March 9, 2020

The Honorable Michael R. Pompeo
Secretary of State
United States Department of State
2201 C Street NW
Washington, DC 20520

Re: Public notice 10930: “Visas: Temporary Visitors for Business or Pleasure”

Dear Secretary Pompeo,

As child health professionals, we write to express our deepest alarm with the Department of State’s (“the Department”) recent final rule, “Visas: Temporary Visitors for Business or Pleasure” published on January 24, 2020, with no opportunity for public comment. As pediatricians, public health researchers, and child health and policy experts, we strongly oppose the published changes to the issuance of class B nonimmigrant visas that will restrict the travel of certain pregnant or suspected-to-be pregnant women to the United States.

The finalized rule establishes a presumption that a pregnant B nonimmigrant visa applicant, who a consular officer may believe will give birth during her stay in the United States, is traveling for the primary purpose of obtaining US citizenship for the child. This gives full authority and discretion to consular officers to determine intent, without providing any clarification on how this decision will be made. Furthermore, the burden is on the applicant to rebut the consular officer’s presumption and to justify and prove her travel intent “to the satisfaction of the consular officer,”¹ without providing any information about how this will be uniformly determined. The broad discretion given to consular officers may result in easily subjecting all pregnant women or women of reproductive age to invasive and coercive questioning, procedures, and harassment. This will certainly generate significant and unnecessary stress for the women impacted, which, in turn, is associated with harmful health consequences for women and their infants or unborn children.² The impact of stress is particularly harmful during this period, as it has been shown to have negative consequences for maternal physical health - likely through altered immune function and increased risk of gestational hypertension. Maternal stress is now known to be strongly linked to poor birth outcomes including preterm birth and low birthweight, which have serious implications for lifetime child health and cognitive development.³,⁴,⁵,⁶

The women affected by this rule will overwhelmingly be from low and middle-income countries, and will disproportionately be women of color, due to country-specific requirements to apply for a B nonimmigrant visa. The vast majority of women that would be exempt from this scrutiny due to participation in the Visa Waiver Program are from white, European countries; the few countries that are outside of Europe (Brunei, Chile, Republic of Korea, and Japan) are primarily high income countries. This poses major maternal and child health equity concerns not only because of the health consequences and violation of dignity it will have among women, but because it additionally and specifically targets a subset of women of color already at high-risk for stress and health disparities, including poor birth outcomes and high maternal and infant mortality rates.⁷ These also are often women in countries where access to state of the art maternity care is limited and seeking care abroad may be a rational choice.
In addition, the regulation would require individuals seeking these visas for the purpose of medical treatment to prove their ability to obtain medical care and the finances to do so; otherwise, their application will be denied. While pregnant applicants can receive a visa if they meet a high standard of evidence proving a medically complicated pregnancy and that appropriate medical treatment cannot be obtained where they live, they may be subject to invasive and medically complicated questions by consular officers with no medical training or specific knowledge in obstetrics care. This could prevent a pregnant person from accessing life-saving medical treatment, and also sets a dangerous precedent for unchecked racial and gender profiling. As health professionals, we deeply understand the impact this would have on mothers and their children, and know that this cannot be adequately or appropriately determined by a consular officer.

The published rule purports to address and reduce the prevalence of “birth tourism”, despite the Department’s inability to provide any significant data to support the claim of any substantial existence of this phenomenon. The Department relies on unspecified “increasing trends” of the number of B visa applicants whose stated primary purpose of travel is to give birth in the US, but no concrete data or other evidence are provided. However, its codification will likely contribute to increased fear and stress – both of which are associated with poor health – among immigrant communities and nonimmigrant travelers, particularly given the vague and subjective determination process. This rule will effectively restrict travel of low-income women of color by instilling fear that will prevent these women from traveling to the United States. The negative implications are huge – the rule will restrict women’s ability to travel freely and to make the best medical decisions for themselves and their families. It will have a negative effect on those choosing to travel to the United States for other legitimate reasons too, such as leisure or to visit family, as they will be subject to intense lines of questioning, per this rule.

Increased focus on restrictive immigration policies and enforcement create fear and stress that negatively affect children’s physical and mental health and cognitive development. Although the Department’s published rule targets those applying for temporary visas from outside the United States, research demonstrates the cumulative impact this and related rules are having on existing immigrant communities within our nation. Based on our clinical and research experience, we know this regulatory measure, in concert with others, will increase fear that immigrant families express related to freedom of movement within this country and to accessing needed services. Not receiving needed support will jeopardize the health, and body and brain growth of our youngest children, and the long-term health of our country. Moreover, it will lead to major increases in healthcare costs. In a recent survey, one in four Latinx respondents had a close family member or friend put off seeking healthcare due to fear of immigration issues, and nearly one in five respondents expressed the same fears seeking reproductive healthcare. In the same survey, 37 percent of respondents stated that the political environment around immigration and race is having a negative impact on their health and well-being.

The published rule does harm: it will allow for racial/ethnic profiling of women seeking even brief entry to the United States – including those who are not pregnant, but judged to be potentially-pregnant – in an attempt to curtail the migration and growth of naturalized citizens of the United States, and will undermine the dignity and autonomy of women of color. Furthermore, it will impact the health and well-being of immigrant communities within the United States, including children. Finally, the rule represents a larger effort to curtail immigration of people who cannot pass a wealth test, due to its application only to the specific lower income countries designated.
No person should be subject to such demeaning levels of scrutiny and coercion solely based on how they look and their perceived reasons for simply traveling to another country. Pregnancy is not a threat to national security; this rule is a violation of human rights and lacks any legal or data-driven justification. This rule will have extensive harmful impacts on communities within our country, including children, as it will increase fear, and further perpetuate health disparities and discrimination. We strongly oppose this administrative action that will harm the health of children and their families, and we urge the administration to rescind the finalized rule immediately and in its entirety.

Sincerely,

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1 Visas: Temporary Visitors for Business or Pleasure. 22 CFR 41. 2020.