August 24, 2015

Thomas R. Frieden, M.D., M.P.H.
Director
Centers for Disease Control and Prevention
Department of Health and Human Services
1600 Clifton Road
Atlanta, GA 30329-4027

RE: CDC-2015-0045: Medical Examination of Aliens – Revisions to Medical Screening Process

Dear Director Frieden,

On behalf of the American Psychiatric Association (APA), the national medical specialty society representing more than 36,000 physicians specializing in psychiatry, we are writing in response to the Centers for Disease Control and Prevention’s (CDC) proposed rule, “Medical Examination of Aliens – Revisions to Medical Screening Process,” as published in the Federal Register on June 23, 2015 (the “Proposed Rule”). APA is pleased that the Department of Health and Human Services (HHS) is planning to modernize these regulations; however, we have concerns that some of the proposed changes (e.g., the proposed removal of the requirement that a psychiatrist participate in review boards when an alien’s mental health is the basis for inadmissibility) may unfairly disadvantage some of those who seek entry to the United States.

Proposed removal of the requirement that a psychiatrist participate in review boards when an alien’s mental health is the basis for inadmissibility

As stated in the Proposed Rule, the United States excludes aliens from entry into the country and excludes their eligibility for adjustment to lawful status on the basis of disqualifying medical and mental health related grounds. This authority is established through the Immigration and Nationality Act (INA) and its amendments, which generally hold that aliens who are determined to have (or have had) a physical or mental disorder that “may pose, or has posed a threat to the property, safety, or welfare of the alien or others” and those who are determined to be “drug abusers or addicts” be inadmissible. These determinations can be revisited by CDC-convened review boards after appeal by the alien. Current regulations mandate that a board-certified psychiatrist must be included in a review board when an alien’s mental health condition is the basis for inadmissibility. The Proposed Rule would remove this requirement, replacing it with the requirement that the review board consist of “at least
one medical officer who is experienced in the diagnosis and treatment of the physical or mental disorder, or substance-related disorder for which the notification was made.”

The rationale cited in the Proposed Rule follows:

By removing the requirement that one medical officer must be a board-certified psychiatrist, HHS/CDC will be able to more easily and efficiently comprise the board of case-specific specialists. Removing the requirement for a board certified psychiatrist also allows the agency to expedite the review board’s convening in circumstances where a medical officer who is a board certified psychiatrist is unavailable. By tailoring the board to meet the needs of the alien, HHS/CDC will ensure that the alien has the attention of medical officers who are experienced in the diagnosis and treatment of their specific medical condition.

APA strongly opposes this proposed revision and questions the rationale behind it. Since the regulations correctly retain the definition of medical officer as a physician, it is unclear to us who a “case-specific specialist” would be in these circumstances besides a psychiatrist. Psychiatrists are both the highest qualified physicians and the highest qualified mental health clinicians to ensure the validity of the type of determinations that rest in the relevant statute (e.g., ones based on threat to safety, welfare, and “behavior [that] is likely to recur or to lead to other harmful behavior†). Adequate psychiatric clinical training experience (i.e., psychiatric residency training) is necessary for accurate differential diagnoses and informed assessments. Non-psychiatric physicians do not have the expertise to perform the necessary dangerousness-based risk assessments and cannot ensure that the determination of inadmissibility is valid.

The Proposed Rule states that this change would allow these panels to meet more expeditiously since they would not have to find a board-certified psychiatrist to participate. However, the Proposed Rule would also remove the restriction that medical officers be physicians in the Public Health Service Commissioned Corps, which would significantly broaden the available review board medical personnel pool. The Proposed Rule would redefine medical officer to “a physician assigned by the Director to conduct physical and mental examinations of aliens on behalf of HHS/CDC.” If available personnel constraints have inhibited CDC’s ability to “expedite the review board’s convening,” this change would seem to alleviate these concerns and improve access to qualified psychiatric physician review panel participants.

It is imperative that HHS and CDC make every effort to ensure that these individuals are given accurate diagnosis and appropriate oversight to prevent any discriminatory application of legal and clinical standards in cases that would bar aliens from admission. APA urges CDC to “meet the needs of the aliens” and retain the requirement that a psychiatrist be a part of any review panel examination when an alien’s mental health condition is the basis for inadmissibility. We offer ourselves as a resource to work with you on facilitating the necessary participation of psychiatrists on the review panels in as much as APA is able to help.

Revision of mental health related definitions

As referenced in the Proposed Rule, the Diagnostic and Statistical Manual for Mental Disorders (DSM) is the national medical standard for the diagnosis of mental disorders and substance-related disorders. It is the consensus publication used by clinicians and researchers to diagnose and classify mental disorders in the United States. DSM contains descriptions, symptoms, and other criteria for each mental disorder, providing a common language for clinicians to communicate about their patients. CDC proposes updating the definitions of drug abuse, drug addiction, and mental disorder – seeking to explicitly clarify that the “most recent edition” of the DSM be used. Since the most current version of DSM represents the most current science and clinical
understanding of psychiatric disorders, APA supports this proposed change and urges swift adoption of current DSM standards and criteria throughout the clinical and policymaking spheres.

Discriminatory treatment of individuals with mental illness (including substance use disorders) within the INA regulatory framework and the use of stigmatizing terminology

APA also has concerns regarding the overarching policy behind the INA medical examinations of aliens and its likely discriminatory impact on individuals with mental illness. The relevant statute and regulations appear to single out those aliens who may be dangerous simply by virtue of their diagnosis of mental illness, though individuals with mental illness are not highly likely to be dangerous\(^1\). The inadmissibility framework does not address those aliens who may be dangerous and have never been diagnosed with a mental illness, and it does not recognize the limits of psychiatrists’ and other clinicians’ abilities to distinguish those who are or aren’t likely to commit violent behavior – especially with limited background information. APA questions the utility and fairness of the current approach, and we offer ourselves as a resource to address these issues in greater detail with HHS/CDC and Congress.

Though APA recognizes that the terms “drug abuser” and “drug addict” are statutory definitions established under the Immigration and Nationality Act (INA), and that HHS/CDC do not have the legal authority to update these terms, we wish to communicate that these are obsolete and stigmatizing terms that require replacement in order to meet current scientific understanding of substance use disorders. APA will work with Members of Congress to update these and other stigmatizing references in federal law and would appreciate the support of HHS and CDC in these efforts. We would also note that INA creates a separate categorical immigration admissibility exclusion based on these substance use disorders under Title 8 USC 1182(a)(1)(A)(iv) that is not in line with the broader statutory standard that governs admissibility related to physical or mental disorders. This policy appears to be discriminatory and requires close study and potential action from Congress.

Thank you in advance for your review and consideration of these comments. If you have any questions, or if you would like to discuss these matters further, please contact Matthew Sturm, Director of Legislative and Regulatory Policy, at msturm@psych.org or 703-907-7800.

Sincerely,

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

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\(^1\) It should be noted that several non-psychiatric medical conditions (that are also not considered communicable diseases under INA) are associated with violent behavior. These include brain injury secondary to blunt trauma, intracranial pathology, metabolic conditions, complex partial seizures, and aberrant effects of medication. See: Rueve ME, Welton RS. Violence and Mental Illness. Psychiatry (Edgmont). 2008;5(3):34-48.