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March 10, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Confidential Medical and Psychological Records of Undocumented Minors

Dear Secretary Azar:

On behalf of our physician and medical student members, the American Medical Association (AMA) is writing to urge the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS) to protect the confidentiality of medical and psychological records as well as any social work case files of undocumented minors with the U.S. Department of Justice and the U.S. Department of Homeland Security (DHS) in immigration court cases and in making legal residency determinations, including for undocumented minors seeking asylum. As the largest professional association for physicians and the umbrella organization for state and national medical specialty societies, the AMA has been, and continues to be, deeply committed to ensuring the health and safety of all individuals regardless of immigration status.

Unaccompanied minors seeking refuge in the U.S. often have already experienced multiple stressful events due to problems in their home countries, which is only compounded by the emotional and physical stress they endure during their harrowing journeys to the U.S. The 1997 settlement agreement in *Flores v. Reno* put in place strict national standards for the detention, treatment, and release of all minors in immigration custody to ensure their safety and proper care. Children within ORR custody are given access to mental health care in order to assist them in dealing with the significant emotional and psychological trauma they have experienced.

It has been reported that these children participate in counseling sessions at ORR-funded facilities with the understanding that what they share will be kept confidential and not used against them in future asylum or immigration court proceedings. However, their confidentiality is not being maintained. The AMA strongly condemns the use of medical and psychological records and social work case files that are understood to be confidential as evidence in immigration courts without patient or parental consent. This is especially true of unaccompanied, undocumented minors who have no parent or guardian that is truly looking out for their interest. The ORR, which nominally serves as a guardian for immigrant children but primarily serves the government's interest, is no substitute for a parent or guardian when immigration court decisions potentially have life-or-death consequences. The AMA's approach to privacy is governed by our Code of Medical Ethics and long-standing policies adopted by our policymaking body, the House of Delegates, which support strong protections for patient privacy and, in general, require clinicians to keep patient medical records strictly confidential. AMA policy and ethical opinions on patient privacy and confidentiality provide that a patient's privacy should be honored unless waived by the patient in a

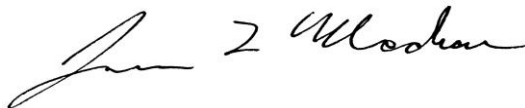
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meaningful way, de-identified, or in rare instances when strong countervailing interests in public health or safety justify invasions of patient privacy or breaches of confidentiality. When breaches of confidentiality are compelled by concerns for public health and safety, those breaches must be as narrow in scope and content as possible, must contain the least identifiable and sensitive information possible, and must be disclosed to the fewest entities and individuals as possible to achieve the necessary end. These conditions have not been met; ORR has failed to provide any justification for the disclosure of the deeply sensitive and personal information these minor children share with their counselors. The agency's practice violates basic tenets of medicine and further harms already-traumatized children.

The decision to share confidential medical and psychological records is inconsistent with federal law and fundamental medical ethics when it comes to the treatment of unaccompanied immigrant minors. The AMA urges HHS to live up to its ethical and moral obligation concerning the treatment of immigrant minors and specifically to cease sharing confidential medical and psychological information that was disclosed to medical professionals in confidence.

Should you have any questions, please contact Jason Scull, Assistant Director, Federal Affairs, at jason.scull@ama-assn.org or 202-789-4580.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James L. Madara, MD