

ICE/DRO DETENTION STANDARD

TERMINAL ILLNESS, ADVANCE DIRECTIVES, AND DEATH

I. PURPOSE AND SCOPE. This Detention Standard ensures that each facility's continuum of health care services addresses terminal illness, fatal injury, and advance directives and provides specific guidance in the event of a detainee's death. It applies to the following types of facilities housing DRO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by DRO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

Procedures in italics are specifically required for SPCs and CDFs. IGSAs must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Some terms used in this document may be defined in the separate **Definitions** Standard.

II. EXPECTED OUTCOMES. The expected outcomes of this Detention Standard are:

1. The continuum of health care services provided detainees will address terminal illness, fatal injury, and advance directives.
2. Each detainee who has a terminal illness or potentially fatal injury will receive medical care consistent with standard medical practices.
3. In the event of a detainee's death, specified officials and the detainee's designated next of kin will be immediately notified.
4. In the event of a detainee's death, required notifications will be made to authorities outside of ICE/DRO (such as the local coroner or medical examiner), and required procedures will be followed regarding such matters as autopsies, death certificates, burials, and the disposition of decedent's property. Established guidelines and applicable laws will be observed in regard to notification of a detainee death while in custody.
5. The medical records of detainees addressed herein will be complete.
6. The information in this standard will be communicated in a language or manner which the detainee can understand.

III. DIRECTIVES AFFECTED. This Detention Standard replaces **Terminal Illness, Advance Directives, and Death** dated 9/20/2000.

IV. REFERENCES

American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ADLF-4C-19, 4D-23, 4D-26.

V. EXPECTED PRACTICES

A. Terminal Illness

When a detainee's medical condition becomes life-threatening, consistent with the Detention Standard on **Medical Care**, the facility's clinical medical authority or equivalent, or administrative health authority or equivalent shall:

- Arrange the transfer of the detainee to an appropriate off-site medical facility if necessary.
- Immediately notify the facility administrator and/or ICE/DRO Field Office Director (FOD) of the detainee's condition by phone or in person and document the detainee's condition in a memorandum to the facility administrator that briefly describes the illness and prognosis.

The facility administrator, or designee, shall immediately notify ICE/DRO.

A detainee in a community hospital remains under ICE/DRO authority:

- ICE/DRO retains the authority to make administrative decisions affecting the detainee (visitors, movement, authorization of patient care services, etc.).
- The hospital assumes medical decision-making authority consistent with the contract (drug regimen, lab tests, x-rays, treatments, etc.).
- Authority over the detainee's treatment is exercised by the hospital's medical staff once ICE DIHS is notified of admission. ICE DIHS Managed Care and the facility's administrative health authority will follow up on a daily basis to receive major developments.
- The hospital's internal rules and procedures concerning seriously ill, injured, and dying patients shall apply to detainees.

The FOD or designee shall immediately notify (or make reasonable efforts to notify) the detainee's next-of-kin of the medical condition and status, the detainee's location, and the visiting hours and rules at that location, in a language or manner which they can understand. The off-site hospital will also have policies for involving next-of-kin consistent with state or other applicable law.

ICE/DRO, in conjunction with the medical provider, shall provide family members and any others as much opportunity for visitation as possible. Facility staff are reminded to observe and maintain safety and security measures while finding ways to respectfully accommodate the family and detainee needs at this sensitive time.

With respect to a serious illness, or death of a detainee with immigration proceedings pending, the facility administrator or DRO will inform the local Chief Counsel who will then notify the Executive Office of Immigration Review (EOIR) or the court of record.

B. Living Wills and Advance Directives

When the detainee is at an off-site facility, that facility is expected to assist the detainee in completing an Advance Directive and/or Living Will.

All facilities shall use the State Advance Directive form (in which the facility is located) for implementing Living Wills and Advance Directives, the guidelines for which include instructions for detainees who wish to:

- Have a Living Will other than the generic form made available by medical staff, or
- Appoint another individual to make advance decisions for him or her.

At any time, a detainee may request a Living Will other than the (state-specific) generic form, made available by medical staff, to be prepared by the detainee's attorney at the detainee's expense.

When the terms of the advanced directive must be implemented the medical professional overseeing the detainee's care will contact the ICE/DRO FOD or designee and the respective ICE Chief Counsel.

ICE/DRO may seek judicial or administrative review of a detainee's advance directive as appropriate.

C. Do-Not-Resuscitate (DNR) Orders

Each facility holding detainees shall establish written policy and procedures governing DNR orders. Local procedures and guidelines must be in accordance with the laws of the state in which the facility is located.

Health care will continue to be provided consistent with the DNR order. If the DNR order is not physically present or there is any question about the validity of the document, appropriate resuscitative aid will be rendered until an active, properly executed DNR is verified.

Each facility's DNR policy shall comply with the following:

- A DNR written by a staff physician requires the CD/HSA's approval.
- The policy shall protect basic patient rights and otherwise comply with community medical standards.
- A decision to withhold resuscitative services shall be considered only under specified conditions:
 - a. The detainee is diagnosed as having a terminal illness or fatal injury.
 - b. The detainee has requested and signed the order. If the detainee is unconscious or otherwise unable or incompetent to participate in the decision, staff shall attempt to obtain the written concurrence of an immediate family member. The attending physician shall document these efforts in the medical record.
 - c. The decision is consistent with sound medical practice, not in any way associated with assisting suicide, euthanasia, or other such measures to hasten death.
- 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:

- Diagnosis and prognosis;
- Express wishes of the detainee (living will, advance directive, or other signed document);
- Immediate family's wishes;
- Consensual decisions and recommendations of medical professionals, identified by name and title;
- Mental competency (psychiatric evaluation), if detainee concurred in, but did not initiate, the DNR decision; and
- Informed consent evidenced, among other things, by the legibility of the DNR order, signed by the ordering physician and CD.

The document shall be maintained in the medical file.

- A detainee with a DNR order may receive all therapeutic efforts short of resuscitation.
- The facility shall follow written procedures for notifying attending medical staff of the DNR order.
- As soon as practicable, the CD or health authority shall notify the medical director and the respective ICE Chief Counsel of the basic circumstances of any detainee for whom a "Do Not Resuscitate" order has been filed in the medical record.

Health care will continue to be provided consistent with the DNR order. If the DNR order is not physically present or there is any question about the validity of the document, appropriate resuscitative aid will be rendered until an active, properly executed DNR is verified.

D. Organ Donation by Detainees

If a detainee wants to donate an organ:

1. The organ recipient must be a member of the donor's immediate family.
2. The detainee may not donate blood or blood products.
3. All costs associated with the organ donation (hospitalization, fees, etc.) shall be at the expense of the detainee, involving no Government funds.
4. The detainee shall sign a statement that documents his or her:
 - Decision to donate the organ to the specified family member;
 - Understanding and acceptance of the risks associated with the operation;
 - That the decision was undertaken of his or her own free will and without coercion or duress; and
 - Understanding that the Government shall not be held responsible for any resulting medical complications or financial obligations incurred.

5. ICE/DRO shall assist in the preliminary medical evaluation, contingent on the availability of resources.
6. The facility shall coordinate arrangements for transportation, custody, and classification.

E. Death of a Detainee in ICE/DRO Custody

Each Field Office Director (FOD) must ensure that all facilities within his or her jurisdiction receive written instructions detailing the specific procedures to be followed in reporting a detainee's death to the Field Office, as well as internal Field Office procedures for notifying the FOD and others, as detailed below.

1. Detention Facilities

Each facility shall have written policy and procedures that are followed to notify ICE/DRO officials, next-of-kin, and consulate officials of a detainee's death, as detailed below.

2. During Transit in a Land Vehicle

The transporting officers shall notify the closest originating or receiving Field Office as soon as possible, including the detainee's name and A-number, and the date, time, and place of death.

The closest Field Office shall arrange for the local coroner or medical examiner and the Federal Bureau of Investigation (FBI) to meet at the site of death. If death was caused by violence or was associated with other unusual or suspicious circumstances, ICE/DRO shall also contact the local law enforcement authority.

The body must be transferred to the local coroner or medical examiner in the jurisdiction where the death occurred. The transporting officers shall obtain a coroner's receipt in exchange for the body.

3. During Transit via Commercial Flight

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

4. During Transit via JPATS

Established JPATS protocols shall be followed.

5. Vital Information

The FOD shall assemble the following information concerning the decedent detainee, which shall be maintained in the deceased detainee's A-file:

- Name;
- Alien registration number;
- Date of birth;
- Date, time, and location of death;
- Apparent cause of death;

- Investigative steps being taken, if necessary;
- Name and address of next-of-kin in the United States;
- Notifications made;
- Brief medical history related to death;
- Status of autopsy request, if necessary.

6. Notification Process

a. Immediate Notifications after the Death of a Detainee

(1) Headquarters

Within two hours or as soon as practical after the discovery of a detainee death, the Field Office Director (FOD) or Deputy FOD must personally telephone the DRO Assistant Director for Field Operations and the Joint Intake Center (1-877-2INTAKE) to report the circumstances surrounding the death. This telephonic communication may not be delegated. Notification by email or voicemail or through other HQDRO personnel does not satisfy this requirement. If the Assistant Director cannot be reached within 30 minutes, the FOD or DFOD will call the Director of DRO or his/her Chief of Staff.

Detainee deaths are “significant incidents” that must be reported within 24 hours to the ICE Reporting and Operations Center (IROC) using the electronic ICE Significant Event Notification (SEN) system at <https://reporting.ice.dhs.gov>. FODs will ensure that relevant and timely updates are made to HQDRO and IROC through SEN updates, referencing the original Significant Incident Report tracking number.

DRO Headquarters shall immediately notify ICE Office of Professional Responsibility.

(2) Medical Reports

Within 48 hours, the FOD shall send all available medical reports to the DIHS Medical Director (or designee) for review.

(3) Office of the Inspector General (OIG)

ICE/DRO Headquarters will notify OIG within 48 hours.

(4) Each detainee’s death will necessitate proper notification to the appropriate state and local officials where this is required. Each FOD and facility administrator will familiarize themselves with their respective state and local reporting requirements. Documentation of this reporting will be included in the detainee A-file.

b. Notification of Family

Each FOD shall have written procedures that provide for:

- Communicating news of a detainee's serious illness or death to the detainee's next-of-kin and other immediate family in a language or manner which they understand, and/or
- Coordinating religious rituals, if requested.

(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 FOD shall notify the consulate.

(2) Letter of Condolences

The FOD shall send a condolence letter to the next-of-kin, ordinarily within 72 hours, including:

- If the death was by natural causes, a brief account of the medical details.
- If the death was accidental, with no suspicion of foul play, a brief description of the accident and cause of death.
- 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 of death may not yet be provided.

7. Notification of Consulate Officials

In a timely manner, the FOD (or designee) shall notify, by telephone, the respective consulate, and shall follow up with an official letter that explains the circumstances of the death.

F. Disposition of Property

If next-of-kin cannot be identified or located in the United States or abroad (through the consulate) after a reasonable period of investigation, ICE/DRO shall dispose of the property of the decedent in accordance with the ***Abandoned Property*** section of the Detention Standard on **Funds and Personal Property**.

IGSA facilities shall turn over the property to ICE/DRO 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,

ICE/DRO 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, ICE/DRO may coordinate the logistical details involved in returning the remains.

If family members cannot be located or decline orally or in writing to claim the remains, ICE/DRO shall notify the consulate, in writing, after which the consulate shall have seven calendar days to claim the remains and be responsible for making the necessary arrangements and paying all costs incurred (moving the body, burial, etc.).

If neither the family nor the consulate claims the remains, ICE/DRO shall schedule an indigent's burial, consistent with local procedures. If the detainee's record indicates U.S. military service, however, before proceeding with the indigent burial arrangements, ICE/DRO shall contact the Department of Veterans Affairs to determine if the decedent is eligible for burial benefits.

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

Under no circumstances shall ICE/DRO 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:

- Sending the detainee's fingerprint card to the FBI, stamped "Deceased" and identifying the place of death;
- Placing the detainee's death certificate or medical examiner's report (original or certified copy) in the subject's A-file;
- Placing a copy of the gravesite title in the A- file (indigent burial only); and
- Closing any electronic files on the detainee (EARM, for example).

I. Death Certificate

The facility administrator shall specify policy and procedures regarding responsibility for proper distribution of the death certificate:

- Send the original to the person who claimed the body, with a certified copy in the A-file on the decedent, or
- If the decedent received an indigent's burial, place the original death certificate in the A-file.

J. Autopsies

Each facility shall have written policy and procedures to implement the provisions detailed below in this section.

- The facility Chaplain should also be involved in the formulation of the facility's procedures.
- Because state laws vary greatly, including when to contact the coroner or

medical examiner, the respective Chief Counsel will be consulted.

- A copy of the written procedures shall be forwarded to the Chief Counsel.

The written procedures shall address, at a minimum:

- Contacting the local coroner or medical examiner, in accordance with established guidelines and applicable laws;
- Scheduling the autopsy;
- Identifying the person who will perform the autopsy;
- Obtaining the official death certificate, and
- Transporting the body to the coroner or medical examiner's office.

1. Who May Order an Autopsy

The FBI, local coroner, medical examiner, ICE personnel, or clinical medical/administrative health authority may order an autopsy and related scientific or medical tests to be performed in a homicide, suicide, a fatal accident or a detainee's death in accordance with established guidelines and applicable laws.

The FBI, local coroner, medical examiner, ICE personnel, or clinical medical/administrative health authority 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 (for example, the local coroner or medical examiner or next-of-kin) or to authorize a tissue transfer authorized in advance by the decedent.

2. Making Arrangements for an Autopsy

Medical staff shall arrange for the approved autopsy to be performed by the local coroner or medical examiner in accordance with established guidelines and applicable laws.

- 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 decedent was otherwise unattended by a physician.

3. Religious Considerations

It is critical that the FOD, or designee, verify the detainee's religious preference prior to final authorizations for autopsies or embalming and take into account religious-specific requirements.

Standard Approved:

James T. Hayes, Jr. /s/

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Date