

Summary of Conference Call

U.S. Immigration and Customs Enforcement
Advisory Committee on Family Residential Centers
Subcommittee on Medical and Mental Health
June 14, 2016

The U.S. Immigration and Customs Enforcement (ICE) Advisory Committee on Family Residential Centers (ACFRC), Subcommittee on Medical and Mental Health convened for its weekly meeting on Tuesday, June 14, 2016, via teleconference from 1:30 P.M. to 2:30 P.M. The purpose of the meeting was for subcommittee members to continue discussing potential recommendations.

Attendance:

Subcommittee Members Present for the Teleconference:

- Leslye Orloff
- Judith Dolins
- Dr. William Arroyo

*Dr. Andres J. Pumariega was unable to join the call due to an emergency change in his work schedule.

Others Present:

- John Amaya, Deputy Chief of Staff, ICE; Designated Federal Officer (DFO), ACFRC
- Andrea Washington, Special Assistant, ICE

Opening Remarks:

Chair Leslye Orloff acknowledged subcommittee members as they called into the teleconference. She also recognized ICE staff on the call.

General Meeting:

The meeting began with a discussion about how subcommittee members should format their recommendations as they flesh out their ideas into drafts. Vice Chair Judith Dolins noted that Dr. Andres Pumariega used a bulleted format, while she and Dr. William Arroyo opted for the narrative approach. The Vice Chair said the narrative format allowed for framing the problem and stating the importance of addressing it, thus giving more context to the recommendations. Vice Chair Dolins said the subcommittee needs to make a decision about which approach everyone should take so there would be consistency in how the recommendations are presented.

The Vice Chair continued that there has been a lot of conversation about standards and the family residential centers (FRCs), but there is still not a good way to measure whether or not the FRCs are performing against the standards. She said not having the ability to measure standards compliance—combined with likely only hearing and reading the worst stories from colleagues and the media—makes it hard to tell what is really going on in the facilities. Chair Orloff said

these comments made her wonder how ICE and the Department of Homeland Security (DHS) would track adherence to Committee recommendations that are put into practice.

Vice Chair Dolins, moving the discussion to her recommendations, pointed out that her recommendation for reviewing care at the FRCs outlines the need for an independent medical board. This board would be responsible for ensuring that families receive the care they are supposed to be getting, particularly in the area of mental health. Chair Orloff stated that she thought this was a good idea and suggested that Vice Chair Dolins raise the issue with Dora Schriro, Vice Chair for the Subcommittee on Access to Counsel and Language Services, given her expertise and work in detention facilities. She said Ms. Schriro might have helpful information on how other detention settings have handled reviewing medical services.

Vice Chair Dolins said ICE must have some kind of auditing system of its own, but she was not sure what level of review was completed. Chair Orloff asked ICE staff to confirm that there is some standard reporting or ongoing monitoring to make sure that contractors are doing what they are supposed to be doing.

Special Assistant Andrea Washington confirmed that audits do take place and said she believed that one of the other subcommittee's referenced audits in their additional request for information. Vice Chair Dolins said it would be good if the subcommittee could see these audits or at the very least be told what is covered in them. Chair Orloff said knowing the frequency of the audits would also be useful, noting that understanding what is audited and how often could affect recommendations.

Dr. Arroyo asked if the question about audits was specific to health care or to residential conditions. He said if the FRCs were accredited through either the Joint Commission of Healthcare Accreditation Organizations (JCHAO) or the National Committee for Quality Assurance (NCQA), there would have to be periodic internal and external evaluations. Chair Orloff said that was a good question. If the FRCs are supposed to comply with JCHAO or NCQA, she said, it would be beneficial to see those reports. If the centers are not supposed to comply and the subcommittee is recommending that they should, one of the reasons stated could be that adhering to one of the accreditation standards would come with the audit process built in.

Vice Chair Dolins said that she has heard reports about children at the FRCs not getting health care because they were not able to go to a hospital due to their mothers having not yet passed a credible fear test and being unable to leave the facility. If the mother cannot leave, the child will not be allowed to go to the hospital, she said. The Vice Chair asked if this is something that a JCHAO audit would cover. Dr. Arroyo responded that it would not be covered in a JCHAO audit. Using another example, Vice Chair Dolins outlined a situation where a family believes it is going to be released or returned in two days. Someone in the family is not given the health care they need because a staffer at a center decides they do not have to provide care since the family is leaving in a few days. But then the family does not leave, and the necessary care was never delivered. She said this issue is more about how facilities are managed because you have non-medical people making decisions about health care.

Vice Chair Dolins said both of these accounts were examples of issues that she believes are falling through the cracks, based on the subcommittee's current recommendations. Chair Orloff said the subcommittee does not want these types of issues to be forgotten and that addressing what members have observed on their own and/or heard about through other sources can be covered under a broader umbrella of additional best practices.

Dr. Arroyo said that verifying the kinds of accounts Vice Chair Dolins shared can be difficult and that he was not sure the group should use single reports of what members have heard. Chair Orloff stated that she thought members could frame recommendations based on these stories as solutions to things that could plausibly happen. She said the recommendation does not have to claim that an actual finding was made; it could just state that something could conceivably take place and be of concern.

Vice Chair Dolins, reminding the group about the idea of an ombudsman at the FRCs, said these are the types of issues that could be brought to an ombudsman. The Vice Chair stated that she reviewed the current grievance process that residents can use, and it was okay. However, residents still did not have the option of speaking to someone who is independent.

Dr. Arroyo asked for clarification about there not currently being an ombudsman with access to residents at the FRCs. Chair Orloff responded that DHS has an ombudsman, but statutorily the jurisdiction of the office is the United States Citizenship and Immigration Services (USCIS). She asked Ms. Washington to verify this fact, and Ms. Washington confirmed. The Chair then asked if there was anyone at ICE currently playing an ombudsman role, noting that at one time there was an Office of the Public Advocate within the agency. Ms. Washington answered that the office no longer existed because of action taken by Congress.

Dr. Arroyo and Vice Chair Dolins then asked if physical and sexual abuse reports made through the hotlines come to ICE or an entity outside of DHS. Chair Orloff and Ms. Washington both responded that those claims go to the agency. Dr. Arroyo and the Vice Chair said they believe these complaints should go to an independent body outside of ICE and DHS. Vice Chair Dolins suggested the Department of Justice (DOJ) as the potential outside agency, and Dr. Arroyo said that would be fine with him.

Chair Orloff said that from a legal perspective, she did not think DOJ had the authority to police ICE. She suggested that it might be easier to create an entity outside of ICE, but within DHS that could serve a monitoring capacity, similar to how the USCIS Ombudsman is situated. She said if the role was within ICE, but outside of the facility, that would give the agency an opportunity to intervene to fix things before they get raised to another level outside of ICE.

Vice Chair Dolins said she was thinking about what would be easier and more comfortable from a resident's perspective, stating that perhaps there could be someone who comes on-site to speak with residents about things they are seeing and experiencing. She said the person serving in the ombudsman role absolutely should not be working for the contracted companies, and she expressed concern about the individual being within the ICE chain of command.

Chair Orloff said one idea she was thinking about was whether or not the scope of the USCIS Ombudsman could be expanded so that residents at the facilities could take advantage of the office the same way people who are trying to use USCIS do. Given that the role was statutorily created, however, she said it might be a legal issue.

Vice Chair Dolins asked if it was the subcommittee's job to figure out the nuances of how DHS could expand the work of the USCIS Ombudsman or if it was members' responsibility to just recommend that it should be done. Dr. Arroyo answered that he thought the subcommittee should provide some basic parameters, and then DHS can decide if it will follow through. Chair Orloff said she thought it was important and part of the subcommittee's role to set the parameters. She said they could figure out the legal piece, but it is clear that there is precedent within DHS to have an independent ombudsman.

Vice Chair Dolins then read her recommendation regarding the ombudsman and asked the group if it captured the argument for the need for one and the work she/he would do. Dr. Arroyo said there might need to be some minor tweaks to the language, but he thought all the bases were covered in the recommendation.

Dr. Arroyo continued that he was wondering if there was an ombudsman within the Department of Health and Human Services (HHS) that could be utilized because he believes HHS would be more attuned to handling health complaints. Chair Orloff said she was not sure if legally HHS could have oversight of ICE, and she does not want to recommend something that is legally impossible. The Chair said she could look into the legal matter. She added that another option could be to craft a recommendation that says if there is an ombudsman at HHS, the USCIS Ombudsman should set up a relationship to regularly consult with and seek advice from the HHS Ombudsman when she/he receives healthcare-related complaints. Chair Orloff said she liked this option because it could create internal checks and balances, and it would be helpful in establishing ongoing governmental relationships that will survive administration to administration.

Vice Chair Dolins, reviewing the organizational chart for DHS, said the chart does clearly state that the Ombudsman is tied to USCIS. Chair Orloff reiterated that role was statutorily created, and the statute is narrow. She said she would find out by next meeting if there was any way to broaden its scope. Vice Chair Dolins pointed out that DHS also has an Office for Civil Rights and Civil Liberties (CRCL). Chair Orloff remarked that there are a total of three oversight-type entities within DHS: the USCIS Ombudsman, CRCL, and the Office of the Inspector General. She said she would research if CRCL receives any complaints regarding the facilities and how those complaints are handled if the office does get them. Vice Chair Dolins said she was sure CRCL received complaints.

The Chair and Vice Chair then discussed how the USCIS Ombudsman is a different kind of role than the CRCL function. They agreed that there should not be the formality of having to get multiple lawyers involved, and the ombudsman should be a stop before things get elevated to the civil rights level. Chair Orloff said the ombudsman should be a mechanism to diffuse and address problems before the lawyers have to respond.

Vice Chair Dolins said she thought the ombudsman recommendation is something that the other subcommittees will have an interest in, remarking that more than health care concerns would be raised and addressed with an ombudsman.

With a few minutes left in the allotted meeting time, Chair Orloff said that she was hopeful her recommendations would be ready for discussion next week. Vice Chair Dolins asked how the group would prefer to move forward with reviewing each other's recommendations, and the Chair responded that she liked how the Vice Chair drew attention to a few recommendations she wanted to talk through with the group. Chair Orloff said this approach allowed for discussion that could help with amplifying and refining recommendations. Dr. Arroyo stated that he thought everyone could develop their own comments about each of the Vice Chair's recommendations, and then send them to her via email. Vice Chair Dolins could read through the comments and/or edits and address them accordingly, he said. Chair Orloff said she thought mixing discussion with in-document comments and edits was a good idea.

Commenting on the review schedule, Dr. Arroyo said the group could finish discussing Vice Chair Dolins's recommendations next week, and then begin tackling Chair Orloff's recommendations. The Chair added that the subcommittee could then move to discussing the substance of Dr. Pumariega's recommendations, but leave reformatting his work into narratives until all of the subcommittees come to an agreement on formatting.

With no other issues to address, Chair Orloff adjourned the meeting.

Adjournment:

The subcommittee adjourned at 2:30 P.M.