

## Notice of Emergency Rule

### **DEPARTMENT OF CHILDREN AND FAMILIES**

#### **Family Safety and Preservation Program**

RULE NO.: RULE TITLE:

65CER21-3 Standards for Unaccompanied Alien Children (UAC) Homes and Unaccompanied Refugee Minor Programs

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** On September 28, 2021, the Governor of the State of Florida signed Executive Order 21-223 declaring that the Biden administration's refusal to faithfully enforce federal immigration laws has led to an unprecedented surge of illegal border crossings at the southwest border of the United States. In July 2021 alone, over 212,000 persons attempted to illegally enter the United States at the southwest border, the highest number in more than 20 years, and another 209,840 persons attempted to illegally enter in August. Note 1. For the entire federal fiscal year of 2021, over 1.7 million foreign nationals were encountered at the southwest border attempting to enter the country illegally. Note 2. In October alone of this federal fiscal year, the reported number of such encounters stands at more than 164,000. Note 3. By contrast, in the last full federal fiscal year of the previous administration (federal fiscal year 2020), there were fewer than 460,000 such encounters, and in the fiscal year before that (federal fiscal year 2019), there were fewer than 980,000 encounters. Note 4.

The Biden administration has taken numerous actions to cause and further exacerbate this border crisis. It terminated the previous administration's Migrant Protection Protocol (MPP) program (also known as the "Remain in Mexico" policy), reinstated a "catch and release" policy, ended further construction of a border wall, and declined to detain and remove certain categories of illegal aliens who had been convicted of committing crimes. The administration's unlawful termination of MPP was successfully challenged in court, see Memorandum Opinion and Order, *Texas v. Biden*, No. 2:21-CV-067-Z (N.D. Tex. Aug. 13, 2021), and the administration is currently working to reimplement the program in accordance with the court's order. The Biden administration's other actions, however, remain in effect.

Notwithstanding that federal immigration law generally requires that aliens entering the United States without a clear right to be admitted (including applicants for asylum) must be detained pending further proceedings, see 8 U.S.C. § 1225(b)(2)(A), *id.* § 1225(b)(1)(B), the Biden administration has instead been releasing into the interior of the United States large numbers of illegal aliens apprehended at the southwest border. The U.S. Border Patrol released 60,559 illegal aliens from the southwest border in July 2021 alone and another 44,112 in August 2021, a massive increase from the 17 illegal aliens released in December 2020, the last full month of the previous administration. Note 5. During federal fiscal year 2021, the Border Patrol released in total more than 248,000 aliens apprehended at the southwest border, almost all of which occurred after January 2021. Note 6. This number does not reflect additional releases by other elements of the U.S. Department of Homeland Security (DHS). In an October 20, 2021 letter, DHS confirmed that at least 5,900 single illegal alien adults who were released at the southwest border have reported to an Immigration and Customs Enforcement (ICE) field office in Florida. This number likely vastly underreports the number of released illegal aliens from the southwest border who have resettled in Florida because approximately 80% of aliens who are released at the border and directed to report to an ICE office within 60 days reportedly fail to do so. Note 7. Because the Federal Government does not actively coordinate or consult with the State of Florida concerning the illegal aliens that it releases from the southwest border into the interior of the United States, the State of Florida has no knowledge about the backgrounds, criminal history, immigration status, or the status of removal proceedings for the aliens who have resettled in Florida. The State of Florida has brought a legal challenge to the Biden administration's unlawful "catch and release" policy, which is now pending in the U.S. District Court for the Northern District of Florida. See Complaint for Declaratory and Injunctive Relief, *State of Florida v. United States*, No. 3:21-cv-01066-TKW-EMT (N.D. Fla. Sept. 28, 2021) (articulating harms to the State of Florida as a result of the Biden administration's "catch and release" policy).

The surge of foreign nationals attempting to enter illegally at the southwest border has included a large number of Unaccompanied Alien Children (UAC), defined by federal law as a child who has no lawful immigration status; has not attained 18 years of age; and, with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide physical custody and care, see 6 U.S.C. §

279(g)(2). Over 146,000 encounters at the southwest border for federal fiscal year 2021 involved unaccompanied alien children or single minors. Note 8. For federal fiscal year 2022, the number of such encounters has already reached more than 12,000. Note 9. Under existing federal law, the U.S. Department of Health and Human Services (HHS) must take custody of these UAC and attempt to place them with sponsors in the United States until the UAC's immigration proceedings are completed. While the UAC await placement with a sponsor, HHS will often house the UAC in group home facilities that are operated by private entities under contract with HHS and licensed by the states where the facilities are located. During federal fiscal year 2021, 11,145 UAC were placed with sponsors in Florida, more than the 10,773 UAC placed in California, a substantially larger state. Note 10. So far during federal fiscal year 2022, 1,190 UAC have already been placed in Florida. Note 11.

Neither DHS nor HHS actively coordinates or consults with the State of Florida, including the Department, on the UAC that are resettled in Florida. The State does not receive meaningful, if any, advance notice when UAC are transported to Florida and is not meaningfully consulted on the number of UAC that the State's child-caring resources and capacity could feasibly support without adversely affecting children already present in Florida and under the State's protection and care. To the contrary, the Federal Government actively attempts to conceal its UAC resettlement activities. Recently, the State of Florida discovered that, between June and September 2021, there were 78 flights that arrived in Florida with an average of 36 UAC on each flight. These individuals were collectively transported on buses and dispersed to various locations in Florida. All of this occurred without advance notice to the Department and without the State's consent. The State is given no opportunity to object to the transportation or resettlement of UAC in Florida.

Moreover, the State receives no information on the background, criminal history, immigration status, status of removal proceedings, or the sponsors of the UAC brought to Florida. UAC are regularly placed with sponsors without adequate follow-up by HHS or the placement entities to ensure the safety and welfare of the UAC. According to a recent report, between January and May 2021, federal contractors responsible for placing UAC with sponsors across the United States were unable to reach the minor or the sponsor in roughly one of every three attempts. Note 12. Nor does the State have any assurance that the UAC are, in fact, minors. As a result of the chaos at the southwest boarder, there is a significant risk of insufficient and inaccurate vetting of people claiming protection as UAC. Recently, a 24-year-old Honduran national was charged with murder in Florida after having falsely represented his age and been released into the United States as a UAC. Note 13. In short, the Federal Government has failed to provide the State of Florida with sufficient answers to its requests for information on the resettlement of illegal aliens, including UAC, so that their safety and the safety and welfare of Florida's citizens, including children already present in Florida, can be secured. The total absence of meaningful coordination and consultation concerning the resettlement of UAC by the Federal Government in Florida is an immediate danger to the safety and welfare of Floridians, including its most vulnerable children, as well as recently arrived UAC. (The Federal Government's conduct with respect to the resettlement of UAC in Florida stands in stark contrast to the Federal Government's conduct with respect to the resettlement of Unaccompanied Refugee Minors (URM), where the Federal Government has a cooperative agreement in place with the State of Florida.)

To date, the Department has generally granted licenses to facilities that sought to house UAC brought to Florida by HHS. In light of the crisis described above, Section 8 of Executive Order 21-223 directed the Department to "determine whether the resettlement of unaccompanied alien children in Florida from outside of the state constitutes 'evidence of need' under section 409.175(5)(b)(1), Florida Statutes, sufficient to justify the award of a license under Florida law to family foster homes, residential child-caring agencies, or child-placing agencies that seek to provide services for unaccompanied alien children." "To the extent that such resettlement of unaccompanied alien children in Florida is determined not to constitute 'evidence of need' under Florida law," the executive order directed the Department to "amend, if necessary, Florida Administrative Code Rule 65C-46.022, 'Standards for Unaccompanied Alien Children (UAC) Homes and Unaccompanied Refugee Minor Programs,' in accordance with state law, to reflect the Department's determination." In this Emergency Rule, the Department determines that an application for issuance or renewal of a license to house UAC or URM, who are being resettled in Florida from outside of the state, does not constitute "evidence of need," § 409.175(5)(b)1, Florida Statutes, "to protect the health, safety, and well-being of all children in the state" cared for by child-caring agencies, § 409.175(1)(a), Florida Statutes, in the absence of a cooperative agreement between the State of Florida and the Federal Government in which the State of Florida is entitled, at a minimum, to advance notice and meaningful consultation before the resettlement of such UAC or URM

in Florida. The Emergency Rule also prohibits existing licensees from adding to their existing UAC population and imposes additional requirements to ensure that such licensees protect the safety and welfare of UAC that they place with sponsors in the state.

Given the ongoing crisis at the border, including the Federal Government's continued resettlement of UAC in Florida, its ongoing refusal to provide meaningful coordination and consultation, its failure to provide adequate protection for and supervision of UAC once they are placed with sponsors in the state, and its failure to adequately screen purported UAC (as evidenced by the recent murder charge brought against an adult foreign national who misrepresented his age to gain entry to the United States), emergency rulemaking is justified and necessary.

Note 1: Rebecca Beitsch, US-Mexico July Border Crossings Hit 20 Year High, The Hill (Aug. 12, 2021, 4:22 PM), <https://thehill.com/policy/national-security/567647-us-mexico-july-border-crossings-near-20-year-high>; see U.S. Customs & Border Prot., Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last updated Nov. 15, 2021) (showing 213,593 for July and 209,840 for August).

Note 2: U.S. Customs & Border Prot., Southwest Land Border Encounters, supra note 1.

Note 3: Id.

Note 4: Id.

Note 5: See U.S. Customs & Border Prot., Custody and Transfer Statistics FY2021, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2021> (last accessed Dec. 8, 2021).

Note 6: See id.

Note 7: See Mark Krikorian, Immigration Enforcement on the Honor System, <https://www.nationalreview.com/corner/immigration-enforcement-on-the-honor-system/> (July 16, 2021). In addition, between federal fiscal year 2008 and 2019, "32 percent of aliens referred to [immigration courts] absconded into the United States" and did not report to their hearings. See Memorandum Opinion and Order, Texas v. Biden, No. 2:21-CV-067-Z, 2021 WL 3603341, at \*4 (N.D. Tex. Aug. 13, 2021).

Note 8: See U.S. Customs & Border Prot., Southwest Land Border Encounters, supra note 1.

Note 9: See id.

Note 10: See Office of Refugee Resettlement, Unaccompanied Children Released to Sponsors by State (June 24, 2021), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>.

Note 11: See id.

Note 12: See Stef W. Knight, Exclusive: Government Can't Reach One-in-Three Released Migrant Kids (Sept. 1, 2021), <https://www.axios.com/migrant-children-biden-administration-a597fd98-03a7-415c-9826-9d0b5aaba081.html>.

Note 13: See Adam Shaw, Honduran Illegal Immigrant Charged with Murder Entered US Falsely Claiming to be Unaccompanied Minor: Report (Nov. 4, 2021), <https://www.foxnews.com/politics/honduran-illegal-immigrant-charged-murder-entered-us-unaccompanied-minor>.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The procedure is fair under the circumstances because the Emergency Rule ends the State's practice of facilitating the Federal Government's UAC resettlement program by granting state licenses for housing UAC, notwithstanding the Federal Government's active refusal or failure to coordinate or consult with the State on the resettlement of UAC in Florida, without terminating existing licenses or otherwise foreclosing the issuance of licenses for UAC in the future. Instead, going forward, the State will require a meaningful cooperative agreement with the Federal Government before issuing or renewing licenses for housing UAC. (The same principle will apply for licenses to house URM, but there is a cooperative agreement with the Federal Government already in place.) In the meantime, existing licensees will not be permitted to add to their existing UAC population and will be subject to additional obligations to ensure the welfare and safety of the UAC whom they place with sponsors in Florida, but their existing licenses will not be cancelled. Further, in order to allow continued operation by licensees, the renewal prohibition contained in the Emergency Rule will not apply to any licenses that will expire within forty-five (45) days of the effective date of this Emergency Rule.

SUMMARY: The Emergency Rule amends Florida Administrative Code Rule 65C-46.022 and provides that an application for issuance or renewal of a license to house UAC or URM, who are being resettled into Florida from outside of the state, does not constitute "evidence of need," § 409.175(5)(b)1, Florida Statutes, "to protect the health,

safety, and well-being of all children in the state” cared for by child-caring agencies, § 409.175(1)(a), Florida Statutes, in the absence of a cooperative agreement, evidenced by or through an approved State Plan, contract, or a memorandum of understanding, between the State of Florida and the Federal Government in which the State of Florida is entitled, at a minimum, to advance notice and meaningful consultation before the resettlement of such UAC or URM in Florida. The Emergency Rule also prohibits existing licensees from adding to their existing UAC population and requires such licensees to conduct welfare checks of the UAC whom they place with sponsors in Florida.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Elizabeth Floyd at Elizabeth.Floyd@myflfamilies.com

THE FULL TEXT OF THE EMERGENCY RULE IS:

**65CER21-3 (65C-46.022) Standards for Unaccompanied Alien Children (UAC) Homes and Unaccompanied Refugee Minor Programs.**

(1) Except as otherwise provided in this rule, the ~~The~~ child-caring agency providing services for Unaccompanied Alien Children ~~unaccompanied minor children~~ (UAC) and Unaccompanied Refugee Minors (URM) must meet the licensing requirements set forth in Rules 65C-46.001 through 65C-46.014, F.A.C., in addition to the program standards in this emergency rule.

(2) For purposes of section 409.175(5)(b)1, F.S., which requires “evidence of need” to obtain a license, and in light of section 409.175(1)(a), F.S., which provides that the purpose of the licensure requirement is to “protect the health, safety, and well-being of all children in the state” who are cared for by child-caring agencies, the planned and organized resettlement, by the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services, of UAC or URM from outside of Florida does not constitute evidence of need as required for issuance or renewal of a license for a child-caring agency that seeks to provide services to such UAC or URM unless such resettlement is governed by a cooperative agreement, evidenced by or through an approved State Plan, contract, or a memorandum of understanding, between the State of Florida and the United States Government in which the State of Florida is entitled, at a minimum, to advance notice and meaningful consultation before the resettlement of such UAC or URM to Florida. In the absence of such cooperative agreement, no license shall be issued or renewed with respect to any child-caring agency that applies to provide services for UAC or URM resettling to Florida, and any child-caring agency providing such services under a current license to UAC or URM who have already resettled in Florida shall not take placement of any additional UAC or URM until a cooperative agreement is entered. For purposes of this emergency rule, the term “resettlement” means the transportation of persons to Florida for the purpose of temporarily or permanently residing in Florida. The Department has no obligation to enter or renew a cooperative agreement with the United States Government for the resettlement of UAC or URM to Florida, and the Department may revoke or decline to enter or renew such agreement.

(3)~~(2)~~ The child-caring agency shall ensure a contractual or grant agreement was executed with ORR ~~the Office of Refugee and Resettlement (ORR)~~ in order to provide care and services to UAC ~~unaccompanied and/or undocumented minor children~~.

(4) The child-caring agency shall ensure a contractual or grant agreement was executed with the State of Florida in order to provide care and services to URM.

(5)~~(3)~~ The UAC child-caring agency shall ensure all direct care staff complete training hours on immigration in child welfare, cultural awareness, and human trafficking related topics, as outlined in ~~the~~ Section 4.3.6. of the Office of Refugee and Resettlement (ORR) UAC Program Policy, March 11, 2019, incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-13072>.

(6)~~(4)~~ The child-caring agency providing care to UAC or URM ~~unaccompanied children~~ shall not provide care to dependent youth in the same home or under the same license.

(7)~~(5)~~ The child-caring agency may utilize a shift care or house parent staffing model.

(8)~~(6)~~ The director and direct care staff of a child-caring agency shall sign and comply with the plan applicable to the licensed setting. Child-caring agencies that provide services for UAC shall use the “~~Partnership~~ Plan for Unaccompanied Alien ~~and Refugee Minor~~ Children” Form form, CF-FSP 5488, December 5446, Apr 2021, incorporated by reference and available at <https://www.myflfamilies.com/general-information/publications-forms/>

<http://www.flrules.org/Gateway/reference.asp?No=Ref 13069>. Child-caring agencies that provide services for URM shall use the “Partnership Plan for Unaccompanied Refugee Minors,” Form CF-FSP 5487, December 2021, incorporated by reference and available at <https://www.myflfamilies.com/general-information/publications-forms/>.

~~(9)~~(7) The child-caring agency shall provide a copy of its ~~their~~ education plan outlining how education will be provided for youth.

~~(10)~~(8) The child-caring agency shall notify the Department of any changes in the contract/grant agreement, and submit an updated copy, to include ORR’s decision to no longer utilize the facility.

~~(9) Record retention of child files shall be relinquished to the ORR when the child-caring agency no longer selects to maintain a license.~~

~~(10) Incident reports shall be available to the licensing Department upon request.~~

(11) The child-caring agency must develop policies and procedures on the administration and management of medication. A licensed health care provider must write or verbally order all nonprescription medications. Verbal orders must be documented in the child’s file. The child-caring agency must align all health and safety policies with guidelines of the ORROffice of Refugee Resettlement located at [Health and Safety The Administration for Children and Families \(hhs.gov\)](http://www.hhs.gov).

(12) To ensure orderly transition to this emergency rule, the prohibition on renewal as set forth in section (2) above does not apply to any licenses that will expire within forty-five (45) days of the effective date of this emergency rule.

*Rulemaking Authority 409.175(5) FS. Law Implemented 409.175 FS. History—New 5-26-21, Formerly 64C-14.122.*

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.