

EXECUTIVE ORDER NO.

2021-19

WHEREAS, the United States Department of Health and Human Services' Administration for Children and Families ("ACF") recently submitted an inquiry or request to the South Carolina Department of Social Services ("DSS") regarding potential support resources available in the State of South Carolina for utilization in connection with the placement of unaccompanied migrant children entering the United States via the southern border; and

WHEREAS, following the aforementioned inquiry, DSS identified several potential problematic impacts associated with such a scenario, which involve varied avenues and degrees of risk exposure to the State of South Carolina, to include the fact that any relatively large cohort of children suddenly occupying foster care placements otherwise available to children who enter the care of the State would necessarily strain South Carolina's current capacity for timely and stable placements and other services and supports; and

WHEREAS, in light of the above-referenced and other concerns and the State of South Carolina's efforts over the last two years to build and expand capacity for timely and stable placements for children in foster care and other services and supports, as well as the requirements imposed by the United States District Court for the District of South Carolina since 2015 in connection with the *Michelle H. v. Haley* class action litigation and settlement agreement, C/A No. 2:15-cv-00134-RMG (D.S.C.), the undersigned has determined that accepting placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina would unduly limit the availability of placements for children in South Carolina and would present a threat of harm to the children in such facilities and would constitute a failure of any such facility to keep the facility safe to care for children as contemplated by section 114-590(F)(4)(a) and (b) of the South Carolina Code of Regulations, as amended; and

WHEREAS, in addition to the foregoing, under the circumstances of the public health emergency related to the 2019 Novel Coronavirus ("COVID-19") and given the ongoing and evolving public health threats associated with the potential emergence and introduction of additional COVID-19 variants in this State originating from different geographic areas—as well as the migrant crisis occurring at the southern border of the United States and the questionable

testing processes, quarantine procedures, and congregate facilities apparently being utilized by the federal government in connection with the same—the undersigned has determined that accepting placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina would present a threat of harm to the children in such facilities and would constitute a failure of any such facility to keep the facility safe to care for children as contemplated by section 114-590(F)(4)(a) and (b) of the South Carolina Code of Regulations; and

WHEREAS, in accordance with section 43-1-80 of the South Carolina Code of Laws, as amended, DSS is charged with supervising and administering certain “public welfare activities and functions of the State” and “child protective services,” and in furtherance of the foregoing responsibilities, “may adopt all necessary rules and regulations and formulate policies and methods of administration, when not otherwise fixed by law, to carry out effectively the activities and responsibilities delegated to it”; and

WHEREAS, consistent with the foregoing mission, and in accordance with section 114-590(F)(4)(a) and (b) of the South Carolina Code of Regulations, DSS may refuse to issue or revoke a license for a residential group care organization and facility for children if the licensee, *inter alia*, “[f]ails to . . . keep safe and sanitary the facility to care for children,” and DSS is further “empowered to seek an injunction against the continuing operation of a facility” if DSS “determines threat of harm to children in the facility”; *see* S.C. Code Ann. § 63-7-1210(C); S.C. Code Ann. § 63-11-50; and

WHEREAS, although section 63-11-40 of the South Carolina Code of Laws, as amended, authorizes DSS “to develop a network of homes and facilities to use for temporary crisis placements for children,” such placements may not occur “unless it is agreed to by the child’s parent, guardian, or custodian and [DSS]” and “may last no longer than seventy-two hours,” which demonstrates that such temporary crisis placements are not suited for use in connection with the federal government’s potential placement of unaccompanied migrant children in the State for an unspecified or unlimited length of time; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that it is necessary and appropriate to take proactive action to address and mitigate the identified risks and threats associated with the federal government’s potential placement of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Prioritizing and Protecting South Carolina’s Children

A. Pursuant to the cited authorities and other applicable law, I hereby direct DSS to take any and all necessary and appropriate action, in accordance with DSS’s existing statutory and

April 12, 2021

regulatory authority, and to the maximum extent permitted by applicable state and federal laws, regulations, and Orders, to prevent placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina, including the initiation of corrective action plans and further enforcement action, as needed, such as the revocation of a current license, the refusal to issue a license, or the pursuit of an injunction against the continued operation of any licensee providing residential care for children that accepts the placement of an unaccompanied migrant child at the request of ACF. In furtherance of the foregoing, as well as the undersigned's responsibility to provide for and protect the health, safety, security, and welfare of the people of South Carolina, I hereby direct DSS to continue utilizing DSS's existing resources to protect and prioritize the needs of children in the State of South Carolina as provided by law.

B. I hereby expressly rely upon and incorporate by reference the recitals and other specific factual findings, legal authorities, determinations, and conclusions contained in previous Orders, to include Executive Order Nos. 2021-12 and 2021-18.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 12th DAY OF
APRIL, 2021.**

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State