ADMINISTRATION FOR CHILDREN & FAMILIES
Office of Refugee Resettlement

Implementation Plan for the *Lucas R. Psychotropic Medication Settlement Agreement*

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Bureau of Unaccompanied Children

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I. Introduction and Purpose of the Implementation Plan

This document outlines the steps that the Office of Refugee Resettlement (ORR) Unaccompanied Alien Children Bureau (UAC Bureau) has taken, as well as steps it will undertake, with respect to system and process improvements and implementation of the terms of the Settlement Agreement which resolves the Psychotropic Medications class claim in *Lucas R. v. Becerra* (hereinafter referred to as the Settlement Agreement). As part of the Settlement Agreement, ORR committed to improving informed consent and assent procedures; ensuring proper use of psychotropic medications, including in emergent situations in alignment with accepted medical practice; informing and empowering authorized consenters and providing for an alternative process when informed consent cannot be obtained; promoting accountability; protecting children's individual psychological and psychiatric needs; and maintaining proper medical records. The Settlement Agreement emphasizes accountability, transparency, proper medical record documentation, and robust monitoring and reporting systems. Through implementation of this Settlement Agreement, ORR will be better able to support the physical and psychological safety and well-being of unaccompanied alien children through individualized care.

II. Who We Are

The Office of Refugee Resettlement is statutorily responsible for the care and placement of unaccompanied alien children who are in federal custody by reason of their immigration status. See generally the Homeland Security Act of 2002 (HSA), 6 USC 279. An unaccompanied alien child is defined as a child who has no lawful immigration status in the United States; 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 care and physical custody. See 6 U.S.C. §279(g)(2). In 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), 8 USC 1232, which provided additional protections to unaccompanied alien children in federal custody. ORR's statutory responsibilities, as well as additional responsibilities including those described in the 1997 Flores Settlement Agreement, were further incorporated in the Unaccompanied Children Program Foundational Rule, codified at 45 CFR part 410 (Foundational Rule).[1] Under these and other legal responsibilities, ORR provides a range of services to unaccompanied alien children, including mental health counseling, recreation, and education, while vetting and placing them with suitable sponsors. ORR provides these services through its UAC Bureau.

As soon as children enter ORR care, they are put in contact with their parents, guardians, or relatives, if known, and the process of finding a suitable sponsor begins. Most sponsors are a parent or a close family relative living in the United States. While ORR programs are looking for sponsors, children are provided age-appropriate care and wraparound services in an ORR-funded facility.

The important work happening in each of the facilities and programs in the ORR network around the country — work ORR has done successfully since 2003 — takes an experienced team of competent, hardworking individuals dedicated to the welfare of the children.

UAC Bureau Responsibilities:

[1] In 2024 the *Flores* court partially terminated the *Flores* Settlement Agreement as to ORR as a result of the Unaccompanied Alien Children Program Foundational Rule, 89 FR 34384, though certain provisions remain in effect.

- Making and implementing placement decisions in the least restrictive setting in the best interests of unaccompanied alien children.
- Ensuring that the interests of the child are considered in decisions related to the care and custody of unaccompanied alien children.
- Providing home assessments for certain categories of children.
- Funding post-release services for certain categories of children.
- Overseeing the infrastructure and personnel of ORR-funded care provider facilities.
- Conducting on-site monitoring visits of ORR-funded care provider facilities and ensuring compliance with ORR national care standards.
- Collecting, analyzing, and reporting statistical information on unaccompanied alien children.
- Developing procedures for age determinations and conducting these determinations.
- Cooperating with the Department of Justice's Executive Office for Immigration Review to ensure that sponsors receive Legal Orientation Presentations for Custodians (LOPC).
- Ensuring, to the greatest extent practicable, that all unaccompanied alien children in custody have access to pro bono legal representation or counsel for immigration proceedings.
- Unifying unaccompanied alien children with suitable sponsors who are determined to be capable of providing for their physical and mental well-being as safely as possible.

Currently, ORR's UAC Bureau is organized into 10 divisions. The Divisions of Unaccompanied Alien Children Health, Placement Operations, and Data Analytics and Information Management contribute to the implementation of the Settlement Agreement. An overview of each of these divisions is provided below. [2]

Division of Unaccompanied Alien Children Health (DHUAC)

DHUAC oversees the physical, mental, and behavioral health of unaccompanied alien children in ORR care, including public health screenings and surveillance of and response to communicable diseases. The division develops health-related policies, guidance, and standard operating procedures for medical, mental, and behavioral health care, and communicable disease prevention and control. DHUAC is comprised of a Health Informatics Lead and four teams: Medical Services Team; Mental and Behavioral Health Services Team; Communicable Disease Surveillance and Response Team; and a Health Quality and Innovation Team. Of note, prior to 2017, public health and clinical oversight responsibilities were under the "ORR Medical Team."

Mental and Behavioral Health Services Team (MBHST)

The DHUAC Mental and Behavioral Health Services Team (MBHST) was created in 2019 to provide oversight of the mental and behavioral health of unaccompanied alien children. The team currently includes three psychiatrists; a pediatrician with additional board certification in neurodevelopmental disabilities and pediatric rehabilitation medicine; a child psychologist; two advanced practice nurses; a clinical social worker; and a licensed practice counselor. Initially tasked with answering questions from ORR care providers, the team's duties have expanded to providing ongoing consultation to ORR providers on high-need mental and behavioral health cases, improving behavioral health policy and procedures, and partnering with national organizations to develop and implement high-quality trainings on behavioral health best practices for ORR staff and care providers. An overview of MBHST's current portfolio of work is provided below.

[2] Current staffing levels in these divisions reflect ORR's most recent census data and needs. These staffing levels may change depending on ORR's future census and needs.

Mental and Behavioral Health Framework

Recognizing the varied behavioral needs of children in ORR care, MBHST developed a behavioral health framework grounded in trauma-informed principles. The framework defines tiers of care, ranging from Tier 1 (preventative skill building with little to no disruption in daily activities), to Tier 4 (significant disruptions in daily activities with possible residential treatment center (RTC) placement). ORR providers are encouraged to use available trauma-informed tools to screen children and then refer those in Tiers 3 and 4 to community-based providers for therapeutic intervention (See Appendix A).

UACB's Trauma Informed UAC Workforce Initiative

To encourage trauma-informed interactions between ORR providers and children in ORR care, ORR partnered with Duke University and experts from the National Child Traumatic Stress Network (NCTSN) to develop and implement the Trauma-Informed UAC Workforce Initiative. Key components included:

- **Training and Resources**: UACB staff participated in virtual trainings on the essentials of trauma-informed care and clinicians and case managers were required to participate in advanced trauma-informed care trainings. In addition, ORR created a resource website for ORR care provider staff to access trauma-informed resources, webinar recordings, and provides a digital platform for questions they have about trauma-informed care.
- **Specialized Training:** Approximately 60 care provider clinicians have been trained in Trauma-Focused Cognitive Behavioral Therapy (TF-CBT), with clinicians working in programs with high percentages of children who remain in ORR care for long periods of time prioritized.
- **Consultation:** UACB staff have participated in private trauma-informed consultation sessions with trauma experts to discuss a broad range of trauma-related issues affecting unaccompanied alien children, staff, and facilities and discuss the specific challenges of implementing trauma-informed care.
- **Webinars:** Topic specific webinars by Duke University consultants were made available upon request for all ORR care providers.

Division of Placement Operations, Special Populations

The Special Population Department was created in 2018 under the management and oversight of the Special Population Supervisor, who provided support to ORR programs for children placed in higher levels of care. Since its inception, the program has evolved and, in 2022, the Special Populations Supervisor developed a team of four Federal Field Specialists (FFS) who are assigned to the field to support the most vulnerable children in custody. This includes support for children with disabilities; children with a mental health diagnosis; children with behavioral concerns who are administered psychotropic medications; and children who were "stepped up" to restrictive facilities requiring additional supervision, including: Therapeutic, Heightened Supervision, Secure, Residential Treatment Center and Out of Network (OON) service providers.

The Special Populations Team provides support by guiding programs and field staff with the ORR policy requirements for restrictive care through educational and training programs, reviewing policy and compliance requirements, conducting in person meetings with children, and monitoring service requirements for the continued care of children in restrictive settings, their right to legal counsel, and the continued review and completion of the *Notice of Placement* (NOP) whereby children are notified of their right to challenge a restrictive placement.

DHUAC meets weekly with the Special Populations Team to discuss children receiving care in OON facilities and evaluate if each child continues to meet the requirements of more restrictive care. An unaccompanied alien child with serious mental health or behavioral health issues can only be placed at a restrictive residential treatment center (RTC) if the unaccompanied alien child is evaluated and determined to be a danger to self or others by a licensed psychologist or psychiatrist consulted by ORR or a care provider facility, which includes a determination by clear and convincing evidence documented in the child's case file, including documentation by a licensed psychologist or psychiatrist that placement in an RTC is appropriate. The MBHST team provides additional support for every child who is at an RTC in network or any out of network placement for behavioral health reasons. This support includes monitoring the child's progress and any mental health concerns via emails and regular meetings with RTC program staff.

Division of Data Analytics and Information Management and DHUAC Data Team

Two entities within ORR play a pivotal role in the monitoring of the Settlement Agreement data requirements. These entities are ORR's Division of Data Analytics and Information Management (DAIM) and DHUAC. DAIM supports data driven decision making and tracks key performance metrics by collecting, storing, and analyzing data, and developing dashboards and data visualization tools. With a team of 16 full-time federal staff and additional contractors, DAIM collaborates across ORR programs to create customized tools for strategic programming decisions. DAIM creates data reports and shares them with DHUAC to enable them to create dashboards related to Settlement Agreement monitoring requirements.

DHUAC has strengthened internal capacity to gather and analyze data and develop relevant quality metrics and indicators for program monitoring over the past four years. In response to rising needs for health data and analytics, DHUAC's first data manager was hired in 2021 and a second full-time data manager was hired in 2024 to expand mental and behavioral health data analysis capabilities. These data managers work closely with DHUAC epidemiologists and clinical staff to define queries and determine what data variables to extract and compile from different sources to analyze data and identify health trends.

Recent DHUAC data projects include creating the first epidemiological review, which compiles different clinical diagnoses of children in ORR care, including behavioral health diagnoses, such as attention deficit hyperactivity disorder (ADHD), as well as disorders such as those affecting mood, anxiety, trauma, disruptive behavior, thought, substance use, and sleep/wake cycles. This internal epidemiological report tracks common diagnoses and diagnoses that require significant resources to help inform development of oversight processes, guidance, and technical assistance needs; the report also includes analyses on changes in trends over time.

III. Lucas R. Lawsuit and Settlement Agreement

In June 2018, unaccompanied alien children initiated the *Lucas R* class action litigation against ORR to challenge various policies and practices and later amended their complaint in September 2018. In December 2018, the Court certified five subclasses. This Implementation Plan is focused on the third sub-class, which challenged the prescription or administration of psychotropic medication to unaccompanied alien children in ORR's care and custody allegedly without procedural safeguards, including informed consent and assent. ORR and plaintiffs negotiated a Settlement Agreement concerning this subclass, which was approved by the court and became effective on May 3, 2024 (Effective Date).[3] The Settlement Agreement describes ORR's commitment to several key procedural improvements related to the

[3] ORR and plaintiffs also finalized settlements with respect to two other sub-classes, which also became effective on May 3, 2024. These subclasses concerned the treatment of children with disabilities; and legal representation with regard to placement, release, and custody.

prescription and administration of psychotropic medications, guided by overarching principles to ensure the safety, well-being, and rights of these children. While scheduled to terminate no later than May 3, 2030, the Settlement Agreement also allows for the possibility of early exit beginning three years after the Effective Date (May 3, 2027), upon a showing of substantial compliance, as determined by the Monitor.

ORR has committed to several key improvements related to the administration of psychotropic medications. The goals and related improvements are described below.

IV. Settlement Goals and Foundational Elements

The Settlement Agreement aims to:

- Continuously improve procedures and clarify policies for obtaining and documenting informed consent and assent related to the use of Psychotropic Medications.
- Promote the emotional health and well-being of children by ensuring the appropriate use of Psychotropic Medications per accepted medical practices.[4]
- Inform and empower "Authorized Consenters" with the information they need to make informed decisions for the health and well-being of the child.
- Promoting accountability and transparency through consent documentation requirements.
- Protecting the needs of individual children through clear exception management processes.
- Support continuity of care through proper medical record documentation standards.

To achieve the goals outlined above and fulfill the requirements of the Settlement Agreement, ORR will implement system and process improvements as summarized below:

- **Ensure Proper Use of Psychotropic Medications** – Reinforce that psychotropic medications should be used to treat psychiatric conditions only after a diagnostic assessment by a licensed healthcare provider, considering other situational factors such as trauma.
- **Authorized Consent/Concurrence** – Establish criteria and processes for identifying the Authorized Consenter for an Unaccompanied Alien Child.
- **Consent Procedures for Authorized Consenters** – Establish the processes and requirements for obtaining informed consent from the Authorized Consenter for an unaccompanied alien child both verbally and in writing.
- **UAC Assent** – Establish the process and requirements for obtaining agreement from a child 14 years of age or older to take psychotropic medication and ensuring that children are never forced to take psychotropic medication, except in emergencies.
- **Overriding Denial of Consent** – Establish the processes and requirements for overriding denial of consent from the Authorized Consenter.
- **Emergencies** – Establish criteria and processes for when psychotropic drugs may be administered without prior informed consent, and defining when the emergency administration authority begins and ends, as well as documentation requirements.

[4] Per the Settlement Agreement, prescribers, CCU, and DHUC should refer to the parameters for the child's age and weight as noted in the "literature-based maximum dosage" established by the Texas Department of Health & Human Services document entitled, "Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health (7th Ed.)" ("Texas Formulary"), as may be updated periodically, when determining appropriateness of dosage (See Appendix O).

- **Role of Centralized Concurrence Unit (CCU) and Consent Overrides** – Establish the CCU and the criteria and process for overriding certain consent denials and providing concurrence when obtaining consent is not possible.
- **Oversight Responsibilities of ORR's DHUAC** – Establish a specialized team of mental health professionals, including a child and adolescent psychiatrist, to review specific cases of psychotropic medication administered to unaccompanied alien children and provide comprehensive case reviews of a select number of cases.
- **Monitor** – Establish procedures for monitoring compliance to the settlement, including through DHUAC, the court appointed monitor, site visits by class counsel, and reporting requirements, including an annual report to the court.
- **Transition Plan** – Establish a transition plan to set the timeline for implementing the Settlement Agreement across the ORR Provider Network.

Ensure Proper Use of Psychotropic Medications

The Settlement Agreement opens with the agreed upon framework for prescribing psychotropic medications to children in ORR custody. The framework emphasizes that psychotropic medications should only be prescribed by a licensed healthcare provider and after considering other factors that may be contributing to the child's condition, such as trauma. Moreover, the psychotropic medications should be aligned with the child's diagnosis, and not used due to other therapies being inconvenient or more expensive. Medications should only be given to children in accordance with the prescriber's recommendations and periodically reassessed by a licensed prescriber for side-effects and benefits. Psychotropic medications should be given at dosages within the available dosage guidelines, based on the child's age and weight, as per the Texas Formulary (See Appendix B). Finally, prescribing psychotropic medications must never be used as punishment for disruptive or inappropriate behavior, for the convenience of staff members or caregivers, or as a substitute for adequate staffing and/or adequate ongoing programming for a child's needs.

Authorized Consent/Concurrence

The Settlement Agreement specifies who can provide consent for the administration of psychotropic medication to children in ORR care and custody, prioritizing parents or legal guardians, certain sponsors who are close relatives and previously served as the child's primary caregiver, and unaccompanied alien children 16 years old or older.[5] Of note, the Settlement Agreement clarifies that ORR staff are not authorized consenters, meaning ORR staff cannot provide consent for the administration of psychotropic medication to children in ORR care and custody.[6] If there is no Authorized Consenter or the Authorized Consenter provides verbal consent but cannot be reached in three subsequent attempts to obtain a

[5] "'UAC Consenter' means a UAC, age 16 or 17, from whom a doctor has obtained informed consent." Settlement Agreement, Section I.S.

[6] The Settlement Agreement permits DHUC to function as the CCU. However, this role does not grant DHUC the authority to act as an authorized consenter for decisions requiring informed consent. The responsibility for providing informed consent remains with the designated authorized consenter as per the relevant regulations and policies. If ORR were to pursue this option of bringing the CCU into DHUC, then the staff within DHUC performing the CCU's role would have the authority to oversee and offer an independent opinion on the appropriateness of the administration of psychotropic medications when consent cannot be obtained from an authorized consenter or override a denial of consent by a Primary or Sponsor (as discussed in "Role of Centralized Concurrence Unit (CCU) and Consent Overrides"), but even in this circumstance, DHUC staff acting as CCU would not be considered "authorized consenters," per the Settlement Agreement.

written signature, then the Centralized Concurrence Unit (CCU) may provide approval (concurrence) to administer the medication.

Consent Procedures for Authorized Consenters

The Settlement Agreement outlines that before an unaccompanied alien child in ORR custody may be administered psychotropic medications, efforts must be made to obtain informed consent from an Authorized Consenter, which can be a parent, legal guardian, sponsor, or the child themselves if they are 16 or 17 years old, except in the case of emergencies. If the Primary Consenter is unavailable, the care provider must seek consent from a Sponsor Consenter or, if applicable, the child. The consent process involves providing the consenter with clear information about the medication, including its purpose, benefits, risks, and alternatives, in a language the consenter understands. Verbal consent must be documented and followed by written consent within two weeks. If consent cannot be obtained, the CCU may provide approval to administer the medication.

UAC Assent

The Settlement Agreement requires that, except in the case of emergencies, children aged 14 years or older must provide their assent before being administered psychotropic medications. This means that the child must agree to the medication after being given clear, age-appropriate information about its purpose, benefits, risks, and alternatives. The healthcare provider must ensure that the child understands this information and voluntarily agrees to the treatment. The child's assent must be documented in their medical records. While the child's denial of assent or refusal to take the medication does not nullify the informed consent from an Authorized Consenter or concurrence from the CCU, administering the medication requires the child's willingness to take the medication. This process respects the child's autonomy and ensures their involvement in decisions about their own health care.

Role of Centralized Concurrence Unit (CCU) and Consent Overrides

The Centralized Concurrence Unit (CCU), an entity comprised of a rotating panel of psychiatrists licensed in the U.S., is established under the Settlement Agreement to oversee and offer an independent opinion on the appropriateness of the administration of psychotropic medications when consent cannot be obtained from an authorized consenter. While the Settlement Agreement allows for DHUAC to function as the CCU, ORR has instead established the CCU through its medical underwriter, Point Comfort United (PCU, formerly Point Comfort Underwriters), thereby increasing the independent decision-making authority of the entity. The CCU is responsible for providing or withholding concurrence for medication prescriptions in appropriate cases and in the best interest of the child, documenting and tracking its decisions, and ensuring that all actions comply with the guidelines set forth in the Settlement Agreement. The CCU also has the authority to override a denial of consent by a Primary or Sponsor Consenter under specific conditions, ensuring that the child's health and well-being are prioritized. This unit plays a crucial role in maintaining accountability and transparency in the use of psychotropic medications for children in ORR custody.

The Settlement Agreement specifies that if a Primary or Sponsor Consenter denies consent for psychotropic medication, the CCU can review the case. The CCU has the authority to override the denial if it determines that the medication is in the child's best interest, and all other reasonable measures, alone,

have been determined unlikely to prevent the UAC from the impairment or harm.[7] This decision must be based on a thorough review of the child's medical and psychological needs, as well as consultation with the prescribing clinician, the care provider, and the Primary or Sponsor Consenter (as applicable), and the CCU must document the reasons for the override. The CCU's decision is final and must be communicated to the authorized consenter, along with an explanation. This process ensures that the child's health and safety are prioritized even when consent is initially denied. Note, however, in all cases of override, the Primary or Sponsor Consenter will be provided with the contact information of the Monitor so that they may report any concerns to the Monitor. And in no case will the CCU override a UAC Consenter's denial of consent.

Emergencies

In an emergency, the administration of psychotropic medication to a child without prior consent is permissible, but there are certain safeguards and processes that must be followed. An emergency exists where the immediate failure to administer psychotropic medication to the child poses an imminent threat of death or substantial bodily harm to the child or others. Except where gradual weening off a medication administered on an emergency basis is medically necessary, use of the emergency medication must terminate when the emergency has ended. The Settlement Agreement emphasizes that the emergency exemption may not be relied upon for the routine or ongoing administration of psychotropic medications. The Primary Consenter or Sponsor Consenter and DHUAC must be notified of the emergency administration of psychotropic medication, the incident must be documented in the child's case file, and the child's case team must meet within a week of the incident to discuss what should be done in the future to prevent the use of emergency administration of psychotropic medication.

Oversight Responsibilities of ORR's Division of Health for Unaccompanied Alien Children

DHUAC plays a pivotal role in the implementation of the Settlement Agreement, leveraging their professional expertise in child health and well-being to ensure the appropriate use of psychotropic medication. DHUAC has specific oversight responsibilities outlined in the Settlement Agreement. These include (as overseen by a licensed child and adolescent psychiatrist within DHUAC): (1) review of certain cases that have been flagged by a care provider such as an unaccompanied alien child's consent to the administration of antipsychotics or to the administration of three or more psychotropic medications; (2) development of a system for conducting retrospective, secondary reviews of psychotropic medications prescribed to unaccompanied alien children in ORR's care and custody under certain circumstances; and (3) an annual case review of 30 files of unaccompanied alien children administered psychotropic medications.

Monitor

The court-appointed Monitor plays a critical role in overseeing the implementation of the Settlement Agreement, ensuring that all terms and conditions are met effectively. The Monitor is responsible for evaluating implementation progress, reporting on compliance, and certifying that the Office of Refugee Resettlement (ORR) adheres to the agreed-upon standards. By conducting regular site visits, reviewing case files, and engaging with stakeholders, the Monitor provides an independent and objective

[7] The Settlement Agreement specifies that the CCU may concur to override denial of consent only if it finds that a child's failure to take the prescribed medication would result in observable and material impairment to the growth, development, or functioning of the child, or place the child at imminent risk of substantial bodily harm or of inflicting substantial bodily harm to others.

assessment of ORR's practices. This oversight helps ORR to maintain accountability, transparency, and continuous improvement in the administration of psychotropic medications to unaccompanied alien children in care. The Monitor's involvement ensures that the rights and well-being of children in ORR custody who are prescribed and administered psychotropic medications are protected, and that the Settlement Agreement's goals are achieved.

The Settlement Agreement requires that ORR submit a Quarterly Report to the Monitor and Plaintiffs' Counsel, submit a Semi-Annual Report to the Monitor (known as the Periodic Report), and publish an anonymized public report semi-annually on ORR's website (known as the Online Report). In addition, the Monitor will convene periodic meetings between all parties to the Settlement Agreement.

Transition Plan

The Settlement Agreement requires ORR to create a transition plan, to ensure a smooth and orderly shift to the new procedures mandated by the Agreement. In accordance with the timeline in the Settlement Agreement, ORR will stagger implementation of the informed consent process at various care providers nationwide over more than a two-year period from the Effective Date to August 3, 2026. Reporting and monitoring of compliance with the Settlement Agreement will likewise align with this phased schedule for implementation of the Settlement Agreement. This Implementation Plan includes a schedule of implementation-related benchmarks that ORR must accomplish in accordance with the Settlement Agreement (See Appendix C).

V. UC Program Foundational Rule

Before describing the Implementation Plan, ORR notes that on April 1, 2024 (and effective July 1, 2024), it published regulations that, among other things, implemented key provisions of the Settlement Agreement. See Unaccompanied Alien Children Program Foundational Rule, 89 FR 34384, codified at 45 CFR part 410 (Foundational Rule). ORR codified several provisions that reflected its commitment to ensuring that psychotropic medications are administered appropriately in the best interest of the child and with meaningful oversight.[8] Although the Foundational Rule did not incorporate all the detailed terms of the Settlement Agreement, which at the time were preliminarily approved by the court but not yet effective, the Foundational Rule incorporates key principles of the Settlement Agreement. Specifically, the Foundational Rule requires voluntary informed consent prior to the administration of psychotropic medications, describes who may serve as an authorized consenter, as well as requires documentation of any emergency use of psychotropic medication, notification to authorized consenters, and review of such uses to reasonably avoid future emergency administrations of medication (see 45 CFR 410.1310(a)); and requires meaningful ORR oversight of the administration of psychotropic medication(s) to unaccompanied alien children (see 45 CFR 410.1310(b)). (See Appendix D). The Foundational Rule also provides that unaccompanied alien children may have the assistance of counsel, at no cost to the Federal Government, with respect to the administration of psychotropic medications (see 45 CFR 410.1310(c)). These explicit provisions establish durable standards with respect to the administration of psychotropic medications in accordance with accepted medical practice that are consistent with and reinforce the Settlement Agreement's terms. By pursuing codification through the notice-and-comment rulemaking process, ORR

[8] ORR also codified various provisions reflecting other settlements reached in the case, including regarding the disabilities and legal representation class claims, as well as incorporating policies and procedures required by the now-dissolved Preliminary Injunction issued by the Lucas R Court earlier in the case which concerned the unfit custodian and step-up class claims.

ensured that these provisions on psychotropic medications were subject to the notice and comment process, thereby increasing transparency and enabling input from stakeholders.

Additionally, the Foundational Rule requires that ORR care provider facilities report data relating to the administration of psychotropic medications to ORR to enable ORR to maintain this data. See 45 CFR 410.1501(g)(1). (See Appendix E). Such information must include children's diagnoses, the prescribing physician's information, the name and dosage of the medication prescribed, documentation of informed consent, and any emergency administration of medication. This data must be compiled in a manner that enables ORR to track how psychotropic medications are administered across the network and in individual facilities.

Like this Implementation Plan, the Foundational Rule also contemplates intersections between the requirements of the Psychotropic Medications class Settlement Agreement and other aspects of *the Lucas R*. litigation, including the care of children with identified disabilities, and children suspected of having a disability. For example, the Foundational Rule requires ORR to administer the UAC Bureau in the most integrated setting appropriate to the needs of children with disabilities, in accordance with 45 CFR 85.21(d), unless ORR can demonstrate that this would fundamentally alter the nature of its UAC Bureau. See 45 CFR 410.1311(b). (See Appendix F). Under the Foundational Rule, ORR must also make reasonable modifications to its programs, including the provision of services, equipment, and treatment, so that an unaccompanied alien child with one or more disabilities can have equal access to the UAC Bureau in the most integrated setting appropriate to their needs. As noted, however, ORR is not required to take any action that it can demonstrate would fundamentally alter the nature of a program or activity. See 45 CFR 410.1311(c). While not all children with identified disabilities will require psychotropic medications (and correspondingly not all children who take psychotropic medications have a disability), nevertheless under the Foundational Rule and this Implementation Plan, ORR has a responsibility to identify children with disabilities and ensure their placement in the most integrated setting appropriate to their needs. Similarly, ORR notes that to the extent children who are prescribed psychotropic medications and may have one or more disabilities are placed in restrictive placements, such placements must be made based on clear and convincing evidence, and that such placements are subject to administrative review that provides due process for such children wishing to challenge such placements. See generally 45 CFR 410.1901. Furthermore, the Foundational Rule requires that ORR gather and maintain data relating to the treatment of unaccompanied alien children with disabilities, some of whom may take psychotropic medications. This information must include whether an unaccompanied alien child has been identified as having a disability, the unaccompanied alien child's diagnosis, the unaccompanied alien child's need for reasonable modifications or other services, and information related to release planning. Such data shall be compiled in a manner that enables ORR ongoing oversight to ensure unaccompanied alien children with disabilities are receiving appropriate care while in ORR care across the network and in individual facilities. See 45 CFR 410.1501(g)(2). Importantly, ORR intends to implement the Psychotropic Medication Settlement Agreement in relation to the holistic needs of unaccompanied alien children in ORR custody, as is consistent with its broader responsibilities related to the *Lucas R*. litigation and the Foundational Rule. See also Section IX below.

VI. Plan for Implementing the Settlement Agreement

In the descriptions below, ORR explains how it will implement the requirements in the Settlement Agreement, the timelines for accomplishing each task, and the entity(ies) responsible. In addition, the section discusses how ORR will implement processes to monitor, provide quality assurance, and ensure

continuous quality improvement. Although ORR may opt to seek early termination after three years, this detailed plan provides information for the full six years of the Settlement Agreement's term, which is set to terminate no later than May 3, 2030.

Guidance to ORR Care Provider Network and ORR Staff

The finalized Settlement Agreement terms were informed by ORR's prior experiences implementing a centralized consent process for ORR care providers in Texas. In June 2022, while settlement negotiations proceeded, ORR released new guidance for programs based in Texas as a pilot program, which introduced the framework of Authorized Consenters as outlined by the then-draft Settlement Agreement (See Appendix G). The guidance built on previous guidance issued to providers in Texas in 2018, which first introduced the hierarchy of individuals who can provide informed consent (starting with parents, then close adult relatives who served as the child's primary caregiver) to the ORR network (See Appendix H). The major change from the 2018 guidance to the 2022 guidance was the introduction of the CCU's role. Previously, ORR programs based in Texas were directed to seek appointment of a Medical Consenter by court order in circumstances in which there was no consent from a parent or close adult relative See Tex. Fam. Code § 266.004 for procedures. While ORR care providers were able to apply Texas law for most circumstances, obtaining medical consenters appointed by state and local courts for children without parents or close relatives to provide consent proved impossible because the state and local courts summarily dismissed petitions for children in federal custody on the basis that they lacked jurisdiction. Consequently, some providers received citations from Texas for delays in administering prescribed psychotropic medication to children placed at their facility. As such, the introduction of the CCU was viewed as a welcome support for ORR care providers in Texas.

The early introduction of this process helped provide valuable lessons for the final Settlement Agreement negotiations, resulting in a tested framework that ORR could implement nationally. Lessons learned included understanding the challenge of hiring licensed child and adolescent psychiatrists for the CCU. Instead of being required to have only child and adolescent psychiatrists on the CCU panel, ORR was able to successfully request that parts of the oversight responsibility be delegated to child and adolescent psychiatrists within DHUAC and that the CCU be approved to include psychiatrists who are not specifically trained to work with child and adolescents. In addition, originally it was proposed that a doctor affirmatively certify competence of a UAC Consenter, which ORR learned was contrary to practice in the medical field. While doctors routinely assess competency during medical examinations and would flag a situation where they believe the child is not competent to consent, they do not typically affirmatively certify competence in every instance. The proposed competency certification requirement complicated programs' ability to obtain consent because doctors were not willing to certify competence in this manner contrary to ordinary medical practice. These, and other lessons from early introduction in Texas, resulted in a stronger and more practicably implementable final settlement.

ORR issued the June 2022 guidance ahead of a new process for approving payment for psychotropic medications, enacted by ORR's medical underwriter, PCU. The process remains in place for all Texas programs and will be rolled out nationally in accordance with the Settlement Agreement Transition Schedule. The new PCU process requires covered programs to submit a Treatment Authorization Request (TAR) for any psychotropic medication prescribed to a child in care. (See Appendix I). This process enables PCU to review each request to ensure that consent was properly obtained before issuing payment. Although Texas programs have only been required to operate under the terms of the Settlement Agreement as of February 3, 2025, implementing this process over two and a half

years in advance enabled ORR to learn best practices and address challenges, better preparing the program for full implementation.

Furthermore, even before the Settlement Agreement was finally negotiated and approved by the Court, beginning in June 2022, ORR's Division of UAC Policy commenced policy revisions to add Section 3.4.4.1 Informed Consent for Psychotropic Medication to the Unaccompanied Alien Children Bureau Policy Guide and UAC Manual of Procedures (UAC MAP). Final revisions were added in December 2023 to incorporate the terms of the anticipated Settlement Agreement. Following the Court's approval of the Settlement Agreement on May 3, 2024, the drafts of the policies and procedures were sent for review and comment to Plaintiffs' Counsel and to the Monitor on August 2, 2024 (thereby meeting the settlement deadline of August 3, 2024). Another revised draft was provided to the Monitor on November 25, 2024, and the Monitor's final feedback was returned to ORR on December 2, 2024. A final version of the UAC Policy Guide Section 3.4.4.1 Informed Consent for Psychotropic Medication will be published in the UAC Bureau Policy Guide and the UAC MAP as soon as practicable. ORR is targeting a publication date in February 2025, but this timing is contingent on approval for publication. Of note, UAC Policy Guide 5.6.2 Maintaining Case Files requires that care providers include all hospitalization records in the UAC Case File, which fulfills Section III.D.4. regarding hospitalizations records.

Initial training for ORR staff on the draft psychotropic medications policies and procedures was held in September 2024. This training is recorded and available to ORR and care provider staff through the UAC Portal (ORR's electronic database and system of record). When the new UAC Policy Guide Section 3.4.4.1 policy and procedures are finally approved and officially released, the Division of UAC Policy will provide training to ORR staff, as is standard for any significant policy updates. In addition, once integrated into ORR's UAC Bureau Policy Guide, training on this section will be incorporated into the onboarding training for new federal field specialists (FFS) and project officers.

In addition to their work training ORR staff, the Division of UAC Policy will support compliance with the Settlement Agreement by engaging ORR care providers in periodic meetings on the topic and providing training and technical assistance. These periodic meetings will continue until the informed consent process is implemented at all ORR care providers in accordance with the phased plan for implementation detailed in the Settlement Agreement Appendix C.

Onboarding Informed Consent Process at ORR Care Providers

The Settlement Agreement outlines a phased approach to rolling out its requirements across the country. The first programs to be onboarded were the ORR residential treatment centers (RTCs), including children who are administratively placed with an RTC, but physically located at an out-of-network provider (OON). After that, Texas-based programs were required to adopt the new procedures. The remaining programs nationwide will be onboarded sequentially in three groups. This phased approach allows ORR to address any challenges and refine best practices before full implementation across all programs nationwide. Because the Psychotropic Medication TAR Process, as implemented by PCU, must be rolled out by state, ORR proposed grouping the remaining programs (i.e., programs outside Texas and not RTCs) by state and region.

ORR will initiate the onboarding process for each cohort approximately four months in advance of the compliance deadline. During the monthly office hours that the Division of UAC Policy's Legal Affairs Team holds for programs, the team will brief care providers on the requirements of the

Settlement Agreement, UAC Bureau Policy Guide, and UAC MAP. These briefings will review the consent process, the role of the CCU, the reporting requirements, and DHUAC's oversight role. In addition, providers had additional opportunities for questions during the Legal Affairs Team office hours, held in November 2024 to January 2025 and support via resource accounts. Support via additional technical assistance and retraining will be offered, as necessary. As learned during the implementation of the informed consent process in Texas, regular meetings or similar forums with ORR and care provider staff to encourage group learning and exchange practice tips is essential to successful uptake of this new process.

ORR proposed the following schedule in its Transition Plan, which was submitted to the Monitor and Plaintiffs' counsel on November 4, 2024, and is currently awaiting final approval by the Monitor. The schedule, as detailed in ORR's approved Transition Plan (Settlement Agreement Transition Schedule), is as follows:

Onboarding Deadline	ORR Region	States in Region	Number of ORR Care Providers	FY 2024 Psych Meds Administered
08/03/2024	RTC programs	N/A	3[9]	23
02/03/25	6 - Texas Only	TX	66	752
08/01/25	4, 5, 6 (LA), 7, 8, & 10	FL, GA, IL, IN, KY, LA, MI, NC, OH, SC, TN, WA	74	499
03/01/26	9 and 1	AZ, CA, CT, MA, NV	75	337
08/01/26	2 and 3	DC, MD, NJ, NY, PA, VA, WI, WV	68	441

Onboarding Out of Network Providers

While the ORR program network contains several different facility types, there are situations in which a child's specific needs are best served by a specialized placement with an out-of-network (OON) provider. OON providers are licensed by an appropriate State agency and provide physical care and services for individual unaccompanied alien children as requested by ORR on a case-by-case basis, under a single case agreement for care of a specific child between ORR and the OON provider. These OON placements enable children to receive treatment that may not be available within the ORR network. The OON facilities may be restrictive or non-restrictive, depending on the type of treatment program. All requests for OON placements are reviewed and approved by DHUAC. For the purposes of ORR's tracking and oversight, the child is considered "administratively placed" at the ORR program where their case manager is located, while the child's physical placement is at the OON facility.

If a child is transferred to an OON facility, they will retain a case manager from an in-network ORR facility. The ORR case manager will continue to work on the child's identified case plan goals and will have weekly contact with the OON provider. The case manager is responsible for ensuring that the OON provider is following ORR policies and procedures, including the Authorized Consent process. Additionally, the

[9] While there were three RTCs operational at some point during FY2024, as of August 2024, there is only one RTC (Shiloh Treatment Center) in network.

assigned Contracted Field Staff (CFS) oversees the program case manager's documentation in the UAC Portal, to ensure ORR policies and procedures are being followed while the child is in the OON placement. ORR provides another layer of direct oversight by assigning a dedicated Special Populations FFS, who visits the OON program monthly, attends weekly staffings, and reviews reports provided by the CFS on documentation found on the UAC Portal. The Special Populations FFS provides guidance to both the ORR in-network case manager and the OON program to ensure adherence to ORR policies and procedures.

With regard to compliance with the Settlement Agreement Transition Schedule, the relevant placement for determining which compliance date applies is the administrative placement. For example, ORR requires that the in-network RTC Shiloh Treatment Center's compliance include children physically placed at an Out of Network (OON) RTC if the child is administratively placed at Shiloh Treatment Center. As such, ORR is currently applying the consent process and other settlement terms to children physically located outside of Texas, but administratively placed in the state.

Onboarding Emergency or Influx Facilities (EIFs)

While ORR has worked to build up its standard bed capacity, sometimes additional capacity is needed to manage increases in referrals of unaccompanied alien children from DHS. To prepare for this potential need and provide services and care that align with child welfare best practices, HHS can open Emergency or Influx Facilities (EIFs), which include both an Emergency Intake Site (EIS) and an Influx Care Facility (ICF) and may accept children for placement in the event of an influx. Children placed in EIFs must receive the full range of services offered in ORR's standard network of care, including six hours of classroom education onsite every weekday. ORR is committed to ensuring EIFs meet or exceed state licensing standards. EIFs will follow the Settlement Agreement Transition Schedule, depending on which state they are located in. Of note, as of January 2025, there are no children placed at any EIF, as the standard bed capacity is sufficient to provide placement for the number of children currently in ORR care and custody.

Establishment of the CCU and Oversight by ORR's DHUAC

In the Summer of 2022, ORR partially established the CCU, which allowed ORR to test the feasibility of implementing the terms of the draft Settlement Agreement that was under negotiation at the time. Even as much of the Settlement Agreement was still under negotiation, the CCU (implemented through PCU) has performed some of the functions now formalized in the Settlement Agreement that was finally approved and went in effect on May 3, 2024. These functions performed by the CCU were primarily focused on providing concurrence (or non-concurrence) in situations where consent from an Authorized Consenter cannot be obtained, as is contemplated by Section VIII.B.1. of the Settlement Agreement.

Commencing in August 2024, when the Settlement Agreement required compliance from in-network RTCs, ORR directed PCU to ensure that the CCU fully implemented the requirements of the Settlement Agreement consistent with the Settlement timeline. In the upcoming months, ORR will assist the CCU in implementing its duties for providing consent when authorized consent cannot be obtained and override-related responsibilities set forth in the Settlement Agreement at Sections IV. and VIII.B. As the Settlement Agreement Transition Schedule requires compliance from more programs across the country, ORR will also assist the CCU in expanding their duties to accommodate ORR's network. ORR is prepared to respond proactively to any issues that arise. For example, as implementation occurs across the nation, there is a possibility that the CCU's process as laid out by

the Settlement Agreement may conflict with state licensing. In this situation, the Settlement Agreement instructs the CCU to notify ORR, who must inform the Monitor within 10 days and offer an alternative that enables ORR to substantially comply with the Settlement Agreement.

Oversight by ORR's DHUAC

DHUAC plays a pivotal role in ORR's successful implementation of the Settlement Agreement and its goals. Certain categories of cases are singled out for direct review (either immediate or retrospective) by DHUAC, per the Settlement Agreement ("red flag cases"). Cases that require immediate review are those where a UAC Consenter consents to antipsychotic medication or three or more psychotropic medications. Cases that require retrospective, secondary review include use of psychotropic medication for any child aged three years or younger; any case with simultaneous use of three or more psychotropic medications for 90 days or more or use of two or more antipsychotic medications for 60 days or more; any instance where CCU overrides a denial of consent by a Primary or Sponsor Consenter; use of psychotropic medication dosages in excess of the guidelines; and any other category DHUAC, in its discretion, chooses to include. In addition, DHUAC is tasked with conducting an annual case review of 30 files of children administered psychotropic medication, to ensure that children's medical records are diligently maintained.

ORR began to prepare DHUAC to undertake their central oversight role prior to the Effective Date of the Settlement Agreement by hiring additional staff needed to perform the oversight required, including successfully hiring a licensed child and adolescent psychiatrist, as required by Section IX.E. DHUAC is currently adjusting their oversight duties to comply with the requirements of the Settlement Agreement and is providing insightful guidance as the informed consent process is implemented by ORR care providers in accordance with the implementation schedule.

PCU Operations

PCU is an integral partner in UAC healthcare and provides the services of the CCU (through a contractor). DHUAC serves as the primary point of contact for PCU at ORR. The Division of UAC Policy and licensed psychiatrists from DHUAC meet biweekly with PCU to discuss implementation of the Settlement Agreement, including oversight of the CCU, and troubleshoot any issues that emerge and provide guidance and technical assistance. PCU provides ORR with a monthly report documenting every prescription for psychotropic medication for a child in ORR care and custody paid for by the underwriter. This report is cross-checked with information from the UAC Portal to create a definitive list of the number of unaccompanied alien children who have been prescribed and/or received psychotropic medication, as discussed below in Section VII.

VII. Plan for Monitoring and Reporting

Recordkeeping

Programs are required to document psychotropic medications in the UAC Portal. Entry of a psychotropic medication generates an auto-notification to DHUAC. This information is cross-checked with the list from PCU, thereby providing extra oversight and ensuring accuracy of reporting. Furthermore, programs are required to submit Child-Level Events (CLE)[10] within a specific timeframe

[10] Child-Level Event (CLE) are incidents, events, or observations that affect the health, safety, and well-being of individual children and include emergency incidents, significant incidents, behavioral notes, and historical

to inform ORR of incidents, events, or observations that affect the health, safety, and wellbeing of individual children. These CLE include emergency and non-emergency Significant Incident Reports (SIRs), behavioral notes, and historical disclosures.

SIRs that are sent for review by DHUAC include incidents when children are hospitalized, have a psychiatric hospital admission, demonstrate severe mental health symptoms without self-harm, or have suicidal ideation with a plan. These SIRs are routed to DHUAC through the ORR SIR Triage team. The SIR Triage Team receives and reviews CLEs and ensures that appropriate ORR staff are notified of relevant incidents so that all necessary follow-up, compliance, and oversight actions take place. While the SIR alerts are broader than the cases required to be reviewed by the Settlement Agreement, it allows ORR's Mental and Behavioral Health Services Team to have comprehensive visibility into the pattern and practice of prescribing psychotropic medication to children in care and to intervene on concerning cases before medication may be necessary.

However, there continue to be challenges in analyzing health data. First, these reporting systems are all dependent on the ORR program staff to enter the psychotropic medication correctly into the UAC Portal. In addition, the UAC Portal was not designed to collect health data at this quantity or of this quality. Notably, the UAC Portal cannot be updated easily, and most medical data are uploaded via PDF documents. As such, significant manpower is needed to manually search for data elements, including those related to mental and behavioral health.

ORR recognizes that accurate, timely information on psychotropic medication usage is of utmost importance to implementing the purpose and spirit of the Settlement Agreement. Recognizing that systemic improvements to data collection (such as the integration of an Electronic Medical Record system highlighted below) will require time to develop, the Division of UAC Policy has implemented an interim process for retrieving the information necessary to complete the reports required by the Settlement Agreement at Section VII.C. This interim process includes retrieving psychotropic medication-related payment information from ORR's medical administrator (PCU) and matching it with identifying information that is stored in ORR's online case management system such as the children's placement location, length of time in ORR custody, and diagnosis. PCU also provides reports on the Authorized Consenter information, including the type of consent (verbal and/or written), the date the consent was received, and the category of consenter (Primary, Sponsor or

disclosures. There are four (4) types of CLE: Emergency Significant Incident Report (SIR), Non-Emergency Significant Incident Report (SIR), Historical Disclosures, and Behavioral notes. Emergency SIRs are urgent incidents in which there is an immediate and severe threat to a child's safety and well-being that requires immediate action. It also includes unauthorized absences of unaccompanied alien children from an ORR care provider facility. Emergency SIRs must be reported to ORR within four (4) hours. Non-Emergency SIRs are non-emergency situations that may immediately affect the safety and well-being of a child. This type of SIR is required to be submitted to ORR within 24 hours. Historical Disclosures are incidents that have occurred prior to the child coming into ORR care that include past incidents of abuse, neglect, other harm, or threats of harm that may inform how an ORR care provider can best meet a child's needs, such as by providing relevant mental health support or other relevant services or resources. This type of CLE must be reported to ORR within 24 hours. Behavioral Notes are documentation of positive events or developments in a child's daily life while in ORR care. Behavioral notes can also include documentation of patterns of behavior that potentially merit intervention or support over time, such as developmentally appropriate horseplay or adolescent non-compliance with staff instructions. There is no required timeframe to submit these behavioral notes, and they are optional to use.

UAC). Through the combination of data from these sources, ORR currently tracks and can produce the information necessary to comply with the reporting requirements of the Settlement Agreement.

In addition, the Division of UAC Policy is collaborating with DHUAC to improve data reporting. As an initial step, the Division of UAC Policy sought approval for a form for the systemic collection of the information necessary to obtain informed consent and assent in accordance with the Paperwork Reduction Act (PRA). ORR provided opportunity for the Monitor and Plaintiffs' counsel to submit feedback on the forms. The PRA submission was published in the Federal Register (89 FR 59115) on July 22, 2024, has received public comments, to which ORR has responded, and received final OMB approval on January 13, 2025. The forms will be required to be used consistently to document consent from Authorized Consenters and/or assent, and programs will be required to upload them timely into the UAC Portal, as evidence of having followed ORR's policies and procedures. This will also allow DHUAC to create more detailed reports about compliance with the consent process, as reflected in the UAC Portal.

Finally, ORR is in the process of procuring an Electronic Medical Record (EMR) system, to be used by all ORR programs. By mandating one single EMR, managed by ORR, for all programs, ORR will improve accuracy of reporting. In addition, ORR would be able to customize the EMR fields to enable faster and more tailored reporting. The consent and assent forms could be integrated into the EMR interface to allow electronic completion and real-time reporting. ORR aims to have the new system rolled out across the network by the end of 2025. In this way, the development and use of an EMR will allow DHUAC to directly monitor health data, as well as authorized consenter information.

Reporting

The Settlement Agreement requires that ORR produce three reports on a specific schedule. The first report is the Quarterly Report, which ORR must provide to Plaintiffs' Counsel and the Monitor every quarter (or three months) from the effective date in accordance with Section VII.C.1. of the Settlement Agreement. The Quarterly Report must include the following information:

- Name of each child in ORR custody who has been prescribed or administered one or more psychotropic medication;
- The child's alien registration number (A#); and
- The child's placement location.

The Quarterly Report includes children placed at ORR care providers that are required to comply with the terms of the Settlement Agreement at the time each report is issued. In addition, it is expected that the Quarterly Report will also include children identified as having a disability upon reaching the deadline for the implementation of *Lucas R. Disability Settlement Agreement*, which is May 3, 2025 (one year from the Effective Date), which is discussed in brief below.

ORR submitted the first, second, and third Quarterly Reports to Plaintiffs' Counsel and the Monitor by the deadlines of August 2, 2024, November 4, 2024, and February 3, 2025.

The second type of required report is the Periodic Report, which ORR must provide to the Monitor semi-annually (or every six months) calculated from the Effective Date in accordance with Section VII.C.2. of the Settlement Agreement. The Periodic Report must include, at a minimum, the information listed in Exhibit A of the Settlement Agreement. ORR submitted the first Periodic Report to the Monitor by the deadline of November 3, 2024.

The third report is the Public Report, which ORR must publish on ORR's website at the same time that it provides its Periodic Reports to the Monitor in accordance with Section VII.C.3. of the Settlement Agreement (i.e., semi-annually, calculated from the Effective Date). The Periodic Report is a streamlined document that includes, at a minimum, aggregated information concerning:

- The number of unaccompanied alien children in ORR care and custody prescribed psychotropic medications;
- The number of unaccompanied alien children in ORR care and custody prescribed certain classes of psychotropic medications;
- The type of placements; and
- The number of times psychotropic medications were prescribed for an emergency to an unaccompanied alien child in ORR care and custody.

ORR's deadline for online publication of the first Public Report was November 3, 2024. The report was published online at the following link:

https://www.acf.hhs.gov/sites/default/files/documents/orr/Public-Report---Psychotropic-Medication-to-Children-in-ORR-Custody.pdf (See Appendix L).

Monitoring, Quality Assurance, and Continuous Quality Improvement

A comprehensive and reinforcing monitoring, quality assurance, and continuous quality improvement paradigm is critical to ensure that children in ORR care receive appropriate, high quality, and child-centered mental health care and that ORR is on track to meet the Settlement Agreement's delineated requirements. By regularly evaluating and refining procedures, ORR can identify and address any issues promptly, ensuring that psychotropic medications are used safely and in accordance with accepted medical practice. This commitment to ongoing improvement reflects dedication to the well-being and rights of the children in ORR custody, as envisioned by the Settlement Agreement.

ORR will put into place a tripartite approach to monitoring, quality assurance, and continuous quality improvement. Monitoring is primarily focused on tracking milestones (e.g., showing that an action took place, or a process was created); quality assurance measures how well the process is working (e.g., measuring how effective the process is at achieving the intended result); and continuous quality improvement, which ensures that there is a feedback loop to reinforce best practices and course correct as needed.

Monitoring

The primary divisions within UAC Bureau that have responsibility for monitoring compliance with the terms of the Settlement Agreement are the Division of UAC Policy (specifically, the Legal Affairs Team) and DHUAC. The Legal Affairs Team developed an internal tracking system to ensure ORR meets benchmarks identified in the Settlement Agreement (See Appendix M). Furthermore, the Legal Affairs Team drafted and submitted the Transition Plan, which specifies the timeline for how ORR will proceed with implementing the Settlement Agreement terms over time in different jurisdictions across the country (See Appendix N). The Legal Affairs Team has responsibility for tracking these deadlines, coordinating internally and with ORR programs, and reporting regularly to leadership and other affected UAC Bureau Divisions, to ensure that ORR is on track with meeting all agreed-upon milestones. In advance of any impending milestone, such as the recent February 3, 2025, expansion to all Texas programs, the Legal Affairs Team meets with all programs in the region. If the Legal Affairs Team identifies a potential slippage in

compliance, they notify the assigned FFS and DHUAC of noncompliance by the program, with a request that the program make corrections. If the noncompliance persists, then the Legal Affairs Team offers training and technical assistance for the program. The Legal Affairs Team also discusses the appropriateness of corrective actions with the FFS and project officer, if necessary. This process was developed by the Legal Affairs Team and has been successfully used to monitor previous legal settlement agreements.

In addition, as discussed earlier, the Settlement Agreement lays out a reporting schedule (periodic, quarterly, and public reports). The Legal Affairs Team has responsibility for working with DHUAC, PCU, and DAIM to track reporting deadlines, review draft reports and ensure their accuracy, and facilitate submission to ORR's Office of the General Counsel (OGC), who then submits to the Monitor and Department of Justice, who shares with Plaintiffs' counsel, and/or the public in a timely manner.

Quality Assurance

In order to review the efficacy of the policies, procedures, and systems put into place, ORR intends to start a regular comprehensive case review process ("comprehensive case review"), led by DHUAC, with a multidisciplinary review team made up of internal stakeholders such as Legal Affairs, Special Populations and/or Field Staff. This review process will encompass the explicit requirement for DHUAC's annual case review of 30 files of unaccompanied alien children administered psychotropic medications for purposes of evaluating whether ORR is ensuring that ORR care providers exercise reasonable and diligent efforts to compile and maintain children's medical records. In addition to case reviews, the multidisciplinary team will provide a comprehensive report on how the cases sampled reflect not only medical record-keeping but also compliance with the entire Settlement Agreement and ORR policy. The case reviews will assess the consent process, ensuring that the Authorized Consenter was identified correctly, that the consents (both verbal and written) were obtained in a timely manner, that the medication prescribed was in alignment with the child's diagnosis and within the guidelines and accepted medical practice, and other requirements of the tool jointly developed by DHUAC and the Monitor, as discussed below in the Continuous Quality Improvement section. This comprehensive case review process will occur annually, starting in 2026. The multidisciplinary case review team will report their findings and compliance rate to ORR leadership and other stakeholders annually.

In addition, DHUAC maintains a broad vision of the health of the children in custody through tracking comprehensive data. Construction of dashboards to monitor this data allows for proactive identification of trends on multiple issues to include: the number of children prescribed psychotropic medications, the number of children placed in RTCs, and the number and types of Child-Level Events. Monitored criteria can be modified to ensure critical elements of care are captured.

Clinical Reviews

In addition to the multidisciplinary case reviews, discussed above, DHUAC will provide individual clinical reviews of the specific categories of cases identified by the Settlement Agreement for immediate or retrospective review ("red flag cases"). DHUAC will document this information by using the *Lucas R Psychotropic Medication* Monitoring Tool, which is in process of being jointly developed by DHUAC and the Court-Appointed Monitoring team. Documentation of the required reviews are provided to the Monitor, as required by the Settlement Agreement.

In addition to the reviews required by the Settlement Agreement, DHUAC's MBHST also reviews all UAC Portal auto-notifications of a psychotropic medication administered to an unaccompanied alien

child. The MBHST more closely examines the cases of children who were prescribed a mood stabilizer, an antipsychotic, and/or a medication that does not align appropriately with the diagnosis. As needed, these cases will be followed on a high-risk list and MBHST will reach out to the program to offer assistance and get periodic updates.

Continuous Quality Improvement

Continuous Quality Improvement (CQI) is a systematic, data-driven approach to enhancing the quality of services and processes over time by identifying strengths and successes, pinpointing areas for improvement, implementing changes, and measuring their impact. It is an iterative process, where feedback and data are continuously used to refine and optimize processes. ORR developed a specialized CQI team in 2022, who support ORR UACB Divisions in integrating the practice into their work. The CQI team has developed a UACB CQI Blueprint, which provides a framework for integrating quality improvement across and within all UACB activities with the aim of improving performance agency wide. The Blueprint is designed to support the agency in systematically improving processes, enhancing performance, and achieving measurable outcomes.

The CQI team will be part of the comprehensive case review team (see above, discussing Quality Assurance), led by DHUAC, and in collaboration with the Legal Affairs Team, to develop case sampling procedures and the case review process. This team will analyze the compliance rates as documented by the case review process to identify items that are consistently or substantially below established targets as well as items that are consistently at or above established targets. To support systematic improvement, the CQI team will support DHUAC in root cause analyses of both areas of deficiency and success to identify the components that facilitate consistent compliance and develop appropriate interventions to ensure integration of best practices (for example, targeted trainings, changes in policy or procedures, technological updates, etc.). CQI will start working with case review team in 2025, to be prepared to conduct the annual case review in early 2026.

The comprehensive case review team will regularly develop reports on compliance rates based on the case sampling, root cause analysis findings, and status of interventions for ORR. Reports will also examine alignment of current compliance rates and interventions with the agreement benchmarks and milestones. Through these actions, the CQI process will ensure that adherence to the Settlement Agreement terms results in the intended or desired outcomes -- e.g., administration of psychotropic medications to children in accordance with accepted medical practice to promote children's safety and well-being.

Benchmarks & Deliverables

The Settlement Agreement sets forth several benchmarks that ORR must timely achieve. As these benchmarks cover a six-year span (unless ORR can demonstrate substantial compliance for an early exit), ORR developed a tracking system to assist in keeping on track with the schedule. A copy of this schedule is provided below (See Appendix C). These milestones are monitored by the Legal Affairs Team.

VIII. Intersection with Disability Settlement

In addition to the Settlement Agreement that resolved the Psychotropic Medications class claim, ORR reached another Settlement Agreement in the *Lucas R* litigation concerning the Disability class claim, hereinafter the "Disability Settlement." The Disability Settlement was likewise approved by the Court on May 3, 2024 and pertains to the certified class of children in ORR custody who have or will have a

behavioral, mental health, intellectual, and/or developmental disability as defined in 29 U.S.C. section 705, and who are or will be placed in a secure facility, medium-secure[11] facility, or RTC solely by reason of such disabilities (i.e., the disability class). The implementation date for the Disability Settlement is one year from the Effective Date or May 3, 2025. As of July 17, 2024, ORR implemented the requirements of the Disability Settlement in its policies, see for example ORR UACB Policy Guide Section 3.8;[12] among others, and as noted, many of the key principles were also codified in the Foundational Rule, which became effective July 1, 2024. See, *e.g.,* 45 CFR 410.1311.

Although the two settlements are separate and have distinct timelines and requirements, ORR recognizes that there is considerable overlap in the psychotropic medication and disability classes – i.e., some unaccompanied alien children in ORR custody who take psychotropic medications have one/more disabilities or are suspected of having a disability, and some children with one or more disabilities are taking psychotropic medication(s). But not all children in ORR custody with one/more disabilities necessarily take psychotropic medication(s), and not all children who take psychotropic medication(s), have one/more disabilities, or are suspected of having a disability.

The Disability Settlement Agreement requires that ORR identify children with disabilities. And, for a child in ORR custody with one or more disabilities, ORR must consult with individuals with relevant expertise and assess the child's potential need for reasonable accommodations, modifications, services, and/or supports to meet their disability-related needs, to ensure that they can participate in the UAC Bureau in the most integrated setting appropriate to their needs (unless ORR can demonstrate and document that this would fundamentally alter the nature of its UAC Bureau), and to ensure to the best extent practicable that there is not any unnecessary delay in releasing the child to a sponsor due to their disability. If needed, ORR will develop and implement an individualized Section 504 Service Plan for the child, although the development of such a plan will not delay a child's release to a suitable sponsor. Further, pursuant to the Disability Settlement, and as already required under ORR's policies at UAC Bureau Policy Guide sections 3.8.2 and 3.8.3, such plan, as well as the evaluation or assessment used to identify a disability, must be documented in the child's case file. The Disability Settlement also requires ORR to gather and maintain data regarding the care of children with disabilities in its custody.

Per the Disability Settlement, DHUAC is responsible for developing written guidance on the selection of qualified evaluators, the inclusion of necessary assessments, the process for advising a child about the purpose and scope of the evaluation, and the sharing of relevant records in ORR's possession with the evaluator(s). The Disability Settlement describes when evaluations (including psychiatric ones) are required or may be requested. Any one or more of several enumerated events will trigger an evaluation for disability to determine whether a child has a physical or mental impairment that substantially limits one or more of the child's major life activities. These include: (1) if a child is psychiatrically hospitalized or evaluated for hospitalization (if an evaluation has not already been completed); (2) if a child is considered for step-up to an RTC or secure facility based on danger to self or danger to others (unless an evaluation has already been completed); or (3) at the request of the child after being informed of the purpose, scope,

[11] In its regulations and policies, ORR refers to medium security facilities as "heightened supervision" facilities. See 89 FR 34384, 34424 (explaining that in the Foundational Rule ORR uses the term "heightened supervision facility" in place of the term "medium secure" facility, provided in the *Flores* Settlement Agreement, and in place of the term "staff secure facility" used by ORR at 45 CFR part 411 and in its sub-regulatory guidance).

[12] As noted in the UAC Bureau Policy Guide, ORR is implementing these policies while it undergoes a comprehensive needs assessment, which is discussed in the Disability Settlement. Modifications to the policy will occur throughout the assessment period with the expectation that this section will be fully implemented by October 3, 2025.

and nature of the evaluation, including a request made through counsel of record, a child advocate, or a parent/legal guardian. Further, when a child has been identified as having a disability and/or evaluated for a potential disability (pursuant to Section II of the Disability Settlement), the child will not be re-evaluated for the same presenting symptoms except upon the recommendation of a medical or mental health professional.

Additionally, the Disability Settlement requires that ORR, working with internal and/or external experts, conduct a comprehensive disability needs assessment and develop a disability plan. ORR signed a contract with outside expert KVC Health Systems (KVC) on September 27, 2024, to work closely with ORR on these deliverables. The Monitor agreed to a 5-month extension and the current due date is October 3, 2025, giving KVC one year to conduct the needs assessment and to work with ORR in developing a disability plan. The needs assessment which is underway will evaluate the adequacy of services, supports, and resources currently in place for children in ORR's custody across its network, including ORR's capacity to serve children with disabilities in the most integrated setting appropriate for their needs without fundamentally altering the UAC Bureau; and gaps in the current system, including but not limited to, gaps related to identification, services and supports (including both facility-based and community-based services), placement array (including, but not limited to, the availability of therapeutic foster care and shelter placements for children with higher-level needs and children ready to step down), and connections to available post-release services. ORR's disability plan will address any identified gaps and will include a concrete timeline.

The Disability Settlement also establishes requirements regarding the placement of children in ORR's care, as well as for their release to sponsors. With respect to placement in a restrictive setting, the Disability Settlement requires documentation of the reasons why the child's needs cannot be met in a more integrated and less restrictive setting with additional services, supports, and/or accommodations. Further, ORR must assess placements in restrictive settings every 30 days; provide the child, their advocate, and attorney of record access to relevant documentation; and make and document efforts to place each child with an identified disability in a placement that can provide access to services and supports identified in the child's Section 504 Service Plan. With respect to release of children with disabilities to sponsors, among other things, the Disability Settlement requires that ORR support sponsors in accessing and coordinating post-release community-based services and supports, to the extent they are available. Further, the Disability Settlement requires ORR's evaluation of a potential sponsor of a child with an identified disability to explicitly include consideration of the potential benefits to the child of release to a community-based setting, including consideration of the impact of the child's disability, as well as the availability of post-release services to meet the child's needs. However, the release of a child with a disability to a suitable sponsor will not be delayed because post-release services are not in place unless the child's individualized needs require it.

Finally, DHUAC's case review process as described above related to the Psychotropic Medication Settlement Agreement also will incorporate information about children with disabilities given the overlap in these two classes. Although the two settlements are distinct, the implementation of the requirements of the Psychotropic Medication Settlement Agreement is iterative and will continue to evolve when the Disability Settlement is implemented given the overlap in the certified classes and may be informed by the anticipated disability needs assessment and disability plan.