

Monitoring and Compliance for ORR Care Provider Facilities

**OMB Information Collection Request
0970 - 0564**

Attachment A - Summary of Public Comments and ORR Responses

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Submitted By:
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Administration for Children and Families
U.S. Department of Health and Human Services

ORR expresses its appreciation to the public for the thoughtful and detailed comments in response to this information collection request. In addition to comments specific to the information collection, many of the comments received relate to underlying policy and are outside the scope of the purpose for which comments on the information collection were solicited. As specified in 5 C.F.R. s. 1320.8(d), these purposes are: whether the form and the information it collects are necessary for what the agency is trying to accomplish through the form and whether the information collected will have practical utility; to evaluate the paperwork burden of filling out the form and whether the agency's estimate of the burden was correct; the usefulness of the information being collected on the form; and, minimizing the form completion burden. Although many of the comments summarized below are outside of the scope for this specific information collection, ORR extends its thanks to the public and will consider these comments in our future work.

In addition, ORR notes that the below responses reference ORR's new case management system, UC Path. Three of the instruments in this collection (Forms M-3B, M-14, and M-15) will be incorporated into UC Path, while the remaining instruments will be available in either PDF, Word, or Excel format.

UC Path is critical to program operations, and it is important that rollout of the new system not be delayed. Therefore, revisions based on public comments that are within the scope of the purpose for which comments on the information collection were solicited will be made after initial launch of the UC Path case management system. ORR plans to conduct a deliberative review of commenters' suggestions and concerns and submit a request for revisions to this information collection request in January 2022. The upcoming information collection request will also include revisions based on feedback from UC Path system users (i.e., ORR grantee, contractor, and federal staff).

General Comments on Proposed Information Collection

1. One commenter called on ORR to extend the public comment period for an additional 60 days. The commenter stated that there is confusion around the applicability of the "Regulatory Freeze Pending Review" Memorandum of White House Chief of Staff Ron Klain from January 20, 2021, as well as capacity constraints related to the transition between presidential administrations and the ongoing COVID-19 pandemic. The commenter also asked for clearer and more concise guidance on the purpose of the proposed changes as well as information on the interaction of the proposed changes with concurrent proposed information collections.

ORR Response: While ORR recognizes the capacity constraints related to the COVID-19 pandemic identified by the commenter, the request for public comment on this proposed information collection remains time-sensitive due to ORR's need to collect this information in order to fulfill its statutory obligations.

2. One commenter stated that the proposed forms lack clarity about language access. The commenter referred to the prohibition on national origin discrimination under Title VI of the 1964 Civil Rights Act and Executive Order 13166's mandate that federal agencies provide adequate language access to individuals with limited English proficiency. The commenter

expressed concern and stated that the proposed forms fail to ensure adequate language access in two ways. First, although Forms M-3B, M-8A, M-8B, M-8D, M-9A and M-9B require that the information be provided to the child in a language the child understands, the commenter stated that without professional, standardized translations or audio interpretation of forms, ORR cannot ensure that form users will adequately comply with this requirement and risks that children will receive incomplete, inaccurate and unreliable information. Second, the commenter stated that many forms, including Form M-8D, couch language access as a “best practice” rather than an obligation. The commenter recommended that ORR (1) use scientifically-validated questions and inquiries to determine a child’s best language; (2) produce form translations in languages commonly spoken by UC that incorporate plain language and low-literacy writing techniques; (3) create audio/video versions of all materials for children whose languages are not written and those with diverse reading abilities; and (4) create form fields identifying children’s best language and track phone interpreter use to facilitate internal accountability.

ORR Response: ORR clarifies that none of the forms referenced by the commenter are provided to the UC. Form M-3B contains interview questions that are read to the UC in their preferred language, either by an ORR staff member or using a translation service. With respect to Forms M-8A, M-8B, M-8D, M-9A, and M-9B, these are forms that are completed by ORR monitors during site visits to care provider programs. For more information on ORR monitoring, please see [ORR Policy Guide Section 5.5](#). Subsequently, these forms do not need to be translated into a language the child understands.

3. One commenter stated that many questions on the proposed forms appear to lack a consistent, forensic approach to the elicitation of information about abuse and harm. The commenter stated that Forms M-11C through M-11E suffer from this deficit and provided an example from Form M-11E, where case managers are prompted to report concerns about UC treatment or particular staff members through questions phrased in a yes/no format. The commenter recommended that ORR revise the forms to provide further information to interviewees about the purpose and nature of the interviews, as well as a list of questions to use to further elicit feedback and information.

ORR Response: As stated in [ORR Policy Guide, Section 5.5](#), ORR’s overall goal is always to ensure the care and safety of UC in its custody. Moreover, pursuant to ORR’s Interim Final Rule on the Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, 45 C.F.R. Part 411 and [ORR Policy Guide, Section 4.2](#), ORR has a zero-tolerance policy for all forms of sexual abuse, sexual harassment, and inappropriate sexual behavior at all care provider facilities. ORR monitors are trained to explain the purpose of the interview and ask follow-up questions when interviewing care provider staff, and the referenced forms provide ample room for monitors to document staff responses to those follow-up questions.

4. The commenter stated that some of these forms will often elicit information from children about past trauma. The commenter, an ORR-funded Legal Service Provider, cited its experience with the effects of trauma on UC, including physical and mental manifestations that negatively impact a child’s welfare. The commenter recommended that all questions posed to children be conducted in a trauma-informed manner, with each proposed form soliciting information from UC regarding incidents or past experiences including specific instructions or reference to ORR’s established guidance on using trauma-informed approaches to solicit information from children.

ORR Response: [ORR Policy Guide Section 3.2](#) requires that care provider staff be trained in techniques for child-friendly and trauma-informed interviewing, assessment, observation and other techniques. ORR monitors also follow these best practices when conducting child interviews. The only instruments through which questions will be posed to UC in this information collection activity are the Child Questionnaires, Forms M-12A to M-12D.

Form M-4A - Checklist for a Child Friendly Environment

1. The commenter stated that they are concerned that care provider open spaces, or offices with mirrored windows or screens, do not provide sufficient privacy for children when they meet with their legal service providers, attorneys, or visitors. The commenter also stated that privacy is lacking for a child's telephone conversations with attorneys and legal services providers, and that the term "some level of privacy" was vague and insufficient for calls involving legal conversations. They recommended that ORR provide access to confidential phones and spaces that preserve privacy.

ORR Response: This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR refers readers to [ORR Policy Guide Section 3.3.10](#), which states that children must be provided the opportunity to make a minimum of two calls per week to family members or sponsors in a private setting. Additionally, ORR refers commenters to [Section 3.3.4](#) which discusses mirrored windows, and [Section 4.4.1](#), which explains ORR's line-of-sight supervision requirements for the safety of children in care.

Forms M-5A (UAC Incident review) and M-5B (Adult Incident Review)

1. One commenter was concerned about rapid reporting to relevant parties and requested clarification on Forms M-5A (UAC Incident Review) and M-5B (Adult Incident Review) as to which agency must be notified when there are incidents related to sexual abuse and sexual harassment.

ORR Response: This comment relates not to the information collection itself, but to the underlying policy. Nevertheless, ORR refers the commenters to ORR Policy Guide in [Section 4.10.2](#), which explains ORR's reporting procedures for incidents of sexual abuse and sexual harassment, and [Section 4.11](#), which explains ORR's policies and procedures concerning care provider incident reviews of sexual abuse or sexual harassment, for which these forms are filled out and submitted to ORR.

Forms M-8A (UAC Case File Checklist), M-8B (LTFC Case File Checklist) and M-9D (Secure and Staff Secure Addendum to Checklist)

1. The commenter requested clarification on whether Forms M-8A (UAC Case File Checklist), M-8B (LTFC Case File Checklist) and M-9D (Secure and Staff Secure Addendum to Checklist) are available to children in the language they speak and understand best.

ORR Response: These are internal forms used by ORR monitors to ensure that care providers are compliant with ORR policies on case file maintenance. As these forms are instruments used only for case file monitoring and do not involve requesting information directly from the UC, they do not need to be available in the subject child's language.

Form M-11I (Medical Coordinator Questionnaire)

1. One commenter recommended the addition of a question about the steps medical coordinators and staff should take to obtain consent from children who are being asked to take medications, including the information provided to the child, whether the information was given in the child's best language, and what the child understands about the medication's purpose and length of the prescription.

ORR Response: ORR will take the commenter's recommendation under consideration.