

INS DETENTION STANDARD

TERMINAL ILLNESS, ADVANCE DIRECTIVES, AND DEATH

I. POLICY

All facilities shall have policies and procedures addressing the issues of terminal illness, fatal injury, advance directives, and detainee death. Each will address notification of all concerned, from family to INS. In the cases of Terminal Illness, Advance Directive requests and detainee death, IGSAs and CDFs shall contact INS immediately. *INS shall implement the necessary procedures specified in this standard.*

II. APPLICABILITY

The standards provided in this Detention Standard shall apply to the following facilities housing INS detainees:

1. Service Processing Centers (SPCs);
2. Contract Detention Facilities (CDFs); and
3. State or local government facilities used by INS through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours; referred to as "IGSA facilities."

Within the document additional implementing procedures are identified for SPCs and CDFs. Those procedures appear in italics. IGSA facilities may find such procedures useful as guidelines. IGSAs may adopt, adapt or establish alternatives to, the procedures specified for SPCs/CDFs, provided they meet or exceed the objective represented by each standard.

See the separate "Definitions" Standard for the meaning of certain terms used in this document.

III. STANDARDS AND PROCEDURES

A. Terminal Illness

The facility's Clinical Director (CD), assisted by the Health Services Administrator (HSA), will arrange the transfer of chronically, critically, or terminally ill detainees to appropriate off-site medical facilities.

When a detainee's medical condition becomes life threatening, the following standards and procedures apply:

1. A seriously ill or dying detainee's care shall be consistent with the "Detainee Access to Medical Care" standard.

2. A detainee in a community hospital remains under INS authority. INS retains the authority to make administrative decisions affecting the detainee (visitors, movement, authorizing/limiting services, etc.). The hospital assumes medical decisionmaking authority consistent with the contract (drug regimen, lab tests, x-rays, treatments, etc.).
3. The hospital's policy for involving next of kin shall be consistent with State law. Internal rules and procedures concerning the seriously ill, injured, and dying will apply to detainees.

Authority over the detainee's treatment, once approved by INS, is exercised by the hospital's medical staff, who will keep INS informed of major developments.

4. A detention facility shall immediately notify INS when a detainee is seriously injured or ill. INS, in turn, shall immediately contact (or make reasonable efforts to contact) the next of kin, who will be notified of the medical condition/medical status, the detainee's location, and the visiting hours and rules at that location. INS will provide family members as much opportunity for visitation as possible.

The HSA shall notify the OIC of the detainee's condition by phone or in person, and the OIC shall arrange to notify the family. The HSA shall document the detainee's condition in a memorandum, briefly describing the illness and prognosis, if possible.

With respect to a serious illness, major surgery, or death of a detainee with immigration proceedings pending, the OIC shall notify the EOIR or the court of record.

B. Living Wills and Advance Directives

Each medical facility shall use the State Advance Directive Form for implementing living wills and advance directives. The guidelines for completing the form include instructions for detainees who wish to have a living will (different from the generic document available from the INS Division of Immigration Health Services (DIHS) and/or authorize or refuse permission to perform extraordinary measures to prolong his/her life. The guidelines should note that private attorneys can prepare such documents.

When the medical professional responsible for the detainee's care determine that the terms and conditions of the detainee's medical directive should be implemented, he/she shall contact the CD/HSA and the INS General Counsel, providing the name, condition, and circumstances of the detainee.

In the interest of all parties, INS may seek judicial or administrative review of a detainee's advance directive.

C. Do Not Resuscitate Orders (DNR)

Each facility holding INS detainees shall establish and implement through written procedure policy governing DNR orders.

The director and other members of the DIHS governing body shall review and approve all policies before implementation.

In addition, each facility's DNR policy will comply with the following:

1. A DNR written by a staff physician requires the CD/HSA's approval.
2. The policy shall protect basic patient rights and otherwise comply with DIHS standards.
3. The decision to withhold resuscitative services shall be considered only under specified conditions:
 - a. The detainee has requested or strongly endorsed the decision. If the detainee is unconscious or otherwise unable or incompetent to participate in the decision, staff will attempt to obtain the written concurrence of an immediate family member. The attending physician shall document these efforts in the medical record.
 - b. The detainee is diagnosed with a terminal illness or terminal injury.
 - c. A DNR is consistent with sound medical practice, not in any way associated with assisting suicide, euthanasia, or other such measures to hasten death.
4. The detainee's medical file shall include documentation validating the DNR order:
 - a. A standard stipulation at the front of the in-patient record, and explicit directions: "Do Not Resuscitate" or "DNR."
 - b. Forms and memoranda recording:
 1. Diagnosis and prognosis.
 2. Express wishes of the detainee (living will, advance directive, or other signed document).
 3. Immediate family's wishes.
 4. Consensual decisions and recommendations of medical professionals, identified by name and title.
 5. Mental competency (psychiatric evaluation), if detainee concurred in, but did not initiate, the DNR decision.
 6. Informed consent evidenced, among other things, by the legibility of the DNR order, signed by the ordering physician and CD.

6. A detainee with a DNR order may receive all therapeutic efforts short of resuscitation.
7. The facility shall follow written procedures for notifying attending medical staff of the DNR order.
8. The medical facility shall notify the DIHS medical director and governing body, and the INS General Counsel, of the name and basic circumstances of any detainee for whom a "Do Not Resuscitate" order has been filed in the medical record.

D. Organ Donation by Detainees

The following procedures govern organ donations by detainees:

1. The organ recipient must be a member of the donor's immediate family.
2. All costs associated with the organ donation (hospitalization, fees, etc.) shall be at the expense of the detainee, involving no Government funds.
3. The detainee shall sign a statement documenting his/her decision to donate the organ to the specified family member. The detainee must confirm that he/she understands and accepts the risks associated with the operation of his/her own free will; and that the Government will not be held responsible for any medical complications or financial responsibilities.
4. Resources permitting, INS shall assist in the preliminary medical evaluation.
5. The facility housing the detainee shall coordinate arrangements for transportation, custody, classification, etc.
6. The detainee is not authorized to donate blood or blood products.

E. Death Occurring in INS Custody

The facility shall follow written procedures when notifying INS officials, immediate family members, and consulate offices of a detainee's death.

1. Detention Facilities

It is the responsibility of the Assistant District Director for Detention and Removal (ADD/DRO) to contact the OIC of every facility in his/her jurisdiction, specifying the procedures for reporting a detainee death.

2. Death Occurring in Transit in a Land Vehicle Driven by INS Personnel

If a detainee dies while in transit, the transporting officers must notify the originating or receiving office as soon as possible, by any means excluding transmission by government radio (susceptible to public monitoring). The notification shall state the

detainee's name, A-number, and the date, time, place, and apparent cause of death. The closest INS office will arrange for the local coroner and the Federal Bureau of Investigation (FBI) to meet the bus. If death was caused by violence or was associated with other unusual or suspicious circumstances, the INS office will also contact the local law enforcement authority, which will coordinate bus-meeting with the FBI.

The interagency rendezvous point, where the coroner will remove the body from the bus, must be in the State where the death occurred.

The transporting officers shall obtain a coroner's receipt in exchange for the body.

3. Death Occurring in Transit via Commercial Flight

The escorting officers shall notify the ADD/DRO of the detainee's in-flight death. If the aircraft carrier makes a landing on foreign soil, the officers shall contact the nearest U.S. consulate or embassy for immediate assistance before contacting the ADD/DRO.

4. Death Occurring in Transit via JPATS

The local INS office will contact the ADD/DRO. Established JPATS protocol will be followed.

5. Vital Information

The ADD/DRO shall assemble the following information concerning the deceased detainee:

- a. Name;
- b. Alien registration number;
- c. Date of birth;
- d. Date, time, and location of death;
- e. Apparent cause of death;
- f. Investigative steps being taken, if necessary;
- g. Name and address of next of kin in the United States;
- h. Notifications made;
- i. Brief medical history related to death;
- j. Status of autopsy request, if necessary.

6. Notification of Immigration Officials

a Immediate Notifications

1. Death During or after Regular Workday

The ADD/DRO shall, on receiving the information, telephone the District Director (DD) and the ARD/DRO. The ADD/DRO shall confirm the notification electronically (via cc:Mail), sending an information copy to the Director of Field Operations, Headquarters.

The ARD/DRO shall, on receiving the information, immediately, telephone the Director of Field Operations, Headquarters (who must be notified of all deaths). During non-business hours, the ARD/DRO shall telephone the report to the Director of Field Operations, Headquarters, via the INS Command Center, (202) 616-5000.

2. Medical Reports

Within 48 hours, the ADD/DRO shall send all available medical reports to the local representative of the U.S. Public Health Service (USPHS).

b. Notification of Family

Written procedures will provide for chaplain involvement in communicating news of the serious illness or death of a detainee or member of a detainee's families. The Chaplain shall coordinate requested religious rituals at the time of a detainee's serious illness or death.

1. Immediate Telephonic Notification

The Chaplain shall telephone the person named as the next of kin in the United States to communicate the circumstances surrounding the death. If the next of kin cannot be located, the DD shall notify the consulate of the deceased

2. Letter of Condolences

As soon as practical, the ADD/DRO shall prepare a condolence letter (for DD signature) to the next of kin, which will include the circumstances of the death, as follows:

- a. If the death was by natural causes, a brief account of the medical details.

- b. If the death was accidental, with no suspicion of foul play, a brief description of the accident and cause of death.
- c. If the death occurred under suspicious circumstances or by foul play, a clinical statement of the cause of death, with the proviso that the matter is under investigation and, for that reason, details of the cause may not be provided at this time.

3. Notification of Consulate Officials

The DD shall notify, by telephone, the consulate of the deceased. An official follow-up letter shall be prepared, explaining the circumstances of the death, and sent to the consulate.

F. Disposition of Property

If after a reasonable period of investigation, next of kin cannot be identified and/or located in the United States or abroad (through the consulate; see section III.C., below), INS shall dispose of the property of the deceased in accordance with the "Personal Property Operations Handbook," chapters 10 and 17.

If the detainee dies while in an IGSA facility, the OIC shall turn his/her property to INS for processing and disposition.

G. Disposition of Remains

Within seven calendar days of the date of notification (in writing or in person), the family shall have the opportunity to claim the remains. If the family chooses to claim the body, the family shall assume responsibility for making the necessary arrangements and paying all associated costs (transportation of body, burial, etc.).

If the family wants to claim the remains, but cannot afford the transportation costs, INS may assist the family by transporting the remains to a location in the United States. As a rule, the family alone is responsible for researching and complying with airline rules and Federal regulations on transporting the body. However, INS will coordinate the logistical details involved in returning the family member's remains to the family.

If family members cannot be located or decline, orally or in writing, to claim the remains, INS will notify the consulate, in writing. The consulate shall have seven calendar days in which to claim the remains. If the consulate exercises its right to claim the body, it shall be responsible for making the necessary arrangements and paying all costs incurred (moving the body, burial, etc.)

In the event that neither family nor consulate claims the remains, the DD shall schedule an indigent's burial, consistent with local procedures. However, if the detainee's record indicates U.S. military service, the DD will contact the Department of Veterans Affairs to determine the deceased's eligibility for burial benefits before proceeding with the indigent-burial arrangements.

The Chaplain may also advise the OIC and others involved about religious considerations that could influence the decision about the disposition of remains.

Under no circumstances shall INS authorize cremation or donation of the remains for medical research.

H. Case Closure

Procedures for closing the case of a deceased detainee include the following:

1. Sending the detainee's fingerprint card to the FBI, stamped "Deceased." and identifying the place of death;
2. Placing the detainee's death certificate or medical examiner's report (original or certified copy) in the subject's A-file;
3. Placing a copy of the gravesite title in the A- file (indigent burial only); and
4. Closing the detainee's DACS file.

I. Death Certificate

The OIC shall specify in post orders the designated officer's responsibility for proper distribution of the death certificate.

When the death certificate arrives, the designated officer shall send the original to the person who claimed the body. He/she shall place a certified copy of the death certificate in the A-file of the deceased or, if the deceased received an indigent's burial, the actual death certificate (not a copy) shall be placed in the A-file.

J. Authority To Order Autopsies

With the Chaplain's assistance, the OIC shall develop and implement written procedures for making autopsy arrangements, including: contacting the local coroner; scheduling the autopsy; identifying the person who will perform the autopsy; obtaining the official death certificate, and transporting the body to the coroner's office.

The FBI, local coroner, or the USPHS may order an autopsy and related scientific or medical tests to be performed in cases involving homicide, suicide, fatal illness or accident, or unexplained death.

DIHS may order an autopsy or post-mortem operation for other cases, with the written consent of a person authorized under State law to give such consent (e.g., the coroner, next-of-kin, or, to authorize a tissue transfer, the deceased him/herself).

State laws regarding these issues vary greatly; where legal questions arise, the District Office of General Counsel should be contacted. State law provisions and guidelines on when to contact the coroner shall be incorporated into the Facility Policy and a copy forwarded to General Counsel.

Medical staff (DIHS) shall arrange for the approved autopsy to be performed. Time is a critical factor in arranging for an autopsy, as this ordinarily must be performed within 48 hours of the death. While a decision on an autopsy is pending, no action should be taken that will affect the validity of the autopsy results. Local law may also require an autopsy when death occurs and the deceased was otherwise unattended by a physician.

Before the initiation of an autopsy or embalming, determination of the detainee's religious affiliation shall be made. Religions such as Judaism and Islam forbid embalming. Additionally, there are other religious specific requirements involving autopsies and embalming. Therefore, it is critical the ADD/DRO or designate verify the detainee's religious preference prior to final authorizations for autopsies or embalming.

IV. AMERICAN CORRECTIONAL ASSOCIATION STANDARDS REFERENCED

American Correctional Association Standards for Adult Local Detention Facilities 3rd Edition: 3-ADLF-4E-28, 4E-45.

Approval of Standard



Michael D. Cronin
Acting Executive Associate Commissioner
Office of Programs

SEP 20 2000

Date



Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SEP 20 2000

Date

U.S. Immigration and Naturalization Service
NATIONAL DETENTION STANDARDS
MONITORING INSTRUMENT

Policy All facilities housing INS detainees shall have policies and procedures addressing the issues of terminal illness or injury, medical advanced directives, and detainee death, to include the procedures to ensure proper notification is provided to INS officials, family members and other interested parties in the event of a detainee becoming terminally ill or injured or death of a detainee occurs. In addition, the policy will cover procedures to be taken if the death of a detainee occurs while in transit.

TERMINAL ILLNESS, ADVANCED DIRECTIVES, AND DEATH			
Components	Yes	No	Remarks
1. Are detainees who are chronically or terminally ill, transferred to an appropriate offsite medical facility?			
2. Does the facility promptly notify the next of kin of the detainee's medical condition? a. The detainee's location? b. The limitations placed on visiting?			
3. Are there guidelines addressing State Advanced Directive Form for Implementing Living Wills and Advanced Directives? a. Do the guidelines include instructions for detainees who wish to have a living will other than the generic form the DIHS provides or who wish to appoint another to make advance decisions for him or her?			
4. Do the guidelines provide the detainee the opportunity to have a private attorney prepare the documents?			
5. Is there a policy addressing "Do Not Resuscitate Orders"?			
6. Do detainees with a "Do Not Resuscitate" order in the medical record receive maximal therapeutic efforts short of resuscitation?			
7. Does the facility notify the DIHS Medical Director and Headquarters' Legal Counsel of the name and basic circumstances of any detainee with a "Do Not Resuscitate" order in the medical record?			

TERMINAL ILLNESS, ADVANCED DIRECTIVES, AND DEATH			
Components	Yes	No	Remarks
8. Does the facility have written procedures to address the issues of organ donation by detainees? a. Do the procedure adhere to the detention standard requirements?, if not b. State the difference(s)?			
9. Does the facility have written procedures to notify INS officials, when a detainee dies while in Service? a. Deceased family members? b. Consulate offices?			
10. Does the facility have a policy and procedure to address the death of a detainee while in transport? a. Do the procedures adhere to the requirements in the detention standard?			
11. Are the detainee's remains disposed of in accordance with the provisions detailed in this standard? a. Does the family have seven calendar days of the date of notification (in writing or in person) to claim the remains? b. If the family chooses to claim the body, are they told that they will assume responsibility for making the necessary arrangements and paying all associated costs (transportation of body, burial, etc.)? c. If the family wants to claim the remains, but cannot afford the transportation costs, are they aware that INS may assist the family by transporting the remains to a location in the United States? d. Is the consulate notified? e. If family members cannot be located or decline, orally or in writing, to claim the remains, is the consulate notified?			

TERMINAL ILLNESS, ADVANCED DIRECTIVES, AND DEATH			
Components	Yes	No	Remarks
f. Is the consulate given seven calendar days to claim the remains? g. If the consulate exercises its right to claim the body, are they aware it is their responsible for making the necessary arrangements and paying all costs incurred (moving the body, burial, etc.)?			
12. In the event that neither family nor consulate claims the remains, does the DD schedule an indigent's burial, consistent with local procedures. a. If the detainee's is an U.S. military veteran is the Department of Veterans Affairs notified?			
13. Does the facility authorize the remains to be cremated or donated for medical research?			
14. Is an original or certified copy of a detainee's death certificate placed in the subject's a-file?			
15. Does the facility policy and procedures describe when to contact the local coroner regarding such issues as a. Performance of an autopsy? b. Who will perform the autopsy? c. Obtaining State approved death certificates? d. Local transportation of the body?			
16. Are there procedures for INS to properly close the case of a deceased detainee?			

U.S. Immigration and Naturalization Service
NATIONAL DETENTION STANDARDS
MONITORING INSTRUMENT

TERMINAL ILLNESS, ADVANCED DIRECTIVES, AND DEATH

Verification Sources:

The following may serve as sources of information for auditors verifying the facility's compliance with this detention standard:

SOURCE	TIME	DATE	LOCATION
A. Reviewing facilities medical policy			
B. Interviews with OIC, medical staff and district staff			
C. Facility's written policy and procedures			
D. Review of relevant post orders			

Facilities must complete the attached Plan of Action for bringing operations into compliance. For each element found out of compliance, the plan of action will specify remedial action and the estimated timetable for compliance.

***Remarks:** *(Record significant facts, observations, other sources used, etc.)*

Auditors Signature

Date