and informed of the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment in an age and culturally appropriate fashion and in accordance with section 411.15. At a minimum, the orientation on the care provider facility's zero tolerance policy must include an explanation of the UC's right to be free from sexual abuse and sexual harassment as well as the UC's right to be

free from retaliation for reporting such incidents; definitions and examples of UC-on-UC sexual abuse, staff-on-UC sexual abuse, coercive sexual activity, appropriate and inappropriate relationships, and sexual harassment; an explanation of the methods for reporting sexual abuse and sexual harassment, including to any staff member, outside entity, and to ORR; and an explanation of a UC's right to receive treatment and counseling if the UC was subject to sexual abuse or sexual harassment. Paragraph (b) requires all care provider facilities to provide notification, orientation, and instruction in formats accessible to all UCs at a time and in a manner that is separate from information provided about their immigration cases. Although care provider facilities do not discuss immigration case details with the UC, and ORR is a neutral party in relation to a child's removal proceedings, ORR wants to ensure that any discussion regarding a UC's immigration status remains separate from the explanation of a care provider facility's sexual abuse and sexual harassment-related policies and procedures. This is to avoid any risk that the UC will think that sexual harassment or sexual abuse-related reporting, assistance, or any other related activity could impact his/her immigration case.

Care provider facilities under paragraph (c) are required to document all UCs' participation in orientation and periodic refresher sessions that address the care provider facility's zero tolerance policies.

In addition to the orientation session, care provider facilities also must post information in accordance with section 411.15 on all housing unit bulletin boards about who a UC can contact if he or she has been a victim of sexual abuse or sexual harassment or is believed to be at imminent risk of sexual abuse or sexual harassment under paragraph (d). Under paragraph (e)

care provider facilities also must make available and distribute to all UCs a pamphlet in accordance with section 411.15 that contains, at a minimum, the following: notice of the care provider facility's zero tolerance policy toward sexual abuse and sexual harassment; the care provider facility's policies and procedures related to sexual abuse and sexual harassment; information on how to report an incident of sexual abuse or sexual harassment; the UC's rights and responsibilities related to sexual abuse and sexual harassment; how to contact organizations in the community that provide sexual abuse and sexual harassment counseling and legal advocacy for UC victims of sexual abuse and sexual harassment; and how to contact diplomatic or consular personnel. UCs, upon entering a care provider facility and receiving an orientation, may not remember every piece of information provided, so it is important to post and distribute pamphlets to ensure UCs are always informed.

The NPREC recommends that the pamphlet also include information on how to contact the Office for Civil Rights and Civil Liberties (OCRCL) as well as the Office of the Inspector General (OIG) at DHS. ORR does not include the contact information for OCRCL and OIG at DHS, because UCs are in the care and custody of HHS and not DHS. ORR also does not include the contact information for OCRCL and OIG at HHS, because the two offices do not function like their counterparts at DHS. OIG, for example, does not have the capacity to receive UC reports 24 hours a day in order to immediately refer any UC reports it receives. ORR, instead, provides that an outside agency may receive reports of sexual abuse and sexual harassment, and UCs may always contact diplomatic or consular personnel. In addition, UCs may always directly contact ORR 24-hours a day. The pamphlet will include contact information for care provider facility staff, ORR, the outside agency, and diplomatic and consular personnel.

The NPREC also recommended that sexual abuse education be provided by a qualified individual with experience communicating about these issues with a diverse population. ORR does not explicitly include the requirement that an individual have experience communicating about these issues with a diverse population in this section, because all policies and services related to this rule must be implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population under section 411.11. In addition, section 411.15 requires that care provider facilities ensure meaningful access to all aspects of the care provider facility's sexual abuse and sexual harassment policies to UCs who are limited English proficient. Further, section 411.31 requires all care provider facility staff who may have contact with UCs to receive training on, among other things, cultural sensitivity and effectively communicating with UCs who are LGBTQI.

Section 411.34 covers the specialized training required of medical and mental health care staff employed or contracted by care provider facilities. This standard does not include medical and mental health professionals utilized in the community and at local hospitals not contracted or employed by care provider facilities. Under paragraph (a), all medical and mental health care staff employed or contracted by care provider facilities must be specially trained, at a minimum, on the following topics: how to detect and assess signs of sexual abuse and sexual harassment; how to respond effectively and professionally to victims of sexual abuse and sexual harassment; how and to whom to report allegations or suspicions of sexual abuse and sexual harassment; and how to preserve physical evidence of sexual abuse. If medical staff intend to conduct forensic examinations, they must receive specific training to conduct such examinations prior to

conducting them. Care provider facilities must document that medical and mental health practitioners employed or contracted by the care provider facility received the training referenced in this section under paragraph (b). Paragraph (c) clarifies that medical and mental health practitioners employed or contracted by the care provider facility must receive the training outlined in this section in addition to the training mandated for all care provider facility employees under section 411.31 or for contractors and volunteers under section 411.32, depending on the practitioner's status at the care provider facility.

The NPREC recommends that the agency also provide specialized training for investigators conducting sexual abuse investigations. Because ORR refers all allegations to outside investigators, however, ORR did not include this standard.

### **Subpart E – Assessment for Risk of Sexual Victimization and Abusiveness**

Section 411.41 requires care provider facilities to assess UCs who may be at risk of being sexually abused or harassed or abusing or harassing others. Under paragraph (a), within 72 hours of a UC's arrival at a care provider facility, care provider facilities must obtain and use information about each UC's personal history and behavior to reduce the risk of sexual abuse or sexual harassment by or upon a UC. In addition, care provider facilities must periodically reassess the UC throughout a UC's stay at the care provider facility. Paragraph (b) requires that the care provider facility's assessment of UCs for risk of sexual victimization and abusiveness must include consideration, at a minimum and to the extent that the information is available, the following criteria: prior sexual victimization or abusiveness; any gender nonconforming

appearance or manner or identification as lesbian, gay, bisexual, transgender, questioning, or intersex and whether the UC may therefore be vulnerable to sexual abuse or sexual harassment; any current charges and offense history; age; any mental, physical, or developmental disability or illness; level of emotional and cognitive development; physical size and stature; the UC's own perception of vulnerability; and any other specific information about an individual UC that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other UCs.

Paragraph (c) states that the care provider facility must obtain the information listed in paragraph (b) of this section through conversations with the UC during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, care provider facility behavioral records, and other relevant documentation from the UC's files. Only trained staff are permitted to talk with UCs to gather information specifically about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental disabilities for the purposes of the assessment required under paragraph (a) of this section. Care provider facilities must provide UCs with an opportunity to discuss any safety concerns or sensitive issues privately. Under paragraph (d), care provider facilities must take appropriate steps and implement controls on the dissemination within the care provider facility of responses to questions asked pursuant to the standard set forth in this section in order to ensure that sensitive information is not exploited to the UC's detriment by staff or other UCs.

The NPREC also recommends that the facility make every reasonable effort to obtain institutional and criminal records of immigration detainees in its custody prior to screening for risk of victimization and abusiveness. It also recommends that screenings be conducted by employees who are culturally competent. As part of ORR's placement procedures, all UCs placed in ORR custody must be referred by a federal agency. DHS provides almost all referrals of UCs to ORR and will provide any U.S. criminal records of UCs when referring them. Therefore, ORR did not include this standard, because any existing U.S. criminal records are already transferred to ORR when a UC is placed in its care. UCs may also have a criminal record in a country outside the U.S., but those records take time to collect since they come from INTERPOL. INTERPOL is the world's largest international police organization, with 190 member countries. It ensures that police around the world have access to the tools and services necessary to do their jobs effectively, including access to criminal records in various countries. It would not be feasible to obtain non U.S. records within 72 hours as required under section 411.41.

Section 411.42 explains how care provider facilities are required to use the assessment completed in section 411.41. Paragraph (a) requires care provider facilities to use the information gathered from the assessment completed under section 411.41 to inform the assignment of UCs to housing, education, recreation, and other activities and services. Instead of making generalized decisions for groups of UCs, care provider facilities must make an individualized determination for each UC to ensure the UC's safety and health.

One-on-one supervision in ORR care provider facilities does not refer to the type of solitary confinement used by prisons. UCs are not forced to remain alone and in locked rooms. Instead, one-on-one supervision refers to direct line-of-sight supervision at all times. Paragraph (b) states that care provider facilities may not place UCs on one-on-one supervision as a result of the assessment unless there are exigent circumstances that require it to keep the UC, other UCs, or staff safe. A UC may only be placed on one-on-one supervision until an alternative means of keeping all residents and staff safe can be arranged. A UC who is on one-on-one supervision for his/her safety must still receive all required services, including but not limited to, daily large-muscle exercise, required educational programming, and social services, when possible and reasonable under the circumstance. UCs on one-on-one supervision must receive daily visits from a medical practitioner or mental health care clinician as necessary. The medical practitioner or mental health care clinician may decide based on the needs of the UC that daily visit are not required, but he/she must continue to meet with the UC on a regular basis while the UC is on one-on-one supervision. UCs, however, should generally not be placed on one-on-one supervision for a period of days or weeks. Exigent circumstances should be resolved as soon as possible and once safety is restored, UCs should no longer be supervised one-on-one.

When making assessment and housing assignments for a transgender or intersex UCs, paragraph (c) requires care provider facilities to consider the UC's gender self-identification and an assessment of the effects of placement on the UC's health and safety. The care provider facility must consult a medical or mental health professional as soon as practicable on this assessment, but the care provider facility should not base housing assignment decisions of transgender or intersex UCs solely on the identity document or physical anatomy of the UC. An

identity document may include but is not limited to U.S. and foreign government documentation, such as DHS forms provided when a UC is referred to ORR, birth certificates, and other official documentation stating the UC's sex. A UC's self-identification of his/her gender and self-assessment of safety needs must always be taken into consideration unless State and local licensing standards require otherwise. Some State and local licensing standards have specific requirements for the housing of transgender or intersex UC. In such cases, care provider facilities must follow State and local licensing requirements. Care provider facilities must regularly reassess the housing and programming assignments of each transgender or intersex UCs to review any threats to safety experienced by the UC.

The NPREC recommended that facilities that house both inmates and immigration detainees house all immigration detainees separately from other inmates in the facility. ORR did not include this standard, because it is not applicable for ORR care provider facilities. Immigration detainees housed by DHS may be placed in jails or lockups, which is why the NPREC makes this recommendation. ORR, however, places UCs at residential shelters that may also house domestic children, but the domestic children are not inmates or at the care provider facility because of criminal or delinquent acts. Domestic children at care provider facilities are typically minors in the domestic child welfare system and are often orphaned, separated from parents, or pregnant teens.

ORR does have a policy for care provider facilities to house UCs separate from domestic populations, if the care provider facility also houses domestic populations. Generally, most UCs are housed separately, but there are exceptions to this policy. For example, ORR allows mixing

of domestic minors and UCs in specialized placements, such as at residential treatment centers. In these care provider facilities, there is a higher level of supervision and care, and it is not feasible to separate the two populations, because there are a very small number of UCs at these care provider facilities. ORR does not want to effectively isolate UCs in that way.

### **Subpart F – Reporting**

Section 411.51 discusses care provider facility requirements regarding the ability of UCs to report sexual abuse and sexual harassment and any retaliatory actions resulting from reporting sexual abuse and sexual harassment. The ability of UCs to freely and immediately report sexual abuse and sexual harassment is essential for their protection and safety. ORR is committed to providing easily accessible methods for UCs to make reports. Paragraph (a) requires that care provider facilities develop policies and procedures for UCs to have multiple ways to report sexual abuse and sexual harassment, retaliation for reporting sexual abuse and sexual harassment, and staff neglect or violations of responsibilities that may have contributed to such incidents to the care provider. The care provider facility also must provide access to and instructions on how UCs can contact their consular official, ORR's headquarters, and an outside entity to confidentially, and, if desired, anonymously report these incidents. Instructions on how to contact consular officials should include a list of phone numbers, and UCs must be provided access to telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under section 411.51(b).

Under paragraph (b), care provider facilities also must provide and inform the UC of at least one way for UCs to report sexual abuse and sexual harassment to an entity or office that is not part of the care provider facility and is able to receive and immediately forward UC reports of sexual abuse and sexual harassment to ORR officials, allowing UCs to remain anonymous upon request. For example, care provider facilities may collaborate with rape crisis centers or local nonprofit organizations to receive UC reports of sexual abuse and sexual harassment that can be directly forwarded to law enforcement and ORR. The care provider facility must also maintain or attempt to enter into a memorandum of understanding or other agreement with the entity or office and maintain copies of agreements or documentation showing attempts to enter into agreements. The care provider facility's policies and procedures under paragraph (c) also must include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties. Staff must promptly document any verbal reports. Paragraph (d) requires all allegations of sexual abuse and sexual harassment by staff or UCs to be immediately reported to ORR according to ORR's policies and procedures.

The NPREC recommends that facilities provide access to telephones with free, preprogrammed numbers to the DHS Office for Civil Rights and Civil Liberties (CRCL) and Office of the Inspector General (OIG). ORR did not include this requirement, because UCs are in the care and custody of ORR and not of DHS. ORR also did not include a requirement to provide preprogrammed numbers to HHS' CRCL and OIG, because they do not function in the same manner that DHS' offices do. HHS' CRCL and OIG do not have the capacity to accept reports from UCs on a 24-hour basis. ORR, however, provides UCs the opportunity to report to care provider facilities, ORR headquarters, and to an outside agency. UCs will have access to

telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under section 411.51(b).

Section 411.52 addresses requirements for a care provider's grievance policies and procedures. The grievance process is another method through which UCs may make reports of sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to implement written policies and procedures for identifying and handling time-sensitive grievances that involve an immediate threat to UC health, safety, or welfare related to sexual abuse and sexual harassment. All such grievances must be reported to ORR and responded to immediately. Paragraph (b) requires care provider facility staff to immediately notify medical or emergency services personnel if there is a UC medical emergency. Paragraph (c) requires care provider facilities to issue a written decision on the grievance within five (5) days of receipt of the grievance. Paragraph (d) states that UC may obtain assistance from other UCs, care provider facility staff, family members, or legal representatives to prepare a grievance; and care provider facilities must take reasonable steps to expedite requests for assistance from these other parties. Under State mandatory reporting requirements and section 411.51(d), if a care provider facility staff member assists the UC in filing a grievance and gains knowledge of sexual abuse or sexual harassment occurring at a care provider, he/she must also separately make a report to the appropriate law enforcement agency, Child Protective Services agency, State or local licensing agency, and ORR. If a third-party assists the UC, such as a family member or legal representative, and he/she has knowledge of sexual abuse and sexual harassment occurring at a care provider facility, he/she also may file reports of sexual abuse and sexual harassment with

the appropriate law enforcement agency, Child Protective Services agency, State or local licensing agency, and with ORR.

The NPREC recommends a specific procedure for the exhaustion of administrative remedies. ORR did not include this standard, because ORR does not require UCs to exhaust any type of administrative remedy before a care provider facility is required to take action in order to protect UCs or respond to any allegation of sexual abuse and sexual harassment. Care provider facilities must immediately respond to all allegations of sexual abuse and sexual harassment regardless of how the allegation is reported and also immediately refer the allegation to outside investigating agencies. The previous paragraph discussing grievances describes how grievances are to be filed and promptly responded to by care provider facilities. It does not require a UC to file a grievance before referring an allegation for investigation. It is simply one way for a UC to make a report of sexual abuse or sexual harassment, and ORR requires care provider facilities to have policies and procedures to ensure grievances are addressed in a timely and appropriate manner.

Section 411.53 requires that care provider facilities provide UCs access to outside confidential support services. Although ORR care provider facilities have case managers and clinicians that work with individual UCs on an ongoing basis, care provider facilities also should provide UC victims of sexual abuse and sexual harassment access to outside community resources. If the alleged abuser is a clinician or case manager at the care provider facility, the UC should be able to access outside services and counsel. Paragraph (a) requires care provider facilities to utilize available community resources and services to provide support for a UC

victim in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators. The care provider facility should maintain or try to enter into memoranda of understanding or other agreements with community service providers for immigrant victims of crime and maintain copies of its agreements or documentation showing attempts to enter into agreements. If such resources are available, care provider facilities must have written policies and procedures that include these outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols under paragraph (b). Finally, paragraph (c) requires care provider facilities to make available to UCs information about local organizations that can assist UCs who are victims of sexual abuse and sexual harassment, including mailing addresses and telephone numbers. The care provider facility must allow reasonable communication between the UC and these organizations and agencies in a confidential manner and inform the UC, prior to giving him/her access, of the extent to which such communications will be confidential. The NPREC recommends that the facility also provide UC with unimpeded access to their attorney or other legal representative and their families. ORR has incorporated this recommendation in section 411.55.

The NPREC recommends that the outside service provider help victims of sexual abuse during their transition from incarceration to the community. UCs are not incarcerated like minors in juvenile delinquency facilities, so this standard was not included. ORR, however, does believe it is important to connect special needs or at-risk UCs with resources in the community once they are released. ORR provides post-release services for certain UCs, which would include UC victims of sexual abuse and sexual harassment, in order to connect UCs and UC

sponsors with resources in their community to assist with any needs a UC may have. This service helps UCs transition into the community in which they are released.

Section 411.54 requires ORR to establish a method to receive third-party reports of sexual abuse and sexual harassment at care provider facilities. In addition, ORR is required to make available to the public information on how to report sexual abuse and sexual harassment on behalf of a UC. This is to allow parents, family members, friends, and anyone else to make a report on behalf of a UC. The NPREC recommends that at the conclusion of the investigation, the facility notify in writing the third-party individual who reported the abuse and the resident named in the third-party report of the outcome of the investigation. ORR makes efforts to notify all UCs that are the suspected victims of allegations of sexual abuse and sexual harassment of the outcome of the investigation under section 411.72. ORR, however, does not notify the third-party reporter of the outcome of the investigation in order to protect both the UC and an anonymous third-party reporter. A third-party reporter may be any individual with no relation to the UC. In order to protect the privacy of the UC, ORR will notify the UC of the result, and the UC may choose whether or not to notify the third-party of the results of the investigation. ORR will also accept anonymous third-party reports. In order to maintain the anonymous status of the reporter, ORR cannot provide the third-party notification of the outcome of the investigation.

Section 411.55 requires care provider facilities to ensure that UCs have access to their attorneys or other legal representatives and families. Paragraph (a) states that care provider facilities must provide UCs with confidential access to their attorney or other legal representative in accordance with the care provider's attorney-client visitation rules. A care provider's

attorney-client visitation rules typically include time and place restrictions and require the attorney or legal representative to provide proper identity documentation prior to allowing the attorney to communicate with the UC. Care provider facilities have these rules in order to decrease disruptions in the UC's school and services schedule and to protect the UC's safety and security. In the event of an emergency or exigent circumstance, such as an incident involving law enforcement or the need to make an informed decision regarding medical services, for example, care provider facilities are required to have rules that allow UCs immediate access to attorneys, whether in-person or via telephone. All attorneys, however, should provide proper identity documentation as well as documentation, such as an individualized representation agreement demonstrating they are the UC's attorney, prior to gaining access to any UC. The care provider's attorney-client visitation rules must be approved by ORR to ensure the rules are reasonable and appropriate and include emergency provisions. Care provider facilities must also provide a confidential space for UCs to meet or speak on the phone privately with their attorneys.

Paragraph (b) requires care provider facilities to allow UCs access to their families, including legal guardians, unless ORR has documentation showing that certain individuals should not be provided access because of safety concerns. ORR, for example, may have documentation that a parent has abused his/her child and, therefore, care provider facilities may restrict that individual's access to the UC if the parent poses a safety and security concern for the UC.

### **Subpart G – Official Response Following a UC Report**

Section 411.61 covers reporting requirements for care provider facility staff. ORR takes seriously the responsibility to report incidents of sexual abuse and sexual harassment. In addition, most staff members at care provider facilities are considered mandatory reporters under State law, and, therefore, must ensure they report all allegations, incidents, and suspicions of sexual abuse and sexual harassment to all proper authorities under State and local law as well as under these standards. Consequently, if care provider facility staff are found to have knowledge or suspicion of sexual abuse or sexual harassment but have not reported it, the staff member will be subject to strict sanctions or corrective actions, up to and including termination of employment. ORR will also refer such cases to Child Protective Services and State and local licensing agencies.

In addition to State and local mandatory reporting requirements, paragraph (a) requires that all care provider facility staff, volunteers, and contractors report immediately to ORR according to ORR policy and procedures and to State or local agencies in accordance with mandatory reporting laws: any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred while a UC was in ORR care. All care provider facility staff, volunteers, and contractors also must report immediately any knowledge, suspicion, or information regarding retaliation against UCs or staff who reported an incident of sexual abuse or sexual harassment or any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. ORR must review and approve the care provider's policies and procedures regarding reporting requirements to ensure that the care provider facility has appropriate reporting procedures. Paragraph (b) requires care provider facility staff to make

sexual abuse and sexual harassment reports in accordance with ORR's policies and procedures as well as the care provider's policies and procedures, as approved by ORR under section 411.11(c). Apart from the report, care provider facility staff must not reveal any information within the care provider facility related to a sexual abuse or sexual harassment report to anyone other than to the extent necessary to provide medical and mental health treatment, investigation, notice to law enforcement, or other security and management decisions under paragraph (c). This is to ensure that sexual abuse and sexual harassment reports are kept as confidential as possible to ensure the safety of the UC and/or staff member. Care provider facilities, however, must comply with all ORR requests for information regarding sexual abuse and sexual harassment allegations.

Paragraph (d) requires care provider facility staff also to report any sexual abuse and sexual harassment allegations to the designated State or local services agency under applicable mandatory reporting laws in addition to law enforcement and the State or local licensing agency. Paragraph (e) requires that upon receiving an allegation of sexual abuse or sexual harassment, the care provider facility head or his or her designee must report the allegation to the alleged victim's parents or legal guardians, unless ORR has evidence showing the parents or legal guardians should not be notified or the victim does not consent to this disclosure of information and is 14 years of age or older, and ORR has determined the victim is able to make an independent decision. For example, if parental rights or legal guardian rights have been legally terminated and ORR has documentation of such termination, care provider facilities should not notify the UC's parent or legal guardian whose rights to the UC have been terminated. There may also be circumstances, for example, where ORR has evidence that a parent or legal guardian

has abused a UC in the past and currently poses a danger to the safety and security of the UC. In such cases, ORR may choose not to notify a UC's parent or legal guardian to protect the safety of the UC. If the UC victim does not consent to the disclosure of information to his/her parents or legal guardians and is 14 years of age or older and ORR has determined the victim is able to make an independent decision, ORR will not require parental notification. If the UC is under 14 years of age, ORR will notify the UC's parent or legal guardian of the allegation as long as there is no evidence to show that the parents or legal guardian should not be notified. ORR, along with DOJ and DHS, consider UC 14 years of age and older as capable of making certain decisions, such as submitting an application for immigration status to the U.S. Citizenship and Immigration Services and choosing an attorney and completing the form for attorneys to officially appear as a minor's attorney or accredited representative in immigration court. If a minor may sign a form to retain a legal representative, then ORR will allow that minor to choose whether to disclose information to that attorney. Lastly, upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, ORR will share this information with the UC's attorney of record within 48 hours of learning of the allegation under paragraph (f) unless the UC does not consent to the disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision. Instead of requiring the care provider facility to notify the juvenile court or the victim's judge of record, as recommended by the NPREC, ORR requires that the care provider facility notify the UC's attorney of record. UCs are not in juvenile court proceedings.

The NPREC also recommends that medical and mental health practitioners be required to report sexual abuse to designated supervisors and officials as well as to the designated State or

local services agency and must inform residents of their duty to report at the initiation of services. ORR did not explicitly state this here, because all medical and mental health practitioners that are on staff or are a contractor of a care provider facility are required to report sexual abuse and sexual harassment like any other staff member under this section. Unlike a typical prison environment where medical and mental health practitioners may have different reporting structures and responsibilities under PREA than prison staff, medical and mental health practitioners in ORR care provider facilities are required to make reports in the same way that all other staff make reports. They are subject to all the requirements in this rule that apply to care provider facility staff. The medical and mental health practitioner is also bound by his/her professional responsibilities as a medical provider to make appropriate reports and provide disclosures, as appropriate. ORR does not distinguish between staff in making reports. All staff are required to report all suspicions.

Section 411.62 requires care provider facilities to protect UCs from sexual abuse and sexual harassment. If a care provider facility employee, volunteer, or contractor reasonably believes that a UC is subject to substantial risk of imminent sexual abuse, he or she must immediately take action to protect the UC. Taking action may include, but is not limited to, reporting to care provider facility management, contacting a youth care worker, physically moving the endangered UC, and reporting suspicions and risks to both care provider facility management and ORR.

Section 411.63 covers topics related to reporting allegations to other care provider facilities. Paragraph (a) requires that a care provider facility, upon receiving an allegation that a

UC was sexually abused or sexually harassed while at another care provider facility, must immediately notify ORR no later than 24 hours after receiving the allegation. ORR will then notify the care provider facility where the alleged abuse or harassment occurred. Under paragraph (b), the care provider facility whose staff received the allegation must document that it provided notification of the allegation to ORR. Under paragraph (c), the care provider facility that receives notification that an allegation of sexual abuse or sexual harassment occurred at its facility must ensure that the allegation is referred for investigation in accordance with these standards and State and local law. Paragraph (d) requires that a care provider facility, upon receiving an allegation that a UC was sexually abused or sexually harassed while in DHS custody, must immediately notify ORR but no later than 24 hours after receiving an allegation. ORR will then report the allegation to DHS. The care provider facility must document under paragraph (e) that it provided ORR such notification.

Section 411.64 outlines what duties are required for staff responding to an allegation of sexual abuse. Paragraph (a) outlines the requirements for the first care provider staff member to respond to a report of sexual abuse. The care provider facility staff member must separate the alleged victim and abuser; preserve and protect, to the greatest extent possible, any crime scene until the appropriate authorities can take steps to collect any evidence; if the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and if the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged abuser and/or witnesses do not take any actions that

could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating. The care provider facility staff member should request that such actions not be taken, but the staff member should not physically restrain any UCs from taking such actions. If for any reason evidence cannot be collected in a timely fashion and the UC requests to use the restroom, UCs should be allowed to urinate and defecate as needed.

Section 411.65 requires care provider facilities to have a coordinated response to all allegations of sexual abuse that is immediate, efficient, and thorough. Paragraph (a) requires care provider facilities to develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, outside investigators, victim advocates, and care provider facility leadership in response to an incident of sexual abuse to ensure that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence. ORR must review and make an approval decision on the written institutional plan to ensure it adequately addresses all concerns and is in accordance with ORR policies and procedures. Paragraph (b) requires care provider facilities to use a coordinated, multidisciplinary team approach to respond to sexual abuse. Under paragraph (c), if a victim of sexual abuse is transferred between ORR care provider facilities, ORR must, as permitted by law, inform the receiving care provider facility of the incident and the victim's potential need for medical or social services. Under paragraph (d), if a victim of sexual abuse is transferred from an ORR care provider facility to a non-ORR facility or sponsor, ORR must, as permitted by law, inform the receiving care provider facility or

sponsor of the incident and the victim's potential need for medical or social services, unless the victims requests otherwise.

Section 411.66 requires that ORR and care provider facility staff, contractors, and volunteers suspected of perpetrating sexual abuse or sexual harassment be immediately removed from all duties that would involve or allow access to UCs pending the outcome of an investigation.

Section 411.67 addresses protections against retaliation. Care provider facility staff, contractors, and volunteers as well as UCs must not retaliate against any person, including a UC, who reports, complains about, or participates in an investigation into an allegation of sexual abuse or sexual harassment. Retaliation is absolutely prohibited and must be strongly addressed. For the remainder of the UC's stay in ORR custody following a report of sexual abuse or sexual harassment, ORR and the care provider facility must monitor to see if there may be possible retaliation occurring by UCs or care provider facility staff. If there are suspicions of retaliation, the care provider facility must address the retaliation and remedy the situation. For example, ORR and the care provider facility staff should monitor UC disciplinary reports, housing or program changes, negative performance reviews, or reassignments of staff. Care provider facilities must discuss any changes with the appropriate UC or staff member as part of their efforts to determine if retaliation is taking place, and, when confirmed, immediately take steps to protect the UC or staff member.

Section 411.68 addresses post-allegation protection of UCs and staff. Under paragraph (a), care provider facilities must ensure that UC victims of sexual abuse and sexual harassment are placed in a supportive environment that provides the least restrictive housing option possible, subject to the requirements of 411.42. Paragraph (b) requires the care provider facility to employ multiple protection measures to ensure the safety and security of UC victims of sexual abuse and sexual harassment, including but not limited to: housing changes or transfers for UC victims and/or abusers or harassers; removal of alleged UC abusers or harassers from contact with victims; and emotional support services for UCs or staff who fear retaliation for reporting sexual abuse and sexual harassment or cooperating with investigators. Under paragraph (c), a UC victim may be placed on one-on-one supervision in order to protect the UC. Before taking the UC off of one-on-one supervision, the care provider facility must complete a re-assessment taking into consideration any increased vulnerability of the UC as a result of the sexual abuse or sexual harassment. The re-assessment must be completed as soon as possible and without delay so that the UC is not on one-on-one supervision longer than is absolutely necessary for safety and security reasons. The UC should continue to receive all services, education, and recreation time while on one-on-one supervision to the greatest extent possible.

The NPREC also recommends that DHS never remove from the country or transfer to another facility immigration detainees who report sexual abuse before the investigation of that abuse is completed. ORR did not incorporate these NPREC recommendations in its rule, because ORR has no control over the removal of UCs from the United States. That is a decision for DHS and the immigration courts. With regard to transfers, the NPREC's report states that transfers disrupt a detainee's complaint lodged against a DHS facility. Outside agencies

investigate all allegations at ORR care provider facilities, and investigations should continue to completion regardless of whether a UC is transferred or not. If the UC is released from ORR care and custody, ORR care provider facilities should work with the investigating agencies to ensure the care provider facility follows any procedures necessary to continue cooperation with investigators once the release occurs. If the UC has a protracted stay in ORR care and custody and the investigating agency requests that a UC stay in the jurisdiction, ORR will make best efforts not to transfer the child to a different care provider facility. Once UCs are released from ORR care, ORR no longer has jurisdiction over the UC. ORR is not an enforcement agency and cannot monitor UCs in the community, but ORR will request that the law enforcement agency local to the care provider facility advise the UC on how to protect him- or herself once he/she is released either in the same jurisdiction or elsewhere. In addition, care provider facilities, as part of their agreements with investigating authorities as required under section 411.22, will work with investigating authorities to request that investigations not be closed simply because a UC leaves the jurisdiction.

## **Subpart H – ORR Incident Monitoring and Evaluation**

Section 411.71 discusses the requirements of ORR incident monitoring and evaluation after an allegation of sexual abuse or sexual harassment is made. The NPREC has recommended standards regarding the investigative agency's duty to investigate to completion all allegations of sexual abuse, what to include in criminal and administrative investigations, and evidence standards for administrative investigations. Since ORR does not conduct criminal or administrative investigations, it did not include these standards. Instead, ORR monitors and

evaluates care provider facilities on a regular basis to ensure they are following ORR policies and procedures as well as relevant legal authorities in accordance with their cooperative agreements or contract terms. In addition, if an incident occurs, ORR will also monitor and evaluate a care provider facility to determine if ORR policies and procedures as well as relevant legal authorities were followed and what corrective actions, if any, are needed. ORR does not conduct criminal investigations, collect evidence, or investigate the substance of the allegation. All care provider facilities, except emergency care provider facilities not licensed by a State or local agency, are overseen by State or local licensing agencies and Child Protective Services who are required to investigate such allegations. As such, ORR is committed to ensuring that all allegations of sexual abuse and sexual harassment are referred to outside investigating agencies with the authority to conduct investigations. Under paragraph (a), upon receiving an allegation of sexual abuse or sexual harassment, ORR will monitor and evaluate the care provider facility to determine if the care provider facility did not comply with the requirements of this section or ORR policies and procedures. Once an outside investigation is completed, ORR must review any available completed investigation reports to determine whether additional monitoring and evaluation activities are required.

Paragraph (b) also requires that ORR develop written policies and procedures for incident monitoring and evaluation of sexual abuse and sexual harassment allegations, including provisions requiring: (1) reviewing prior complaints and reports of sexual abuse and sexual harassment involving the suspected perpetrator; (2) determining whether actions or failures to act at the care provider facility contributed to the abuse or harassment; (3) ensuring that all ORR policies and procedures or relevant legal authorities were followed; and (4) retention of such

reports for as long as the alleged abuser or harasser is in ORR custody or employed by ORR or the care provider, plus ten years. Paragraph (c) requires ORR to ensure that its incident monitoring and evaluation does not interfere with any investigation conducted by State or local Child Protective Services, State or local licensing agencies, or law enforcement. Paragraph (d) requires that when outside agencies investigate an allegation of sexual abuse or sexual harassment, the care provider facility and ORR must fully cooperate with outside investigators.

Section 411.72 requires that ORR must, when feasible, notify the UC of the result of the investigation if the UC is still in ORR care and custody following an investigation. If a UC is no longer in ORR custody when investigation results are provided, ORR must attempt to notify the UC of the results where feasible. ORR may use the contact information of the person, organization, or entity the UC was released to in attempting to contact the UC, but ORR is not required to locate a UC if he/she is no longer at the address where he/she was released. The NPREC also recommends that the agency notify other complainants or additional parties that were notified of the allegation of the outcome of the investigation. ORR modified this recommendation, because ORR is not the investigating agency. ORR would not always have contact information about any other complainants and cannot notify reporting parties if they were made anonymously. ORR does not have all the information that an investigating agency would have. Instead, ORR will encourage the investigating agency to notify other complainants, or additional parties notified of the allegation, of the outcome of the investigation.

## **Subpart I – Interventions and Discipline**

Section 411.81 addresses disciplinary sanctions for care provider facility staff for violations of ORR or the care provider facility's sexual abuse and sexual harassment -related policies and procedures. Paragraph (a) requires care provider facilities to take disciplinary action up to and including termination against any staff member with a substantiated allegation of sexual abuse or sexual harassment against them or for violating ORR or care provider facility's sexual abuse and sexual harassment policies and procedures. For staff who engaged in sexual abuse or sexual harassment, termination must be the presumptive disciplinary sanction under paragraph (b). In addition, all terminations for violations of ORR or care provider facility sexual abuse and sexual harassment policies and procedures, or resignations by staff who would have been terminated if not for their resignation, must be reported to law enforcement agencies and to any relevant State or local licensing bodies. Under paragraph (d), any staff member with a substantiated allegation of sexual abuse or sexual harassment against him/her at an ORR care provider facility is barred from employment at any ORR care provider facility.

Section 411.82 discusses corrective actions for contractors and volunteers who engaged in sexual abuse or sexual harassment or violated ORR or the care provider facilities' sexual abuse and sexual harassment-related policies and procedures. Under paragraph (a), any contractor or volunteer who is the subject of a substantiated allegation of sexual abuse or sexual harassment must be prohibited from working or volunteering at the care provider facility and at any ORR care provider facility. Paragraph (b) requires the care provider facility to take appropriate remedial measures and to consider whether to prohibit further contact with UCs by contractors or volunteers who have not engaged in sexual abuse or sexual harassment but have violated other provisions within these standards, ORR sexual abuse and sexual harassment

policies and procedures, or the care provider's sexual abuse and sexual harassment policies and procedures.

Section 411.83 addresses interventions for UCs who engage in sexual abuse. UCs must receive appropriate interventions if they engage in UC-on-UC sexual abuse. Decisions regarding which types of interventions to use in particular cases, including treatment, counseling, or educational programs, are made with the goal of promoting improved behavior by the UC and ensuring the safety of other UCs and staff. Considering the age and background of the UC, the appropriate intervention plan should be created to encourage and assist the UC to improve his/her behavior.

The NPREC made recommendations regarding the imposition of disciplinary sanctions after a finding that a UC engaged in sexual abuse. ORR, however, did not include these recommendations, because care provider facilities do not discipline UCs in a punitive manner. Incidents of UC-on-UC abuse are referred to all investigating authorities, including law enforcement entities, and a UC who poses a danger to him- or herself, to others, or the community may also be transferred to a higher level of care, such as a staff-secure or secure care provider facility. The decision to transfer, however, is not determined as a result of a disciplinary sanction but is determined based on safety concerns and the needs of the UC, as is any lateral transfer or transfer to a higher level of care. If necessary, a UC may also be transferred to a therapeutic care provider facility or residential treatment center if recommended by the care provider's clinician and/or psychiatric assessment. ORR will always ensure that the UC victim is protected from the alleged perpetrator. This may include but is not limited to

keeping the victim and alleged perpetrator physically separate and housed in separate parts of the care provider facility; laterally transferring a UC based on the UC's needs; or transferring the alleged perpetrator to a higher-level of care if he/she continues to pose a danger to him- or herself, to others, or the community.

Rather than imposing disciplinary sanctions to control UC behavior, care provider facilities use positive reinforcement via a token economy system. UCs receive extra privileges or the ability to participate in extra activities, such as a movie night, when they exhibit positive or "good" behavior. UCs may not be able to participate in extra activities if they do not exhibit good behavior, but UCs never have services taken away nor are they ever placed in isolation for disciplinary reasons.

### **Subpart J – Medical and Mental Health Care**

Section 411.91 addresses medical and mental health assessments and histories of sexual abuse. Under paragraph (a), if the assessment pursuant to section 411.41 indicates that a UC experienced prior sexual victimization or perpetrated sexual abuse, the care provider facility must ensure that the UC is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate. Care provider facility staff must also ensure that all UCs disclosures are reported in accordance with these standards. All UCs in ORR care regularly meet with care provider facility clinicians and case managers. If, however, the UC requires a higher level of medical or mental health care as a result of past sexual victimization or perpetrated sexual abuse, the care provider facility will refer the UC to

qualified medical or mental health providers. After a referral for medical or mental health follow-up is initiated, the care provider facility must ensure that the UC receives a health evaluation no later than seventy-two (72) hours after the referral under paragraph (b). If the referral is for a mental health follow-up, the care provider facility must ensure that the UC receives a mental health evaluation no later than 72 hours after the referral under paragraph (c).

Section 411.92 covers access to emergency medical and mental health services. ORR provides regular and emergency medical and mental health care for all UCs in its care at all times, but the following standards are set forth to reiterate the importance of immediately providing medical services and crisis intervention services for sexual abuse victims. Regular medical, mental health, and crisis intervention services provided in the normal course of business are reported to ORR in accordance with its policies and procedures. Likewise, any medical, mental health, or crisis intervention services provided for sexual abuse victims must also be timely reported to ORR in accordance with ORR policies and procedures. Paragraph (a) requires care provider facilities to provide UCs who are victims of sexual abuse that occurred while in ORR care timely, unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where appropriate under medical or mental health professional standards. Such services must be reported to ORR in accordance with ORR's policies and procedures. Paragraph (b) requires care provider facilities to provide victims access to all medical treatment and crisis intervention services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. UCs should receive immediate medical and mental health treatment any time that it is needed. The NPREC's

report made recommendations for when no qualified medical or mental health practitioner are on duty at the time a report of recent abuse is made. ORR did not include these standards, because if there is a medical emergency, care provider facilities take UCs to the local hospital emergency room. Unlike juvenile facilities that have their own medical staff because residents may not leave the facility premises, UCs do not have to receive their medical services at the residential care provider facility. UCs are often taken out in the community to see specialists, dentists, and in the case of emergencies, to the emergency room.

ORR is mindful that some potential and existing grantees and contractors may have religious or moral objections to providing certain kinds of services, including referrals (for example, for emergency contraception). ORR is committed to providing resources and referrals for the full range of legally permissible services to UCs who need them, helping to facilitate access to these options, and doing so in a timely fashion and in a manner that respects the diverse religious and cultural backgrounds of UCs. At the same time, ORR is also committed to finding ways for organizations to partner with us, even if they object to providing specific services on religious grounds.

The following are ways in which organizations with such objections may be able to participate in human services programs. (1) Serve as sub-grantees – In many cases, sub-grantees do not need to provide every service for which the grantee is responsible, so long as all UCs served have access to all services required under the grant in a timely and respectful manner. Grantees must ensure that their overall program provides all of the required services, but grantees can use sub-grantees to provide some services. Under this arrangement, as long as other

sub-grantees are readily available to provide UCs with the objected-to services, a sub-grantee may participate in the grant program while declining to provide services to which they have a religious objection. (2) Apply in a consortium – A second possibility is for faith-based organizations to apply in a consortium with one or more partners. The consortium would allow for a division of responsibility consistent with each organization’s principles. Again, as long as UCs have timely access to all required services, different organizations could divide up the services provided. (3) Notify grantor – In some circumstances, another way in which the grantee could ensure access to any program services would be for the grantee to notify the federal program office responsible for the grant if a UC, who has been informed of the available services, may qualify for or be entitled to any program services, including referrals, to which the organization has a religious objection. It would then be the federal agency’s responsibility to secure the provision of the needed services, or, if appropriate, transfer the case to another provider.

For example, if a UC requested emergency contraception but the grantee that housed the UC objected to providing such services on religious or moral grounds, the grantee need only provide notification to ORR in accordance with ORR policies and procedures that the UC requested such services. The grantee is not required to provide further information or services to the UC in relation to the UC’s request. Once notified, ORR would then have its Federal staff coordinate the provision of such services for the UC, and the grantee need only allow the UC access to the Federal staff member in order to provide the services. If necessary, the ORR staff member would also coordinate transportation to and from the location where the services are provided.

All care provider facilities must provide for all the requirements under this subpart but the provision of the requirements are also subject to ORR's faith-based policy language described above. ORR will consider any combination of the approaches described above and is specifically requesting public comment for other approaches that would accomplish the goal of ensuring that UCs have access to a full range of services while enabling qualified faith-based organizations to participate in the delivery of those services in a manner consistent with their principles. ORR is committed to working with all grantee and contractors to fulfill their requirements under this rule in a manner that is respectful and sensitive to the grantee and contractor's principles and beliefs.

Section 411.93 addresses ongoing medical and mental health care for sexual abuse and sexual harassment victims and abusers. ORR provides regular medical care and mental health services, as stated in the last section, but these standards reiterate the importance of close, continued care for UC victims of sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to offer ongoing medical and mental health evaluations and treatment to all UCs who were sexually abused or sexually harassed while in ORR care and custody. In addition, the evaluation and treatment of such victims must include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to or placement in other care provider facilities or their release from ORR care and custody under paragraph (b). Paragraph (c) requires care provider facilities to provide victims with medical and mental health services consistent with the community level of care.

Under paragraph (d), care provider facilities must ensure that female UC victims of sexual abuse by a male abuser while in ORR care and custody are offered pregnancy tests, as necessary. If pregnancy results from an instance of sexual abuse, the care provider facility must ensure that the victim receives timely and comprehensive information about all lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services. Care provider facilities must also ensure that all UC victims of sexual abuse that occurred while in ORR care and custody are offered tests for sexually transmitted infections as medically appropriate under paragraph (e). Under paragraph (f), care provider facilities must ensure that UC victims are provided access to treatment services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. Finally, paragraph (g) requires care provider facilities to attempt to conduct a mental health evaluation of all known UC-on-UC abusers within seventy-two (72) hours of learning of such abuse and/or abuse history and offer treatment when deemed appropriate by mental health practitioners. In order for UCs to make informed decisions regarding medical services, care provider facilities should engage the UC in discussions with family members or attorneys of record in accordance with section 411.55 to the extent practicable and follow the appropriate State laws regarding the age of consent for medical procedures. As discussed above (see pages 71-72), insofar as care provider facilities may have religious objections to making such services available, the Federal government, consistent with its faith-based policy, is open to considering options whereby UC would be informed of available services, and the care provider would meet its obligations by notifying the grantor of requests for services.

The NPREC recommends that all immigration detainees are counseled about the immigration consequences of a positive HIV test at the time they are offered HIV testing. ORR did not include this standard, because the Department of Health and Human Services changed its regulations in 42 CFR Part 34 to remove HIV infection from the list of communicable diseases of public health significance that would make foreign nationals inadmissible to the United States. The new rule took effect on January 4, 2010, so the NPREC's recommended standard is no longer applicable.

### **Subpart K – Data Collection and Review**

Section 411.101 addresses the requirements to conduct sexual abuse and sexual harassment incident reviews. Sexual abuse and sexual harassment incident reviews are internal reviews completed by care provider facilities and are separate from sexual abuse and sexual harassment investigations, which are conducted by law enforcement, the Child Protective Services agency, and/or the State or local licensing agency. The main purpose of sexual abuse and sexual harassment incident reviews is to determine if the care provider facility's policies and procedures could be improved or changed in light of the incident or allegation. Sexual abuse and sexual harassment incident reviews are conducted at the conclusion of an outside investigation and should not interfere with any ongoing investigations. Under paragraph (a), care provider facilities must conduct a sexual abuse or sexual harassment incident review at the conclusion of every investigation of sexual abuse and sexual harassment and prepare a written report if the allegation was either substantiated or unable to be substantiated, but not determined to be unfounded. The written report must evaluate whether the incident review and/or investigation

indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and sexual harassment. The care provider facility must implement the recommendations for improvement or must document its reason for not doing so in a written response. Both the report and response must be forwarded to ORR's Prevention of Sexual Abuse Coordinator. Care provider facilities must also collect accurate, uniform data for every reported incident of sexual abuse and sexual harassment using a standardized instrument and set of definitions. Under paragraph (b), on an annual basis, the care provider facility must conduct a review of all sexual abuse and sexual harassment investigations and resulting incident reviews to assess and improve sexual abuse and sexual harassment detection, prevention, and response efforts. The results and findings of the annual review must be provided to ORR's Prevention of Sexual Abuse Coordinator. The NPREC recommendation goes into specific detail regarding who is required to review the incident and what to review. Instead, ORR provides a standard that requires the care provider facility to determine if any policies or practices should be changed and to provide recommendations for improvement. Factors that the NPREC recommends facilities consider, such as racial motivation or group dynamics are not as relevant for ORR care provider facilities, because the population of UCs at any given care provider facility will change often, as UCs are released on an average after 35 days.

Section 411.102 addresses data collection requirements. The purpose of this section is to regularly gather and report aggregated information to detect patterns so that future incidents may be prevented at care provider facilities. Paragraph (a) requires that care provider facilities maintain all case records associated with claims of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical

and counseling evaluation findings, and recommendations for post-release treatment and/or counseling in accordance with these standards and applicable Federal and State laws and ORR policies and procedures. Under paragraph (b), the PSA Compliance Manager, on an ongoing basis, must work with the care provider facility management and ORR to share data regarding effective care provider facility response methods to sexual abuse and sexual harassment.

Paragraph (c) requires the PSA Compliance Manager to prepare a report for ORR on a quarterly basis that compiles information about incidents and allegation of sexual abuse and sexual harassment as well as ongoing investigations and other pending cases. Under paragraph (d), the PSA Compliance Manager must annually aggregate incident-based sexual abuse and sexual harassment data in his/her care provider facility and provide it to ORR from the previous year no later than August 31 of the next calendar year.

The NPREC also recommends that facilities collect additional data whenever the immigration detainee is the victim or perpetrator of an incident of sexual abuse in custody. The additional incident-based data collected should indicate whether the victim and/or perpetrator was an immigration detainee, his or her status at the initiation of the investigation, and his or her status at the conclusion of the investigation. ORR did not include this standard, because UCs are not in ORR custody for a long period of time. UCs have an average length of stay of 35 days in ORR care, and most immigration cases and investigations are still ongoing when a release occurs. Once a UC is released, ORR does not track or have the ability to collect immigration information regarding the UC. Therefore, ORR is not able to collect the type of information that the NPREC recommends-

Section 411.103 covers how the collected data should be analyzed, reported, and used to prevent future incidents. Paragraph (a) requires that ORR review data collected and aggregated pursuant to sections 411.101 and 411.102 in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention, detection, and response policies, practices, and training. ORR's assessment should include identifying problem areas, taking corrective actions on care provider facilities on an ongoing basis, and preparing an annual report of its findings and corrective actions for each care provider facility as well as ORR as a whole. Under paragraph (b), ORR's report must include a comparison of the current year's data and corrective actions with those from prior years. In addition, the report must provide an assessment of ORR's progress in preventing, detecting, and responding to sexual abuse and sexual harassment. Paragraph (c) requires that the Director of ORR approve ORR's annual report on ORR's UC Program as a whole and make the report available to the public through its website or otherwise make the report readily available to the public. Paragraph (d) allows ORR to redact specific material from the reports when appropriate for safety and security but must indicate the nature of the material redacted when releasing the report to the public.

Section 411.104 addresses how data related to sexual abuse and sexual harassment should be stored, published, and destroyed. ORR is committed to protecting the safety and security of all UCs in its care and custody and, therefore, must ensure that all data collected related to sexual abuse and sexual harassment is protected. Under paragraph (a), ORR must ensure that data collected pursuant to sections 411.101 and 411.102 is securely retained in accordance with Federal and State laws and ORR record retention policies. Paragraph (b) requires that ORR make all aggregated sexual abuse and sexual harassment data from ORR care provider facilities

with which it provides a grant to or contracts with available to the public at least annually on its website consistent with existing ORR information disclosure policies and procedures. The aggregated data excludes data from secure care providers, as those care provider facilities must follow the Department of Justice's Standards to Prevent, Detect, and Respond to Prison Rape and will report to DOJ accordingly. Information regarding secure care providers will be available from DOJ. Also excluded from the aggregated data is information for traditional foster care providers. Before making any type of aggregated sexual abuse and sexual harassment data publicly available, however, ORR must remove all personal identifiers under paragraph (c). Paragraph (d) requires that ORR maintain sexual abuse and sexual harassment data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires the disposal of official information in less than 10 years.

#### **Subpart L – Audits and Corrective Action**

Section 411.111 addresses the frequency and scope of audits. Paragraph (a) states that ORR will ensure that an audit of each care provider facility is completed within three years and 60 days after the effective date of the standards and at least once during each three-year period thereafter. ORR may, in its discretion, expedite the audit of a particular care provider facility if ORR has reason to believe the care provider facility is experiencing problems related to sexual abuse and sexual harassment under paragraph (b). Paragraph (c) requires that ORR develop and issue an instrument that is coordinated with the HHS Office of the Inspector General that will provide guidance on the conduct and contents of the audit. Paragraphs (d) – (m) describe the types of documents and access the auditor must be provided when auditing a care provider

facility. Paragraph (n) ensures that all sensitive and confidential information that an auditor has access to be properly handled by the auditor, and that the auditor is required to safeguard such information. Paragraph (o) places an affirmative burden on the care provider facility to demonstrate compliance with the standards to the auditor.

Section 411.112 addresses the qualifications required for auditors. Paragraph (a) requires that audits must be conducted by an entity or individual with relevant auditing or evaluation experience and is external to ORR. Under paragraphs (b) and (c), auditors must be certified and trained by ORR and cannot receive financial compensation from ORR other than compensation related to conducting an audit for three years prior or subsequent to an audit.

Section 411.113 addresses the contents and findings of audits. Paragraph (a) requires that audits must include certification by the auditor that there are no conflicts of interest between the auditor and the care provider facility under review. Paragraphs (b) – (d) address the standards that care provider facilities must meet and the methodology, sampling sizes, and basis for the auditor’s conclusions. Under paragraph (e), auditors must redact personally identifiable UC or staff information from their reports but provide such information upon ORR request. Then, under paragraph (f), ORR will publish aggregated data on final audit reports on ORR’s website or otherwise make it readily available to the public.

Section 411.114 discusses audit corrective action plans. If a care provider facility received a finding of “Does Not Meet Standard” with one or more standards, a 180-day corrective action period is triggered under paragraph (a). The auditor and ORR will work to

create a corrective action plan to achieve compliance, and the auditor must take steps to verify implementation of the corrective action plan under paragraphs (b) and (c). Under paragraph (d), after the 180-day corrective action period ends, the auditor must issue a final determination as to whether the care provider facility achieved compliance with those standards requiring corrective action. Paragraph (e) requires that if the care provider facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

Section 411.115 addresses audit appeals. Paragraph (a) allows care provider facilities to file an appeal with ORR regarding any specific audit finding that it believes are incorrect. Such an appeal must be filed within 90 days of the auditor's final determination. Under paragraph (b), if ORR determines that the care provider facility has stated good cause for re-evaluation, the care provider facility may commission a re-audit by an auditor mutually agreed upon by ORR and the care provider facility. The care provider facility, though, must bear the costs of the re-audit. Under paragraph (c), the findings of the re-audit are considered final.

## **V. Waiver of Proposed Rulemaking**

HHS will ordinarily publish a notice of proposed rulemaking in the Federal Register and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substances of the proposed rule or a description of the subjects and issues involved. However, under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), a general notice of

proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued. HHS has determined that it would be contrary to the public interest to delay finalizing the provisions of this regulation until a public notice and comment process is complete.

HHS believes that implementing standards that govern the detection, prevention, and response to the sexual abuse and sexual harassment of UCs as soon as possible is of such importance that publishing a notice of proposed rulemaking would be contrary to the public interest. Section 1101(c) of the Violence Against Women Reauthorization Act (VAWA 2013) directs the Secretary of Health and Human Services to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of UCs within 180 days of the enactment of VAWA 2013, which was on March 7, 2013. In creating a 180-day deadline, HHS believes it was Congress' intent for HHS to issue national standards as quickly as possible so that UCs have specific protections put in place to detect, prevent, reduce, and punish sexual abuse and sexual harassment. Once this rule is published, it will take up to a year to implement all standards at all care provider facilities. To prevent further delay, HHS determined that it should issue an interim final rule instead of a notice of proposed rulemaking in order to begin implementation of these standards as soon as possible. Issuing this regulation on an interim basis is necessary and in the public interest in order to prevent, detect, and respond to the sexual abuse and sexual harassment of UCs in ORR care and custody. It would be contrary to the public interest and to Congress' intent to delay the implementation of this rule.

Based on HHS' determination that a delay of these rules would be contrary to the public interest, HHS finds good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. HHS will take and carefully consider public comments for the interim final rule and make any appropriate changes. HHS is providing a 60-day public comment period and will address comments received before the rule is finalized. We plan to finalize the rule within one year of implementation.

## **VI. Collection of Information Requirements**

Under the Paperwork Reduction Act of 1995 (PRA), HHS is required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by OMB.

This interim final rule with comment requires information collections for which HHS plans to seek OMB approval at a later date. The information collection requirements associated with this interim final rule will not take effect until approved by OMB. HHS will issue future Federal Register notices to seek comments on its information collections as required by 3506(c)(2)(A) of the Paperwork Reduction Act within one month following finalization, and will include the following information collections as described below:

- Section 411.11(c): Care provider facilities must maintain culturally-sensitive written policies mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the care provider facility's approach to detecting, preventing, and responding to such conduct. The policies must be tailored for a diverse population and approved by ORR.
- Section 411.16(b): Care provider facilities must solicit information from job applicants and employees considered for promotion about previous misconduct. If a job applicant previously worked at an institution, care provider facilities must make efforts to solicit information regarding previous misconduct related to sexual abuse and sexual harassment.
- Section 411.16(c) and (d): Care provider facilities must produce background investigation results and documentation to ORR, upon request, for job applicants, volunteers, and contractors.
- Section 411.16(g): Care provider facilities must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer for whom such employee has applied to work.
- Section 411.22(a)-(c): Care provider facilities are required to report allegations of sexual abuse and sexual harassment to ORR and all appropriate investigating authorities. Care provider facilities must maintain documentation of all reports and referrals of allegations for at least ten years. Care provider facilities must also maintain copies of all agreements or documentation showing attempts to enter into

agreements with law enforcement agencies, State or local Child Protective Services, and State or local licensing agencies.

- Sections 411.31(c) and 411.32(c): Care provider facilities must maintain written documentation that employees, contractors, and volunteers have completed required trainings.
- Section 411.33(a), (c)-(e): Care provider facilities must disclose information to UCs regarding the care provider facility's zero tolerance policies in an age and culturally appropriate fashion. All disclosures must be documented.
- Section 411.34(b): Care provider facilities must maintain documentation that medical and mental health practitioners employed or contracted by the care provider facility received required trainings.
- Section 411.51: Care provider facilities must provide information to UCs regarding methods of reporting and contact information to report allegations of sexual abuse and sexual harassment. Care provider facilities must also maintain agreements or attempts to enter into agreements with entities that can receive and immediately forward UC reports. Reports made verbally must be documented, and all allegations must be reported to ORR.
- Section 411.52(c): Care provider facilities must have written procedures for identifying and handling time-sensitive grievances that involve immediate threats to UC health, safety, or welfare related to sexual abuse and sexual harassment, and all such grievances must be reported to ORR.
- Section 411.53: Care provider facilities must maintain agreements or attempts to enter agreements with community service providers to provide legal advocacy and

confidential emotional support services for UC victims of sexual abuse and sexual harassment. Care provider facilities must also have written policies and procedures to include outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols. Finally, care provider facilities must disclose information to UCs about these local organizations and the assistance they can provide to UC victims of sexual abuse and sexual harassment.

- Section 411.54: ORR provides a method to receive third-party reports of sexual abuse and sexual harassment.
- Section 411.61(a)-(b), (d)-(f): Care provider facility staff, volunteers, and contractors are required to report to ORR and third-parties any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment, retaliation, or staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Care provider facilities must disclose allegations of sexual abuse and sexual harassment to a victim's parents or legal guardians with the UC victim's consent as well as his/her attorney of record, if applicable.
- Section 411.63: Care provider facilities that receive an allegation that a UC was sexually abused while at another care provider facility must immediately report the allegation to ORR. The care provider facility reporting the incident must document that it provided notification to ORR and must also report the allegation to appropriate investigators.
- Sections 411.81(c) and 411.82(a): Care provider facilities must report to law enforcement any staff, contractor, or volunteer who has engaged in sexual abuse or sexual harassment.

- Section 411.101: Care provider facilities are required to collect certain data at the conclusion of every investigation of sexual abuse and sexual harassment and, where the allegation was either substantiated or unable to be substantiated but not determined to be unfounded, must prepare a report. Care provider facilities must also conduct an annual review of all sexual abuse and sexual harassment investigations and provide the results and findings to ORR.
- Section 411.102: Care provider facilities must maintain case records associated with claims of sexual abuse and sexual harassment and the Prevention of Sexual Abuse Compliance Manager must share data with ORR regarding effective care provider facility response methods to sexual abuse and sexual harassment. The PSA Compliance Manager must also prepare a report for ORR compiling information and aggregate incident-based sexual abuse and sexual harassment data. Care provider facilities must also provide information to ORR upon request.
- Section 411.113: Audits must contain certain information outlined in this section regarding a care provider facility's compliance with the standards set forth in this rule.

We estimate the cost burden for these information collections per year will be approximately \$900,000 for approximately 100 care provider facilities, with each care provider facility spending approximately 416 hours per year to complete the information collections.

## **VII. Regulatory Impact Analysis – Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. While there are some costs associated with these regulations, they are not economically significant as defined under E.O. 12866. However, the regulation is significant and has been reviewed by OMB.

Within the IFR, the only areas with associated Federal costs are: hiring new staff or converting existing staff to perform functions as a Prevention of Sexual Abuse Compliance Manager at care provider facilities; training/education, prevention planning; expanding reporting mechanisms; data collection; and conducting regular audits. This IFR has an approximately \$6.21 million cost. This includes approximately 100 full-time staff at each care provider facility paid an average salary of \$45,000 with fringe benefits at an average rate of 27%. The full-time staff will provide training/education and prevention planning as well as complete all reporting requirements and data collections. ORR estimates that an annual contract to complete audits will cost approximately \$500,000 annually. This IFR will not only codify existing policies and procedures carried out by the UC Program but will also incorporate recommendations from the National Prison Rape Elimination Commission. This regulation will strengthen the protections and services unaccompanied children receive while in the care of ORR.

## **VIII. Regulatory Flexibility Analysis**

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. This rule primarily affects the operations of the federal government, i.e., the Office of Refugee Resettlement's (ORR) management of the care and custody of unaccompanied children. This rule is primarily intended to ensure that Federally-funded grantees protect, detect, and respond to the sexual abuse and sexual harassment of unaccompanied children in the care and custody of ORR as directed under VAWA 2013. We believe this rule implements the requirements of VAWA 2013 and assists care providers to continue providing a safe and secure environment and child-centered services for UC.

Specifically, as noted under the Collection of Information Requirements section of this preamble, we estimate the cost of implementing the new reporting requirements will be approximately \$900,000 annually, which when applied to approximately 100 grantees nationally, results in a cost per grantee of approximately \$9,000. In developing this estimate, we assumed that each of the 100 grantees would spend a total of 416 hours to comply with reporting and data collection requirements. Much of the costs associated with the reporting requirements of this rule, however, may be absorbed by existing grants, as several of the reporting requirements are already required under State and local licensing standards and existing ORR policies and procedures.

## **IX. Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$141 million or more in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

## **X. Congressional Review**

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

## **XI. Assessment of Federal Regulation and Policies on Families**

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. This regulation will not have an impact on family well-being as defined in this legislation, which asks agencies to assess policies with respect to whether the policy: strengthens or erodes family stability and the authority and rights of parents in the education, nurture, and supervision of their children; helps the family perform its functions; and increases or decreases disposable income.

## **XII. Executive Order 13132**

Executive Order 13132 on federalism requires that federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. This rule does not have federalism implications for state or local governments as defined in the Executive Order.

**List of Subjects in 45 CFR Part 411**

Administrative practice and procedure, Child welfare, Immigration, Unaccompanied children, Reporting and recordkeeping requirements.

Dated: December 16, 2014.

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Eskinder Negash,  
Director, Office of Refugee Resettlement.

Dated: December 16, 2014.

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Mark H. Greenberg,  
Acting Assistant Secretary for  
Children and Families.

Approved: December 17, 2014.

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Sylvia M. Burwell,  
Secretary.

For the reasons discussed above, the Department of Health and Human Services adds part 411 to title 45 of the Code of Federal Regulations as follows:

**PART 411 – STANDARDS TO PREVENT, DETECT, AND RESPOND TO SEXUAL ABUSE AND SEXUAL HARASSMENT INVOLVING UNACCOMPANIED CHILDREN**

Sec.

411.5 General definitions.

411.6 Definitions related to sexual abuse and sexual harassment.

**Subpart A – Coverage**

411.10 Coverage of ORR care provider facilities.

**Subpart B – Prevention Planning**

411.11 Zero tolerance toward sexual abuse and sexual harassment; Prevention of Sexual Abuse Coordinator and Compliance Manager.

411.12 Contracting with or having a grant from ORR for the care of UCs.

411.13 UC supervision and monitoring.

411.14 Limits to cross-gender viewing and searches.

411.15 Accommodating UCs with disabilities and UCs who are limited English proficient (LEP).

411.16 Hiring and promotion decisions.

411.17 Upgrades to facilities and technologies.

**Subpart C – Responsive Planning**

411.21 Victim advocacy, access to counselors, and forensic medical examinations.

411.22 Policies to ensure investigation of allegations and appropriate agency oversight.

#### **Subpart D – Training and Education**

411.31 Care provider facility staff training.

411.32 Volunteer and contractor training.

411.33 UC education.

411.34 Specialized training: Medical and mental health care staff.

#### **Subpart E – Assessment for Risk of Sexual Victimization and Abusiveness**

411.41 Assessment for risk of sexual victimization and abusiveness.

411.42 Use of assessment information.

#### **Subpart F – Reporting**

411.51 UC reporting.

411.52 Grievances.

411.53 UC access to outside confidential support services.

411.54 Third-party reporting.

411.55 UC access to attorneys or other legal representatives and families.

#### **Subpart G – Official Response Following a UC Report**

411.61 Staff reporting duties.

411.62 Protection duties.

411.63 Reporting to other care provider facilities and DHS.

411.64 Responder duties.

411.65 Coordinated response.

411.66 Protection of UCs from contact with alleged abusers.

411.67 Protection against retaliation.

411.68 Post-allegation protection.

### **Subpart H – ORR Incident Monitoring and Evaluation**

411.71 ORR monitoring and evaluation of care provider facilities following an allegation of sexual abuse or sexual harassment.

411.72 Reporting to UCs.

### **Subpart I – Interventions and Discipline**

411.81 Disciplinary sanctions for staff.

411.82 Corrective actions for contractors and volunteers.

411.83 Interventions for UCs who engage in sexual abuse.

### **Subpart J – Medical and Mental Health Care**

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**Authority:** 42 U.S.C. 15607 (d).

### § 411.5 General definitions.

For the purposes of this part, the following definitions apply:

ACF means the Administration for Children and Families.

Care provider facility means any ORR funded program that is licensed, certified, or accredited by an appropriate State or local agency to provide residential or group services to UCs, including a program of group homes or facilities for children with special needs or staff-secure services for children. Emergency care provider facilities are included in this definition but may or may not be licensed, certified, or accredited by an appropriate State or local agency.

Contractor means a person who, or entity that, provides services on a recurring basis pursuant to a contractual agreement with ORR or with a care provider facility or has a sub-contractual agreement with the contractor.

DHS means the Department of Homeland Security

DOJ means the Department of Justice.

Director means the Director of the Office of Refugee Resettlement.

Emergency means a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

Emergency care provider facility is a type of care provider facility that is temporarily opened to provide temporary emergency shelter and services for UCs during an influx. Emergency care provider facilities may or may not be licensed by an appropriate State or local agency.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security of a care provider facility or a threat to the safety and security of any person.

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex.

Gender identity refers to one's sense of oneself as male, female, or transgender.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

HHS means the Department of Health and Human Services.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development

LGBTQI means lesbian, gay, bisexual, transgender, questioning, or intersex.

Law enforcement means any local, State, or Federal enforcement agency with the authority and jurisdiction to investigate whether any criminal laws were violated.

Limited English proficient (LEP) means individuals for whom English is not the primary language and who may have a limited ability to read, write, speak, or understand English.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to a professional who also has successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to a professional who also has successfully completed specialized training for treating sexual abuse victims.

ORR refers to the Office of Refugee Resettlement.

Pat-down search means a sliding or patting of the hands over the clothed body of an unaccompanied child by staff to determine whether the individual possesses contraband.

Secure care provider facility is a type of care provider facility with a physically secure structure and staff responsible for controlling violent behavior. ORR uses a secure care provider facility as the most restrictive placement option for a UC who poses a danger to him or herself or others or has been charged with having committed a criminal offense. A secure care provider facility is a juvenile detention center.

Sex refers to a person's biological status and is typically categorized as male, female, or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

Sexual Assault Forensic Examiner (SAFE) means a "medical practitioner" who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

Sexual Assault Nurse Examiner (SANE) means a registered nurse who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations

Special needs means mental and/or physical conditions that require special services and treatment by staff. A UC may have special needs due to a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102(2).

Staff means employees or contractors of ORR or a care provider facility, including any entity that operates within a care provider facility.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Traditional foster care means a type of care provider facility where a UC is placed with a family in a community-based setting. The State or locally licensed foster family is responsible for providing basic needs in addition to responsibilities as outlined by the State or local licensed child placement agency, State and local licensing regulations, and any ORR policies related to foster care. The UC attends public school and receives on-going case management and counseling services. The care provider facility facilitates the provision of additional psychiatric, psychological, or counseling referrals as needed. Traditional foster care may include transitional or short-term foster care as well as long-term foster care providers.

Transgender means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

Unaccompanied child (UC) means a child:

- (1) Who has no lawful immigration status in the United States;
- (2) Who has not attained 18 years of age; and
- (3) With respect to whom there is no parent or legal guardian in the United States or there is no parent or legal guardian in the United States available to provide care and physical custody.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of ORR or the care provider facility.

Youth care worker means employees primarily responsible for the supervision and monitoring of UCs in housing units, educational areas, recreational areas, dining areas, and other program areas of a care provider facility.

#### §411.6 Definitions related to sexual abuse and sexual harassment.

For the purposes of this part, the following definitions apply:

Sexual abuse means—

- (1) Sexual abuse of a UC by another UC; and
- (2) Sexual abuse of a UC by a staff member, grantee, contractor, or volunteer.

Sexual abuse of a UC by another UC includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of a UC by a staff member, grantee, contractor, or volunteer includes any of the following acts, with or without the consent of the UC:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, grantee, contractor, or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;

(7) Any display by a staff member, grantee, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a UC; and

(8) Voyeurism by a staff member, grantee, contractor, or volunteer.

Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, other electronic communication, or actions of a derogatory or offensive sexual nature by one UC towards another; and

(2) Repeated verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, or other electronic communication of a sexual nature to a UC by a staff member, grantee, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Voyeurism by a staff member, grantee, contractor, or volunteer means an invasion of privacy of a UC by a staff member, grantee, contractor, or volunteer for reasons unrelated to official duties, such as inappropriately viewing a UC perform bodily functions or bathing; requiring a UC to expose his or her buttocks, genitals, or breasts; or recording images of all or part of a UC's naked body or of a UC performing bodily functions.

**Subpart A – Coverage**

§411.10 Coverage of ORR care provider facilities.

(a) This part applies to all ORR care provider facilities except secure care provider facilities and traditional foster care homes. Secure care provider facilities must, instead, follow the Department of Justice's National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR part 115. Traditional foster care homes are not subject to this part.

(b) Emergency care provider facilities are subject to every section in this part except:

(1) Section 411.22(c);

(2) Section 411.71(b)(4);

(3) Section 411.101(b);

(4) Section 411.102(c), (d), and (e); and

(5) Subpart L.

(c) Emergency care provider facilities must implement the standards in this rule, excluding the standards listed above, within fifteen (15) days of opening. The Director, however, may, using unreviewable discretion, waive or modify specific sections for a particular emergency care provider facility for good cause. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification.

(d) For the purposes of this part, the terms related to sexual abuse and sexual harassment refer specifically to the sexual abuse or sexual harassment of a UC that occurs at an ORR care provider facility while in ORR care and custody. Incidents of past sexual abuse or sexual

harassment or sexual abuse or sexual harassment that occurs in any other context other than in ORR care and custody are not within the scope of this regulation.

### **Subpart B – Prevention Planning**

#### §411.11 Zero tolerance toward sexual abuse and sexual harassment; Prevention of Sexual Abuse Coordinator and Compliance Manager.

(a) ORR must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining ORR’s approach to preventing, detecting, and responding to such conduct. ORR must ensure that all policies and services related to this rule are implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population.

(b) ORR must employ or designate an upper-level, ORR-wide Prevention of Sexual Abuse Coordinator (PSA Coordinator) with sufficient time and authority to develop, implement, and oversee ORR efforts to comply with these standards in all of its care provider facilities.

(c) Care provider facilities must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the care provider facility’s approach to preventing, detecting, and responding to such conduct. The care provider facility also must ensure that all policies and services related to this rule are implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population. ORR will review and approve each care provider facility’s written policy.

(d) Care provider facilities must employ or designate a Prevention of Sexual Abuse Compliance Manager (PSA Compliance Manager) with sufficient time and authority to develop,

implement, and oversee the care provider facility's efforts to comply with the provisions set forth in this part and serve as a point of contact for ORR's PSA Coordinator.

§411.12 Contracting with or having a grant from ORR for the care of UCs.

(a) When contracting with or providing a grant to a care provider facility, ORR must include in any new contracts, contract renewals, cooperative agreements, or cooperative agreement renewals the entity's obligation to adopt and comply with these standards.

(b) For organizations that contract, grant, or have a sub-grant with a care provider facility to provide residential services to UCs, the organization must, as part of the contract or cooperative agreement, adopt and comply with the provisions set forth in this part.

(c) All new contracts, contract renewals, and grants must include provisions for monitoring and evaluation to ensure that the contractor, grantee, or sub-grantee is complying with these provisions.

§411.13 UC supervision and monitoring.

(a) Care provider facilities must develop, document, and make their best effort to comply with a staffing plan that provides for adequate levels of staffing, and, where applicable under State and local licensing standards, video monitoring, to protect UCs from sexual abuse and sexual harassment.

(b) In determining adequate levels of UC supervision and determining the need for video monitoring, the care provider facility must take into consideration the physical layout of the facility, the composition of the UC population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse and sexual harassment, and any other relevant factors.

Video monitoring equipment may not be placed in any bathroom, shower or bathing area, or other area where UCs routinely undress.

(c) Care provider facilities must conduct frequent unannounced rounds to identify and deter sexual abuse and sexual harassment. Such rounds must be implemented during night as well as day shifts. Care provider facilities must prohibit staff from alerting others that rounds are occurring, unless such announcement is related to the legitimate operational functions of the care provider facility.

#### §411.14 Limits to cross-gender viewing and searches.

(a) Cross-gender pat-down searches of UCs must not be conducted except in exigent circumstances. For a UC that identifies as transgender or intersex, the ORR care provider facility must ask the UC to identify the gender of staff with whom he/she would feel most comfortable conducting the search.

(b) All pat-down searches must be conducted in the presence of one additional care provider facility staff member unless there are exigent circumstances and must be documented and reported to ORR.

(c) Strip searches and visual body cavity searches of UCs are prohibited.

(d) Care provider facilities must permit UCs to shower, perform bodily functions, and change clothing without being viewed by staff, except: in exigent circumstances; when such viewing is incidental to routine room checks; is otherwise appropriate in connection with a medical examination or monitored bowel movement; if a UC is under age 6 and needs assistance with such activities; a UC with special needs is in need of assistance with such activities; or the UC requests and requires assistance. If the UC has special needs and requires assistance with

such activities, the care provider facility staff member must be of the same gender as the UC when assisting with such activities.

(e) Care provider facilities must not search or physically examine a UC for the sole purpose of determining the UC's sex. If the UC's sex is unknown, it may be determined during conversations with the UC, by reviewing medical records, or, if necessary, learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) Care provider facilities must train youth care worker staff in proper procedures for conducting pat-down searches, including cross-gender pat-down searches and searches of transgender and intersex UCs. All pat-down searches must be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and existing ORR policy, including consideration of youth care worker staff safety.

§411.15 Accommodating UCs with disabilities and UCs who are limited English proficient (LEP).

(a) Care provider facilities must take appropriate steps to ensure that UCs with disabilities (including, for example, UCs who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps must include, when necessary to ensure effective communication with UCs who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary

specialized vocabulary. In addition, the care provider facility must ensure that any written materials related to sexual abuse and sexual harassment are translated and provided in formats or through methods that ensure effective communication with UCs with disabilities, including UCs who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

(b) Care provider facilities must take appropriate steps to ensure that UCs who are limited English proficient have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including steps to provide quality in-person or telephonic interpretive services and quality translation services that enable effective, accurate, and impartial interpretation and translation, both receptively and expressively, using any necessary specialized vocabulary.

(c) In matters relating to allegations of sexual abuse or sexual harassment, the care provider facility must provide quality in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation by someone other than another UC. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment, including notification, orientation, and instruction not provided by ORR, are translated either verbally or in written form into the preferred languages of UCs.

#### §411.16 Hiring and promotion decisions.

(a) Care provider facilities are prohibited from hiring or promoting any individual who may have contact with UCs and must not enlist the services of any contractor or volunteer who may have contact with UCs and who engaged in: sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution (as defined in 42 U.S.C. 1997), or care provider facility; who was convicted of engaging or attempting to engage in

sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who was civilly or administratively adjudicated to have engaged in such activity.

(b) Care provider facilities considering hiring or promoting staff must ask all applicants who may have direct contact with UCs about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of performance evaluations of current employees. Care provider facilities also must impose upon employees a continuing affirmative duty to disclose any such misconduct, whether the conduct occurs on or off duty. Care provider facilities, consistent with law, must make their best efforts to contact all prior institutional employers of an applicant for employment to obtain information on substantiated allegations of sexual abuse or sexual harassment or any resignation during a pending investigation of alleged sexual abuse or sexual harassment.

(c) Prior to hiring new staff who may have contact with UCs, the care provider facility must conduct a background investigation to determine whether the candidate for hire is suitable for employment with minors in a residential setting. Upon ORR request, the care provider facility must submit all background investigation documentation for each staff member and the care provider facility's conclusions.

(d) Care provider facilities also must perform a background investigation before enlisting the services of any contractor or volunteer who may have contact with UCs. Upon ORR request, the care provider facility must submit all background investigation documentation for each contractor or volunteer and the care provider facility's conclusions.

(e) Care provider facilities must either conduct a criminal background records check at least every five years for current employees, contractors, and volunteers who may have contact with UCs or have in place a system for capturing the information contained in a criminal background records check for current employees.

(f) Material omissions regarding such misconduct or the provision of materially false information by the applicant or staff will be grounds for termination or withdrawal of an offer of employment, as appropriate.

(g) Unless prohibited by law, the care provider facility must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer for whom such employee has applied to work.

(h) In the event the care provider facility contracts with an organization to provide residential services and/or other services to UCs, the requirements of this section also apply to the organization and its staff.

#### §411.17 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the care provider facility, as appropriate, must consider the effect of the design, acquisition, expansion, or modification upon their ability to protect UCs from sexual abuse and sexual harassment.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a care provider facility, the care provider facility, as

appropriate, must consider how such technology may enhance its ability to protect UCs from sexual abuse and sexual harassment while maintaining UC privacy and dignity.

### **Subpart C – Responsive Planning**

#### §411.21 Victim advocacy, access to counselors, and forensic medical examinations.

(a) Care provider facilities must develop procedures to best utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs. Each care provider facility must establish procedures to make available outside victim services following incidents of sexual abuse and sexual harassment; the care provider facility must attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available or if the UC prefers, the care provider facility may provide a licensed clinician on staff to provide crisis intervention and trauma services for the UC. The outside or internal victim advocate must provide emotional support, crisis intervention, information, and referrals.

(b) Where evidentiarily or medically appropriate, and only with the UC's consent, the care provider facility must arrange for an alleged victim UC to undergo a forensic medical examination as soon as possible and that is performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination may be performed by a qualified medical practitioner.

(c) As requested by a victim, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered at a hospital conducting a

forensic examination, must be allowed to the extent possible for support during a forensic examination and investigatory interviews.

(d) To the extent possible, care provider facilities must request that the investigating agency follow the requirements of paragraphs (a) through (c) of this section.

§411.22 Policies to ensure investigation of allegations and appropriate agency oversight.

(a) ORR and care provider facilities must ensure that each allegation of sexual abuse and sexual harassment, including a third-party or anonymous allegation, is immediately referred to all appropriate investigating authorities, including Child Protective Services, the State or local licensing agency, and law enforcement. Care provider facilities also must immediately report each allegation of sexual abuse and sexual harassment to ORR according to ORR policies and procedures. The care provider facility has an affirmative duty to keep abreast of the investigation(s) and cooperate with outside investigators. ORR also must remain informed of ongoing investigations and fully cooperate as necessary.

(b) Care provider facilities must maintain or attempt to enter into a written memorandum of understanding or other agreement specific to investigations of sexual abuse and sexual harassment with the law enforcement agency, designated State or local Child Protective Services, and/or the State or local licensing agencies responsible for conducting sexual abuse and sexual harassment investigations, as appropriate. Care provider facilities must maintain a copy of the agreement or documentation showing attempts to enter into an agreement.

(c) Care provider facilities must maintain documentation for at least ten years of all reports and referrals of allegations of sexual abuse and sexual harassment.

(d) ORR will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding.

(e) All allegations of sexual abuse that occur at emergency care provider facilities operating on fully Federal properties must be reported to the Department of Justice in accordance with ORR policies and procedures and any memoranda of understanding.

### **Subpart D – Training and Education**

#### §411.31 Care provider facility staff training.

(a) Care provider facilities must train or require the training of all employees who may have contact with UCs to be able to fulfill their responsibilities under these standards, including training on:

(1) ORR and the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment;

(2) The right of UCs and staff to be free from sexual abuse and sexual harassment and from retaliation for reporting sexual abuse and sexual harassment;

(3) Definitions and examples of prohibited and illegal sexual behavior;

(4) Recognition of situations where sexual abuse or sexual harassment may occur;

(5) Recognition of physical, behavioral, and emotional signs of sexual abuse and methods of preventing and responding to such occurrences;

(6) How to avoid inappropriate relationships with UCs;

(7) How to communicate effectively and professionally with UCs, including UCs who are lesbian, gay, bisexual, transgender, questioning, or intersex;

(8) Procedures for reporting knowledge or suspicion of sexual abuse and sexual harassment as well as how to comply with relevant laws related to mandatory reporting;

(9) The requirement to limit reporting of sexual abuse and sexual harassment to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement, investigative, or prosecutorial purposes;

(10) Cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior and appropriate terms and concepts to use when discussing sex, sexual abuse, and sexual harassment with a culturally diverse population;

(11) Sensitivity and awareness regarding past trauma that may have been experienced by UCs;

(12) Knowledge of all existing resources for UCs both inside and outside the care provider facility that provide treatment and counseling for trauma and legal advocacy for victims; and

(13) General cultural competency and sensitivity to the culture and age of UC.

(b) All current care provider facility staff and employees who may have contact with UCs must be trained within six months of the effective date of these standards, and care provider facilities must provide refresher information, as appropriate.

(c) Care provider facilities must document that staff and employees who may have contact with UCs have completed the training.

§411.32 Volunteer and contractor training.

(a) Care provider facilities must ensure that all volunteers and contractors who may have contact with UCs are trained on their responsibilities under ORR and the care provider facility's sexual abuse and sexual harassment prevention, detection, and response policies and procedures as well as any relevant Federal, State, and local laws.

(b) The level and type of training provided to volunteers and contractors may be based on the services they provide and the level of contact they will have with UCs, but all volunteers and contractors who have contact with UCs must be trained on the care provider facility's zero tolerance policies and procedures regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) Each care provider facility must maintain written documentation that contractors and volunteers who may have contact with UCs have completed the required trainings.

§411.33 UC education.

(a) During the intake process and periodically thereafter, each care provider facility must ensure that during orientation or a periodic refresher session, UCs are notified and informed of the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment in an age and culturally appropriate fashion and in accordance with §411.15 that includes, at a minimum:

(1) An explanation of the UC's right to be free from sexual abuse and sexual harassment as well as the UC's right to be free from retaliation for reporting such incidents;

(2) Definitions and examples of UC-on-UC sexual abuse, staff-on-UC sexual abuse, coercive sexual activity, appropriate and inappropriate relationships, and sexual harassment;

(3) An explanation of the methods for reporting sexual abuse and sexual harassment, including to any staff member, outside entity, and to ORR;

(4) An explanation of a UC's right to receive treatment and counseling if the UC was subjected to sexual abuse or sexual harassment;

(b) Care provider facilities must provide the UC notification, orientation, and instruction in formats accessible to all UCs at a time and in a manner that is separate from information provided about their immigration cases.

(c) Care provider facilities must document all UC participation in orientation and periodic refresher sessions that address the care provider facility's zero tolerance policies.

(d) Care provider facilities must post on all housing unit bulletin boards who a UC can contact if he or she is a victim or is believed to be at imminent risk of sexual abuse or sexual harassment in accordance with §411.15.

(e) Care provider facilities must make available and distribute a pamphlet in accordance with §411.15 that contains, at a minimum, the following:

(1) Notice of the care provider facility's zero-tolerance policy toward sexual abuse and sexual harassment;

(2) The care provider facility's policies and procedures related to sexual abuse and sexual harassment;

(3) Information on how to report an incident of sexual abuse or sexual harassment;

(4) The UC's rights and responsibilities related to sexual abuse and sexual harassment;

(5) How to contact organizations in the community that provide sexual abuse counseling and legal advocacy for UC victims of sexual abuse and sexual harassment;

(6) How to contact diplomatic or consular personnel.

§411.34 Specialized training: Medical and mental health care staff.

(a) All medical and mental health care staff employed or contracted by care provider facilities must be specially trained, at a minimum, on the following:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to respond effectively and professionally to victims of sexual abuse and sexual harassment;

(3) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment; and

(4) How to preserve physical evidence of sexual abuse. If medical staff conduct forensic examinations, such medical staff must receive training to conduct such examinations.

(b) Care provider facilities must document that medical and mental health practitioners employed or contracted by the care provider facility received the training referenced in this section.

(c) Medical and mental health practitioners employed or contracted by the care provider facility also must receive the training mandated for employees under §411.31 or for contractors and volunteers under §411.32, depending on the practitioner's status at the care provider facility.

**Subpart E – Assessment for Risk of Sexual Victimization and Abusiveness**

§411.41 Assessment for risk of sexual victimization and abusiveness.

(a) Within 72 hours of a UC's arrival at a care provider facility and periodically throughout a UC's stay, the care provider facility must obtain and use information about each

UC's personal history and behavior using a standardized screening instrument to reduce the risk of sexual abuse or sexual harassment by or upon a UC.

(b) The care provider facility must consider, at a minimum and to the extent that the information is available, the following criteria to assess UCs for risk of sexual victimization:

- (1) Prior sexual victimization or abusiveness;
- (2) Any gender nonconforming appearance or manner or Self-identification as lesbian, gay, bisexual, transgender, questioning, or intersex and whether the resident may therefore be vulnerable to sexual abuse or sexual harassment;
- (3) Any current charges and offense history;
- (4) Age;
- (5) Any mental, physical, or developmental disability or illness;
- (6) Level of emotional and cognitive development;
- (7) Physical size and stature;
- (8) The UC's own perception of vulnerability; and
- (9) Any other specific information about an individual UC that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other UCs.

(c) This information must be ascertained through conversations with the UC during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, care provider facility behavioral records, and other relevant documentation from the UC's files. Only trained staff are permitted to talk with UCs to gather information about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental disabilities for the purposes

of the assessment required under paragraph (a) of this section. Care provider facilities must provide UCs an opportunity to discuss any safety concerns or sensitive issues privately.

(d) The care provider facility must implement appropriate controls on the dissemination within the care provider facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the UC's detriment by staff or other UCs.

§411.42 Use of assessment information.

(a) The care provider facility must use the information from the risk assessment under §411.41 to inform assignment of UCs to housing, education, recreation, and other activities and services. The care provider facility must make individualized determinations about how to ensure the safety and health of each UC.

(b) Care provider facilities may not place UCs on one-on-one supervision as a result of the assessment completed in §411.41 unless there are exigent circumstances that require one-on-one supervision to keep the UC, other UCs, or staff safe, and then, only until an alternative means of keeping all residents and staff safe can be arranged. During any period of one-on-one supervision, a UC may not be denied any required services, including but not limited to daily large-muscle exercise, required educational programming, and social services, as reasonable under the circumstances. UCs on one-on-one supervision must receive daily visits from a medical practitioner or mental health care clinician as necessary unless the medical practitioner or mental health care clinician determines daily visits are not required. The medical practitioner or mental health care clinician, however, must continue to meet with the UC on a regular basis while the UC is on one-on-one supervision.

(c) When making assessment and housing assignments for a transgender or intersex UCs, the care provider facility must consider the UC's gender self-identification and an assessment of the effects of a housing assignment on the UC's health and safety. The care provider facility must consult a medical or mental health professional as soon as practicable on this assessment. The care provider facility must not base housing assignment decisions of transgender or intersex UCs solely on the identity documents or physical anatomy of the UC; a UC's self-identification of his/her gender and self-assessment of safety needs must always be taken into consideration as well. An identity document may include but is not limited to official U.S. and foreign government documentation, birth certificates, and other official documentation stating the UC's sex. The care provider facility's housing assignment of a transgender or intersex UCs must be consistent with the safety and security considerations of the care provider facility, State and local licensing standards, and housing and programming assignments of each transgender or intersex UCs must be regularly reassessed to review any threats to safety experienced by the UC.

## **Subpart F – Reporting**

### §411.51 UC reporting.

(a) The care provider facility must develop policies and procedures in accordance with §411.15 to ensure that UCs have multiple ways to report to the care provider: sexual abuse and sexual harassment, retaliation for reporting sexual abuse or sexual harassment, and staff neglect or violations of responsibilities that may have contributed to such incidents. The care provider facility also must provide access to and instructions on how UCs may contact their consular official, ORR's headquarters, and an outside entity to report these incidents. Care provider

facilities must provide UCs access to telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under §411.51(b).

(b) The care provider facility must provide and inform the UC of at least one way for UCs to report sexual abuse and sexual harassment to an entity or office that is not part of the care provider facility and is able to receive and immediately forward UC reports of sexual abuse and sexual harassment to ORR officials, allowing UCs to remain anonymous upon request. The care provider facility must maintain or attempt to enter into a memorandum of understanding or other agreement with the entity or office and maintain copies of agreements or documentation showing attempts to enter into agreements.

(c) The care provider facility's policies and procedures must include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties. Staff must promptly document any verbal reports.

(d) All allegations or knowledge of sexual abuse and sexual harassment by staff or UCs must be immediately reported to the State or local licensing agency, the State or local Child Protective Services agency, State or local law enforcement, and to ORR according to ORR's policies and procedures.

#### §411.52 Grievances.

(a) The care provider facility must implement written policies and procedures for identifying and handling time-sensitive grievances that involve an immediate threat to UC health, safety, or welfare related to sexual abuse and sexual harassment. All such grievances must be reported to ORR according to ORR policies and procedures.

(b) The care provider facility's staff must bring medical emergencies to the immediate attention of proper medical and/or emergency services personnel for further assessment.

(c) The care provider facility must issue a written decision on the grievance within five days of receipt.

(d) To prepare a grievance, a UC may obtain assistance from another UC, care provider facility staff, family members, or legal representatives. Care provider facility staff must take reasonable steps to expedite requests for assistance from these other parties.

§411.53 UC access to outside confidential support services.

(a) Care provider facilities must utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators to most appropriately address a sexual abuse victim's needs. The care provider facility must maintain or attempt to enter into memoranda of understanding or other agreements with community service providers, or if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime. The care provider facility must maintain copies of its agreements or documentation showing attempts to enter into such agreements.

(b) Care provider facilities must have written policies and procedures to include outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols, if such resources are available.

(c) Care provider facilities must make available to UC information about local organizations that can assist UCs who are victims of sexual abuse and sexual harassment,

including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, the care provider facility must make available the same information about national organizations. The care provider facility must enable reasonable communication between UCs and these organizations and agencies in a confidential manner and inform UCs, prior to giving them access, of the extent to which such communications will be confidential.

§411.54 Third-party reporting.

ORR must establish a method to receive third-party reports of sexual abuse and sexual harassment and must make available to the public information on how to report sexual abuse and sexual harassment on behalf of a UC.

§411.55 UC access to attorneys or other legal representatives and families.

(a) Care provider facilities must provide UCs confidential access to their attorney or other legal representative in accordance with the care provider's attorney-client visitation rules. The care provider's visitation rules must include provisions for immediate access in the case of an emergency or exigent circumstance. The care provider's attorney-client visitation rules must be approved by ORR to ensure the rules are reasonable and appropriate and include provisions for emergencies and exigent circumstances.

(b) Care provider facilities must provide UCs access to their families, including legal guardians, unless ORR has documentation showing that certain family members or legal guardians should not be provided access because of safety concerns.

## **Subpart G – Official Response Following a UC Report**

### §411.61 Staff reporting duties.

(a) All care provider facility staff, volunteers, and contractors must immediately report to ORR according to ORR policies and procedures and to State or local agencies in accordance with mandatory reporting laws: any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred while a UC was in ORR care; retaliation against UCs or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. ORR must review and approve the care provider facility's policies and procedures and ensure that the care provider facility specifies appropriate reporting procedures.

(b) Care provider facility staff members who become aware of alleged sexual abuse or sexual harassment must immediately follow reporting requirements set forth by ORR's and the care provider facility's policies and procedures.

(c) Apart from such reporting, care provider facility staff must not reveal any information related to a sexual abuse or sexual harassment report to anyone within the care provider facility except to the extent necessary for medical or mental health treatment, investigations, notice to law enforcement, or other security and management decisions.

(d) Care provider facility staff must report any sexual abuse and sexual harassment allegations to the designated State or local services agency under applicable mandatory reporting laws in addition to law enforcement and the State and local licensing agency.

(e) Upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, the care provider facility head or his or her designee must report the

allegation to the alleged victim's parents or legal guardians, unless ORR has evidence showing the parents or legal guardians should not be notified or the victim does not consent to this disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision.

(f) Upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, ORR will share this information with the UC's attorney of record within 48 hours of learning of the allegation unless the UC does not consent to this disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision.

#### §411.62 Protection duties.

If a care provider facility employee, volunteer, or contractor reasonably believes that a UC is subject to substantial risk of imminent sexual abuse or sexual harassment, he or she must take immediate action to protect the UC.

#### §411.63 Reporting to other care provider facilities and DHS.

(a) Upon receiving an allegation that a UC was sexually abused or sexually harassed while at another care provider facility, the care provider facility whose staff received the allegation must immediately notify ORR, but no later than 24 hours after receiving the allegation. ORR will then notify the care provider facility where the alleged abuse or harassment occurred.

(b) The care provider facility must document that it provided such notification to ORR.

(c) The care provider facility that receives such notification, to the extent that such care provider facility is covered by this part, must ensure that the allegation is referred for investigation in accordance with these standards.

(d) Upon receiving an allegation that a UC was sexually abused or sexually harassed while in DHS custody, the care provider facility whose staff received the allegation must immediately notify ORR, but no later than 24 hours after receiving an allegation. ORR will then report the allegation to DHS in accordance with DHS policies and procedures.

(e) The care provider facility must document that it provided such notification to ORR.

§411.64 Responder duties.

(a) Upon learning of an allegation that a UC was sexually abused while in an ORR care provider facility, the first care provider facility staff member to respond to the report must be required to:

(1) Separate the alleged victim, abuser, and any witnesses;

(2) Preserve and protect, to the greatest extent possible, any crime scene until the appropriate authorities can take steps to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brush teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged abuser(s) and/or witnesses, as necessary, do not take

any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

§411.65 Coordinated response.

(a) Care provider facilities must develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, outside investigators, victim advocates, and care provider facility leadership in response to an incident of sexual abuse to ensure that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence. ORR must approve the written institutional plan.

(b) Care provider facilities must use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(c) If a victim of sexual abuse is transferred between ORR care provider facilities, ORR must, as permitted by law, inform the receiving care provider facility of the incident and the victim's potential need for medical or social services.

(d) If a victim of sexual abuse is transferred from an ORR care provider facility to a non-ORR facility or sponsor, ORR must, as permitted by law, inform the receiving facility or sponsor of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

§411.66 Protection of UCs from contact with alleged abusers.

ORR and care provider facility staff, contractors, and volunteers suspected of perpetrating sexual abuse or sexual harassment must be suspended from all duties that would involve or allow access to UCs pending the outcome of an investigation.

§411.67 Protection against retaliation.

Care provider facility staff, contractors, volunteers, and UCs must not retaliate against any person who reports, complains about, or participates in an investigation of alleged sexual abuse or sexual harassment. For the remainder of the UC's stay in ORR custody following a report of sexual abuse or sexual harassment, ORR and the care provider facility must monitor to see if there are facts that may suggest possible retaliation by UCs or care provider facility staff and must promptly remedy any such retaliation. ORR and the care provider facility must also monitor to see if there are facts that may suggest possible retaliation by UCs or care provider facility staff against any staff member, contractor, or volunteer and must promptly remedy any such retaliation. Items ORR and the care provider facility should monitor include but are not limited to any UC disciplinary reports, housing or program changes, negative performance reviews, or reassignments of staff. Care provider facilities must discuss any changes with the appropriate UC or staff member as part of their efforts to determine if retaliation is taking place and, when confirmed, immediately takes steps to protect the UC or staff member.

§411.68 Post-allegation protection.

(a) Care provider facilities must ensure that UC victims of sexual abuse and sexual harassment are assigned to a supportive environment that represents the least restrictive housing option possible to keep the UC safe and secure, subject to the requirements of §411.42.

(b) The care provider facility should employ multiple protection measures to ensure the safety and security of UC victims of sexual abuse and sexual harassment, including but not limited to: housing changes or transfers for UC victims and/or abusers or harassers; removal of alleged UC abusers or harassers from contact with victims; and emotional support services for UCs or staff who fear retaliation for reporting sexual abuse or sexual harassment or cooperating with investigations.

(c) A UC victim may be placed on one-on-one supervision in order to protect the UC in exigent circumstances. Before taking the UC off of one-on-one supervision, the care provider facility must complete a re-assessment taking into consideration any increased vulnerability of the UC as a result of the sexual abuse or sexual harassment. The re-assessment must be completed as soon as possible and without delay so that the UC is not on one-on-one supervision longer than is absolutely necessary for safety and security reasons.

## **Subpart H – ORR Incident Monitoring and Evaluation**

### § 411.71 ORR monitoring and evaluation of care provider facilities following an allegation of sexual abuse or sexual harassment.

(a) Upon receiving an allegation of sexual abuse or sexual harassment that occurs at an ORR care provider facility, ORR will monitor and evaluate the care provider facility to ensure that the care provider facility complied with the requirements of this section or ORR policies and procedures. Upon conclusion of an outside investigation, ORR must review any available completed investigation reports to determine whether additional monitoring and evaluation activities are required.

(b) ORR must develop written policies and procedures for incident monitoring and evaluation of sexual abuse and sexual harassment allegations, including provision requiring:

(1) Reviewing prior complaints and reports of sexual abuse and sexual harassment involving the suspected perpetrator;

(2) Determining whether actions or failures to act at the care provider facility contributed to the abuse or harassment;

(3) Determining if any ORR policies and procedures or relevant legal authorities were broken; and

(4) Retention of such reports for as long as the alleged abuser or harasser is in ORR custody or employed by ORR or the care provider facility, plus ten years.

(c) ORR must ensure that its incident monitoring and evaluation does not interfere with any ongoing investigation conducted by State or local Child Protective Services, the State or local licensing agency, or law enforcement.

(d) When outside agencies investigate an allegation of sexual abuse or sexual harassment, the care provider facility and ORR must cooperate with outside investigators.

#### §411.72 Reporting to UCs.

Following an investigation by the appropriate investigating authority into a UC's allegation of sexual abuse or sexual harassment, ORR must notify the UC in his/her preferred language of the result of the investigation if the UC is still in ORR care and custody and where feasible. If a UC has been released from ORR care when an investigation is completed, ORR should attempt to notify the UC. ORR may encourage the investigating agency to also notify

other complainants or additional parties notified of the allegation of the result of the investigation.

## **Subpart I – Interventions and Discipline**

### §411.81 Disciplinary sanctions for staff.

(a) Care provider facilities must take disciplinary action up to and including termination against care provider facility staff with a substantiated allegation of sexual abuse or sexual harassment against them or for violating ORR or the care provider facility's sexual abuse and sexual harassment policies and procedures.

(b) Termination must be the presumptive disciplinary sanction for staff who engaged in sexual abuse or sexual harassment.

(c) All terminations for violations of ORR and/or care provider facility sexual abuse and sexual harassment policies and procedures or resignations by staff, who would have been terminated if not for their resignation, must be reported to law enforcement agencies and to any relevant State or local licensing bodies.

(d) Any staff member with a substantiated allegation of sexual abuse or sexual harassment against him/her at an ORR care provider facility is barred from employment at any ORR care provider facility.

### §411.82 Corrective actions for contractors and volunteers.

(a) Any contractor or volunteer with a substantiated allegation of sexual abuse or sexual harassment against him/her must be prohibited from working or volunteering at the care provider facility and at any ORR care provider facility.

(b) The care provider facility must take appropriate remedial measures and must consider whether to prohibit further contact with UCs by contractors or volunteers who have not engaged in sexual abuse or sexual harassment but violated other provisions within these standards, ORR sexual abuse and sexual harassment policies and procedures, or the care provider's sexual abuse and sexual harassment policies and procedures.

#### §411.83 Interventions for UCs who engage in sexual abuse.

UCs must receive appropriate interventions if they engage in UC-on-UC sexual abuse. Decisions regarding which types of interventions to use in particular cases, including treatment, counseling, or educational programs, are made with the goal of promoting improved behavior by the UC and ensuring the safety of other UCs and staff. Intervention decisions should take into account the social, sexual, emotional, and cognitive development of the UC and the UC's mental health status. Incidents of UC-on-UC abuse are referred to all investigating authorities, including law enforcement entities.

### **Subpart J – Medical and Mental Health Care**

#### §411.91 Medical and mental health assessments; history of sexual abuse.

(a) If the assessment pursuant to §411.41 indicates that a UC experienced prior sexual victimization or perpetrated sexual abuse, the care provider facility must ensure that the UC is

immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate. Care provider facility staff must also ensure that all UCs disclosures are reported in accordance with these standards.

(b) When a referral for medical follow-up is initiated, the care provider facility must ensure that the UC receives a health evaluation no later than seventy-two (72) hours after the referral.

(c) When a referral for mental health follow-up is initiated, the care provider facility must ensure that the UC receives a mental health evaluation no later than seventy-two (72) hours after the referral.

§411.92 Access to emergency medical and mental health services.

(a) Care provider facilities must provide UC victims of sexual abuse timely, unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where appropriate under medical or mental health professional standards.

(b) Care provider facilities must provide UC victims of sexual abuse access to all medical treatment and crisis intervention services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§411.93 Ongoing medical and mental health care for sexual abuse and sexual harassment victims and abusers.

(a) Care provider facilities must offer ongoing medical and mental health evaluations and treatment to all UCs who are victimized by sexual abuse or sexual harassment while in ORR care and custody.

(b) The evaluation and treatment of such victims must include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to or placement in other care provider facilities or their release from ORR care and custody.

(c) The care provider facility must provide victims with medical and mental health services consistent with the community level of care.

(d) Care provider facilities must ensure that female UC victims of sexual abuse by a male abuser while in ORR care and custody are offered pregnancy tests, as necessary. If pregnancy results from an instance of sexual abuse, care provider facility must ensure that the victim receives timely and comprehensive information about all lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services. In order for UCs to make informed decisions regarding medical services, including, as appropriate, medical services provided under §411.92, care provider facilities should engage the UC in discussions with family members or attorneys of record in accordance with §411.55 to the extent practicable and follow appropriate State laws regarding the age of consent for medical procedures.

(e) Care provider facilities must ensure that UC victims of sexual abuse that occurred while in ORR care and custody are offered tests for sexually transmitted infections as medically appropriate.

(f) Care provider facilities must ensure that UC victims are provided access to treatment services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(g) The care provider facility must attempt to conduct a mental health evaluation of all known UC-on-UC abusers within seventy-two (72) hours of learning of such abuse and/or abuse history and offer treatment when deemed appropriate by mental health practitioners.

### **Subpart K – Data Collection and Review**

#### §411.101 Sexual abuse and sexual harassment incident reviews.

(a) Care provider facilities must conduct sexual abuse or sexual harassment incident reviews at the conclusion of every investigation of sexual abuse or sexual harassment and, where the allegation was either substantiated or unable to be substantiated but not determined to be unfounded, prepare a written report recommending whether the incident review and/or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and sexual harassment. The care provider facility must implement the recommendations for improvement or must document its reason for not doing so in a written response. Both the report and response must be forwarded to ORR's Prevention of Sexual Abuse Coordinator. Care provider facilities also must collect accurate, uniform data for every reported incident of sexual abuse and sexual harassment using a standardized instrument and set of definitions.

(b) Care provider facilities must conduct an annual review of all sexual abuse and sexual harassment investigations and resulting incident reviews to assess and improve sexual abuse and

sexual harassment detection, prevention, and response efforts. The results and findings of the annual review must be provided to ORR's Prevention of Sexual Abuse Coordinator.

§411.102 Data collection.

(a) Care provider facilities must maintain all case records associated with claims of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling in accordance with these standards and applicable Federal and State laws and ORR policies and procedures.

(b) On an ongoing basis, the PSA Compliance Manager must work with care provider facility management and ORR to share data regarding effective care provider facility response methods to sexual abuse and sexual harassment.

(c) On a quarterly basis, the PSA Compliance Manager must prepare a report for ORR compiling information received about all incidents and allegations of sexual abuse and sexual harassment of UCs in the care provider facility during the period covered by the report as well as ongoing investigations and other pending cases.

(d) On an annual basis, the PSA Compliance Manager must aggregate incident-based sexual abuse and sexual harassment data, including the number of reported sexual abuse and sexual harassment allegations determined to be substantiated, unsubstantiated, unfounded, or for which an investigation is ongoing. For each incident, information concerning the following also must be included:

(1) The date, time, location, and nature of the incident;

(2) The demographic background of the victim and perpetrator (including citizenship, nationality, age, and sex) that excludes specific identifying information;

(3) The reporting timeline for the incident (including the name of the individual who reported the incident; the date and time the report was received by the care provider facility; and the date and time the incident was reported to ORR);

(4) Any injuries sustained by the victim;

(5) Post-report follow-up responses and action taken by the care provider facility (e.g., housing placement changes, medical examinations, mental health counseling);

(6) Any interventions imposed on the perpetrator.

(e) Care provider facilities must provide all data described in this section from the previous calendar year to ORR no later than August 31.

§411.103 Data review for corrective action.

(a) ORR must review data collected and aggregated pursuant to §§411.101 and 411.102 in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention, detection, and response policies, procedures, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective actions on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each care provider facility as well as ORR as a whole.

(b) Such report must include a comparison of the current year's data and corrective actions with those from prior years and must provide an assessment of ORR's progress in preventing, detecting, and responding to sexual abuse and sexual harassment.

(c) The Director of ORR must approve ORR's annual report on ORR's UC Program as a whole and make the report available to the public through its website or otherwise make the report readily available to the public.

(d) ORR may redact specific material from the reports when necessary for safety and security reasons but must indicate the nature of the material redacted.

§411.104 Data storage, publication, and destruction.

(a) ORR must ensure that data collected pursuant to §§411.101 and 411.102 is securely retained in accordance with Federal and State laws and ORR record retention policies and procedures.

(b) ORR must make all aggregated sexual abuse and sexual harassment data from ORR care provider facilities with which it provides a grant to or contracts with, excluding secure care providers and traditional foster care providers, available to the public at least annually on its website consistent with existing ORR information disclosure policies and procedures.

(c) Before making any aggregated sexual abuse and sexual harassment data publicly available, ORR must remove all personally identifiable information.

(d) ORR must maintain sexual abuse and sexual harassment data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires for the disposal of official information in less than 10 years.

**Subpart L – Audits and Corrective Action**

§411.111 Frequency and scope of audits.

(a) Within three years of February 22, 2016, each care provider facility that houses UCs will be audited at least once; and during each three-year period thereafter.

(b) ORR may expedite an audit if it believes that a particular care provider facility may be experiencing problems related to sexual abuse or sexual harassment.

(c) ORR must develop and issue an instrument that is coordinated with the HHS Office of the Inspector General that will provide guidance on the conduct and contents of the audit.

(d) The auditor must review all relevant ORR-wide policies, procedures, reports, internal and external audits, and licensing requirements for each care provider facility type.

(e) The audits must review, at a minimum, a sampling of relevant documents and other records and other information for the most recent one-year period.

(f) The auditor must have access to, and must observe, all areas of the audited care provider facilities.

(g) ORR and the care provider facility must provide the auditor with the relevant documentation to complete a thorough audit of the care provider facility.

(h) The auditor must retain and preserve all documentation (including, e.g., videotapes and interview notes) relied upon in making audit determinations. Such documentation must be provided to ORR upon request.

(i) The auditor must interview a representative sample of UCs and staff, and the care provider facility must make space available suitable for such interviews.

(j) The auditor must review a sampling of any available video footage and other electronically available data that may be relevant to the provisions being audited.

(k) The auditor must be permitted to conduct private interviews with UCs.

(l) UCs must be permitted to send confidential information or correspondence to the auditor.

(m) Auditors must attempt to solicit input from community-based or victim advocates who may have insight into relevant conditions in the care provider facility.

(n) All sensitive and confidential information provided to auditors will include appropriate designations and limitations on further dissemination. Auditors must follow appropriate procedures for handling and safeguarding such information.

(o) Care provider facilities bear the affirmative burden on demonstrating compliance with the standards to the auditor.

§411.112 Auditor qualifications.

(a) An audit must be conducted by an entity or individual with relevant auditing or evaluation experience and is external to ORR.

(b) All auditors must be certified by ORR, and ORR must develop and issue procedures regarding the certification process within six months of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], which must include training requirements.

(c) No audit may be conducted by an auditor who received financial compensation from the care provider, the care provider's agency, or ORR (except for compensation received for conducting other audits) within the three years prior to ORR's retention of the auditor.

(d) ORR, the care provider, or the care provider's agency must not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to ORR's retention of the auditor, with the exception of contracting for subsequent audits.

§411.113 Audit contents and findings.

(a) Each audit must include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the care provider facility under review.

(b) Audit reports must state whether care provider facility policies and procedures comply with all standards.

(c) For each of these standards, the auditor must determine whether the audited care provider facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary must indicate, among other things, the number of provisions the care provider facility achieved at each grade level.

(d) Audit reports must describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited care provider facility and must include recommendations for any required correction action.

(e) Auditors must redact any personally identifiable information of UCs or staff information from their reports but must provide such information to ORR upon request.

(f) ORR must ensure that aggregated data on final audit reports is published on ORR's website, or is otherwise made readily available to the public. ORR must redact any sensitive or confidential information prior to providing such reports publicly.

§411.114 Audit corrective action plan.

(a) A finding of "Does Not Meet Standard" with one or more standards must trigger a 90-day corrective action period.

(b) The auditor and ORR must jointly develop a corrective action plan to achieve compliance.

(c) The auditor must take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a care provider facility.

(d) After the 180-day corrective action period ends, the auditor must issue a final determination as to whether the care provider facility achieved compliance with those standards requiring corrective action.

(e) If the care provider facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it achieved compliance.

#### §411.115 Audit appeals.

(a) A care provider facility may file an appeal with ORR regarding any specific audit finding that it believes to be incorrect. Such appeal must be filed within 90 days of the auditor's final determination.

(b) If ORR determines that the care provider facility stated good cause for re-evaluation, the care provider facility may commission a re-audit by an auditor mutually agreed upon by ORR and the care provider facility. The care provider facility must bear the costs of the re-audit.

(c) The findings of the re-audit are considered final.

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