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**RE: DHS Docket No. ICEB-2018-0002 – Comments in Response to Proposed Rulemaking:  
Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied  
Alien Children**

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Dear Ms. Seguin,

On behalf of the American Psychiatric Association (APA), the national medical specialty society representing more than 37,800 psychiatric physicians nationwide, we are writing in response to the Department of Homeland Security's (DHS) proposed rule, *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, as published in the Federal Register on September 7, 2018. We appreciate the opportunity to provide feedback on this important proposal and write with concern about the proposed changes to the regulations established by the Flores Settlement Agreement (FSA). We focus our comments on the negative impacts this policy change would have on children and their families' mental health.

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*Unlimited Detention Will Lead to Long-Lasting Trauma*

The FSA was originally adopted to protect the well-being of children who are detained by immigration authorities, and, as interpreted by the Courts, limits the amount of time children should be detained to 20 days. The proposed rule seeks to amend the FSA to allow the Department to keep "families who must or should be detained together at appropriately licensed family residential centers (FRCs) for the time needed to complete immigration proceedings."<sup>1</sup> This vague guidance about how long families may be detained is concerning and has the potential to impose long-lasting trauma on detained children and their parents.

Administration

Saul Levin, M.D., M.P.A.  
*CEO and Medical Director*

Many families crossing the United States border are fleeing war and violence in their home countries and are already coping with the effects of stress and trauma. A recent study found that among Central American migrants arriving at the border, 83% reported violence as the primary reason for fleeing their

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<sup>1</sup> Notice of Proposed Rulemaking, "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," Federal Register, Vol. 83, No. 174, September 7, 2018, pgs. 45493-45494, <https://www.regulations.gov/document?D=ICEB-2018-0002-0001>.

country.<sup>2</sup> The exposure to violence included extortion, death threats, and being victims of domestic violence. Reports of serious violence are also common, with nearly one third of study participants (32.2%) reporting that a family member had been murdered.

A substantial body of research links the trauma of childhood detention with lasting adverse outcomes, including an increased risk of mental illness, such as depression, anxiety, and post-traumatic stress disorder.<sup>3</sup> While people who are displaced can demonstrate high levels of resiliency, they can also experience disabling post-traumatic stress disorder or other consequences that adversely impact their medical, psychological, social, and spiritual well-being. These consequences can range from demoralization to various sequelae, involving simple and complex trauma complicated by the migratory journey and resettlement process. These migration-related and postmigration stressors can produce demoralization, grief, loneliness, loss of dignity, and feelings of helplessness as normal syndromes of distress that impede refugees from living healthy and productive lives.<sup>4,5</sup> It is critical that children remain with their parents, but this will not eliminate the risk of trauma. Prolongation of these families' detention will compound the already significant mental health consequences they face.

**APA recommends the maximum period of detention for children and their parents not go beyond the current limit of 20 days and that every effort be made to minimize the number of days spent by families in detention to decrease the negative consequences of detention for this vulnerable population.**

#### *Weakened Facility Protections May Lead to Worse Health Outcomes*

In the proposed rule, DHS argues that the challenges in licensing of FRCs were the precursor to families being separated at the border this year. To counter those challenges, the rule would eliminate this barrier by allowing facilities who may not be able to be licensed by state or local governments to become licensed and audited by a third-party auditor. Loosening the licensing standards for facilities and handing off the oversight and accountability to a third party is concerning, given the risks that this presents to the protection of the safety, health, and well-being of children and their families.

Even before the announcement of this rule, the American Medical Association cautioned the federal immigration system to refrain from partnering with private facilities that do not meet the standards of medical care set by the National Commission on Correctional Health Care, due to the amount of reported preventable deaths in such settings.<sup>6</sup> In a recent report on the current state of detention centers, the Office of Inspector General (OIG) found that current audits already, “do not ensure adequate oversight or

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<sup>2</sup> Keller A, Joscelyne A, Granski M, Rosenfeld B. Pre-Migration Trauma Exposure and Mental Health Functioning among Central American Migrants Arriving at the US Border. *PLoS ONE*. 2017;12(1):e0168692.

<sup>3</sup> Felitti, Vincent J et al. *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*. *American Journal of Preventive Medicine*, Volume 14, Issue 4, 245 – 258.

<sup>4</sup> Al-Krenawi, A., Lev-Wiesel, R., & Sehwal, M. (2007). Psychological symptomatology among Palestinian children living with political violence. *Child and Adolescent Mental Health* 12:27–31.

<sup>5</sup> Fernando, G.A., Miller, K.E., & Berger, D.E. (2010). Growing pains: the impact of disaster-related and daily stressors on the psychological and psychosocial functioning of youth in Sri Lanka. *Child Development* 81:1192-1210.

<sup>6</sup> American Medical Association. *AMA Adopts New Policies to Improve Health of Immigrants and Refugees* (June 12, 2017). <https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees>.

systematic improvement in detention conditions.”<sup>7</sup> The report highlights that the current lenient approach to inspections and onsite monitoring have led to inadequate responses to Immigration and Customs Enforcement (ICE) and inconsistencies in implementing corrective actions. Some examples included facilities failing to notify ICE about alleged or proven sexual assaults or not allow detainees to participate in recreation for the required standard. We are gravely concerned that weakening facility requirements and oversight will lead to higher incidents of physical and sexual violence.

In addition, we are concerned about this proposal’s impact on meeting the educational needs of detained children. The current policy of HHS’s Office of Refugee Resettlement requires that children receive an educational assessment within 72 hours of detainment and a minimum of six hours of structured education, Monday through Friday, with learning materials that reflect diversity and sensitivity.<sup>8</sup> However, reports indicate that standardizing educational curriculum in detainment facilities poses several challenges, including the wide range of academic abilities among the children.<sup>9</sup> In some instances, detainment centers cannot meet the specific needs of children with disabilities and instructors have been forced to teach students who are heavily dosed with psychiatric drugs. Combined with the fact that these children are in a particularly traumatic setting, it is clear facilities are not currently equipped to appropriately address the educational and emotional needs of children and the extension of this detention will only exasperate this problem.

The proposed rule also includes expanding the definitions of “emergency” in an effort to give DHS more flexibility to manage juvenile transfers. This would allow for longer delays in the placement of minors and excuse noncompliance for an undetermined amount of time, adding stress to families. For example, the proposal mentions that a snack or meal may be delayed in an emergency, but the guidance leaves the facility to decide the rationale and length of an emergency. In the previously mentioned OIG report, investigators revealed that facilities are already failing to meet compliance and the growing issues with ICE agents granting waiver to exempt facilities from compliance resulting in health, safety, and security issues. It would be dangerous and negligible to legitimize a violation of minimum standards in FRCs for detainees.

**APA recommends DHS hold detainment centers accountable to the maximum safety and compliance requirements and make no exemptions to these standards. Rather than handing off oversight responsibility, we urge DHS to take a greater role and responsibility in eliminating the risks of maltreatment and neglect in FRCs.**

#### *Meeting the Mental Health Needs of Detained Families*

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<sup>7</sup> Dept. of Homeland Security Office of Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, OIG-18-67 (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

<sup>8</sup> Office of Refugee Resettlement, *Children Entering the United States Unaccompanied* (April 20, 2018), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.5>

<sup>9</sup> Goldstein, Dana & Fernandez, Manny. (July 6, 2018) In a Migrant Shelter Classroom, ‘It’s Always Like the First Day of School.’ *New York Times*. <https://www.nytimes.com/2018/07/06/us/immigrants-shelters-schools-border.html>

Research shows that despite the threat of punitive measures, families fleeing the Northern Triangle region of Central America will continue to flee violence to save their lives and those of their children.<sup>10</sup> It is critical that FRCs do better to meet the mental health needs of detained families. Psychiatrists are uniquely qualified to help children and families recover from the trauma inflicted upon immigrants and refugees by displacement from and within their home countries and can provide direct psychotherapeutic and psychosocial interventions.<sup>11</sup> Each FRC should staff their leadership teams with psychiatrists to appropriately care for persons suffering posttraumatic symptoms and other migration-related syndromes of distress.

Earlier this year, Drs. Scott Allen and Pamela McPherson, who respectively serve as the medical and psychiatric subject matter experts for the DHS, wrote a letter to the Congressional Whistleblower Caucus highlighting the agency's harmful practices in detention centers and their impact on the health of families. They noted that FRCs have largely failed in recruiting adequate health staff, including pediatricians, child and adolescent psychiatrists, and pediatric nurses.<sup>12</sup> Their observations have true public health consequences, as noted in a facility where numerous children were vaccinated with adult doses of vaccine when the providers were not familiar with labels on pediatric vaccines. Additionally, they warned that the detention centers were not equipped to screen detainees for trauma. These factors, combined with the language barriers immigrant families face, can lead to preventing families from receiving the care they need while detained. This is deeply troubling considering the unique and critical needs of immigrant families.

**We recommend DHS require each FRC to promptly identify and treat detainees' health and mental health needs, integrate psychiatrists into their programmatic leadership, and educate staff to deliver trauma-informed and culturally competent care.**

We urgently call on DHS to address each of these concerns. Thank you again for the opportunity to respond to this proposal. We welcome the opportunity to further continue this conversation and ask that you contact Kathy Orellana at [korellana@psych.org](mailto:korellana@psych.org) if you have questions.

Sincerely,



Saul Levin, MD, MPA, FRCP-E  
CEO and Medical Director

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<sup>10</sup> Medecins sans Frontieres, *Forced to Flee Central America's Northern Triangle: A Neglected Humanitarian Crisis* (June 2017), [https://www.msf.org/sites/msf.org/files/msf\\_forced-to-flee-central-americas-northern-triangle\\_e.pdf](https://www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf).

<sup>11</sup> American Psychiatric Association. Position Statement on the Role of Psychiatrists in Addressing Care for People Affected by Forced Displacement (2017). <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2017-People-Affected-by-Forced-Displacement.pdf>

<sup>12</sup> Dr. Scott Allen and Dr. Pamela McPherson, Letter to the Senate Whistleblowing Caucus, July 17, 2018, <https://www.whistleblower.org/sites/default/files/Original%20Docs%20Letter.pdf>.