

October 29, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Alex M. Azar, II
Secretary
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Ms. Debbie Seguin
Assistant Director
Office of Policy
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

Re: DHS Docket No. ICEB-2018-0002; Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children

Dear Secretary Nielsen, Secretary Azar, and Assistant Director Seguin:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to provide comments to the U.S. Department of Homeland Security (DHS) and the U.S. Department of Health and Human Services (HHS) on the Notice of Proposed Rulemaking (Proposed Rule or Proposal) on “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” published in the *Federal Register* on September 7, 2018 (83 Fed. Reg. 45486). We are deeply concerned about this Proposal’s potential negative impact on immigrant children and their parents/caregivers and urge that the proposed rule be withdrawn.

Alternative Federal Licensing of Family Residential Centers

In the Proposed Rule, DHS proposes to create a federal licensing scheme for family residential centers (FRCs) and eliminate the state licensing requirement for FRCs. On its face, this provision of the Proposed Rule seems innocuous, but the effect of this provision would essentially allow U.S. Immigration and Customs Enforcement (ICE) to use certain federal facilities to detain family units together during their immigration proceedings.

Families seeking refuge in the U.S. already endure emotional and physical stress during the often long and dangerous journey to the U.S. This stress, and its impact on the health and well-being of children and their parents or caregivers, would be exacerbated if family units are detained during the pendency of their immigration proceedings. Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression, and post-

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traumatic stress disorder.¹ As a result, the AMA opposes the expansion of family immigration detention. Instead, we urge the Administration to give priority to supporting families and protecting the health and well-being of the children within those families. Prolonged detention of migrant children and their parents is not a solution to the earlier immigration issue created by the Administration's zero-tolerance policy which led to the forced separation of thousands of children from their parents and caregivers at the U.S. border.

The Flores Settlement Agreement (FSA), a decades-old court settlement put in place to ensure the safety and proper care of children in immigration detention, set strict national standards for the detention, treatment, and release of all minors (both accompanied and unaccompanied minors) in immigration custody.² The FSA generally requires that children be held in the least restrictive setting appropriate for a child's needs and that they be released without unnecessary delay to a parent, designate of the parent, or responsible adult as deemed appropriate.³ The Proposed Rule seeks to dismantle the FSA by allowing minors with their parents to be detained in DHS licensed family detention facilities for the entirety of their immigration proceedings. This is troubling because the proposal could result in longer detention for minors, beyond the 20-day timeframe outlined in the FSA. Further, the proposal seeks to expand family detention facilities, and as discussed in detail below, current DHS family detention facilities do not adhere to the strict guidelines that the FSA requires, and the Proposed Rule does nothing to further adherence.

DHS acknowledges in the Preamble that the Proposed Rule may result in additional or longer detention for certain minors, but DHS is unsure how many individuals may be detained at FRCs if the Proposed Rule is implemented. We understand that there are numerous variables to consider, but given the focus by the Administration on border security, we believe a substantial number of migrating minor children may be impacted by the Proposed Rule. According to DHS, in fiscal year (FY) 2013, U.S. Customs and Border Protection (CBP) apprehended 14,855 family units at the southwest border of the U.S.; however, in FY 2018 the number had increased to 77,802.^{4,5} As a result, the AMA believes that, as presently drafted, the proposed change in immigration policy would have a negative impact on the health and well-being of a significant number of migrating children and their families.

Under the FSA, the federal government is required to place the migrating child in a "licensed program." Generally, a "licensed program" is defined as one "licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children," which must be "non-secure as required under state law" and meet the standards set forth in an exhibit attached to the FSA. In the Proposed Rule, the federal government contends that state licensing requirements have limited its ability to "effectively use family detention" because "many states have not succeeded in putting in place licensing schemes governing facilities that hold family units together." As a result, the Proposed Rule essentially would allow the federal government to transfer family units to facilities that are not "state licensed," as is currently required, in an effort to enable family detention during the pendency of immigration proceedings. Neither federal law nor the Immigration and Nationality Act provide a comprehensive

¹ <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

² *Flores v. Lynch*, 828 F. 3d 898, 905-08 (9th Cir. 2016)

³ *Flores v. Reno*, CV 85-4544-RJK(Px)

⁴ 83 Fed. Reg. 45493, Table 1—Family Unit Apprehensions at the Southwest Border by Fiscal Year.

⁵ FY18 data does not include August and September 2018.

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framework for detaining alien families during their immigration proceedings. However, as discussed in greater detail below, thus far, DHS detention practices have resulted in substandard health care for children and adults. Furthermore, the minimal standards for the family detention facilities as detailed in the Proposed Rule are not identical to the minimal standards outlined in the FSA. It is our belief that the Proposed Rule does not fully implement the FSA as the federal government argues. Instead, the Proposed Rule seeks to terminate the FSA, along with its state licensing standards, and instead offers migrant children and their parents little in the way of strict standards and protections from negative physical and emotional treatment in these detention facilities.

Health and Safety Concerns

The Preamble states that the Proposed Rule seeks to ensure “all juveniles in the [federal] government’s custody are treated with dignity, respect, and special concern for their particular vulnerability as minors.” While this goal is laudable, it is not consistent with the recent practice at DHS facilities, as determined by the DHS Office of Inspector General (OIG). In a June 26, 2018, report, DHS OIG finalized its investigation of how and to what extent ICE examines detention conditions in more than 200 detention facilities. DHS OIG found that ICE was repeatedly granting waivers which allowed detention facilities to exempt themselves from standards that ICE deemed critically important, including those related to health, safety, and security.⁶ Furthermore, the DHS OIG Report found that neither the inspections of the detention facilities conducted by the ICE Office of Detention Oversight or the private company ICE contracts with or the onsite monitoring program ICE uses 1) ensures consistent compliance with detention standards; and 2) promotes comprehensive deficiency corrections.

In a DHS OIG Report dated December 11, 2017, the DHS OIG found that medical care was delayed or not documented in ICE detention facilities, and detainee bathrooms were in poor condition and lacked basic hygiene supplies such as toilet paper, shampoo, and soap.⁷ While we understand that these DHS OIG Reports are in reference to ICE adult detention facilities, the AMA remains deeply concerned that there is a pattern within DHS of providing substandard health care in poor living conditions to both adults and minors in immigration detention facilities. There is further evidence of this in a letter sent to Congress by two physicians within DHS’ Office of Civil Rights and Civil Liberties. The physicians describe medical neglect and child endangerment in family detention facilities.⁸ We remain unconvinced that the proposed federal licensing scheme for FRCs will provide an appropriate level of protection and oversight for the health and safety of these very vulnerable migrating children and their parents or caregivers.

Definition of Family Unit

Under current statute, minor aliens for whom bond has been posted, parole authorized, or ordered released on recognizance, must be released, in order of preference, to a parent, legal guardian, or adult relative if available. An adult relative is currently defined as a brother, sister, aunt, uncle, or grandparent who is not presently in DHS detention. The Proposed Rule seeks to remove the words “brother,” “sister,” “aunt,” “uncle,” or “grandparent,” in 8 CFR §212.5 *Parole of aliens into the United States* and 8 CFR 236.3

⁶ <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

⁷ <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>

⁸ <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>

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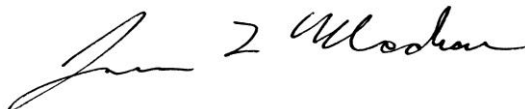
Detention and Release of Juveniles, and replace these words with “parent or legal guardian.” The AMA understands the need for the Administration to ensure terminology used is consistent as it seeks to codify provisions of the FSA; however, the AMA seeks additional clarification from DHS in reference to this proposal. Sometimes the caregiver crossing the border with a migrating child is not the child’s parent or legal guardian, but remains the only family member the child has to provide comfort, safety, and stability. The Proposed Rule seems to treat the migrating child traveling with an adult sibling, aunt/uncle, or grandparent as an unaccompanied minor. If this provision is made final it will further exacerbate the Administration’s original problem of separating children from their caregivers.

Conclusion

Families seeking refuge in the U.S. already endure emotional and physical stress, which is only exacerbated when they are separated from one another or held in family detention facilities during the pendency of their immigration proceedings. It is well known that childhood trauma and adverse childhood experiences created by inhumane treatment often create negative health impacts that can last an individual’s entire lifespan. As detailed above, there is more than enough evidence to demonstrate that DHS family detention practices result in unacceptable treatment of children and do not comport with the strict guidelines that the FSA requires. Given our concerns, we urge DHS to withdraw this Proposed Rule and instead give priority to supporting families and protecting the health and well-being of the children within those families.

If you have any questions regarding this letter, please contact Margaret Garikes, Vice President of Federal Affairs, at margaret.garikes@ama-assn.org or 202-789-7409.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD

cc: Division of Policy, Office of the Director, Office of Refugee Resettlement, U.S. Department of Health & Human Services