

# **ICE/DRO RESIDENTIAL STANDARD**

## **TERMINAL ILLNESS, ADVANCE DIRECTIVES, AND DEATH**

**I. PURPOSE AND SCOPE.** Health care services of the facility address terminal illness, fatal injury, and advance directives, and provide specific guidance in the event of a resident's death.

**II. EXPECTED OUTCOMES.** The expected outcomes of this Standard are as follows:

1. Health care services will provided residents information and assistance on issues that address terminal illness, fatal injury, and advance directives.
2. Each resident who has a terminal illness or potentially fatal injury will receive appropriate medical care.
3. In the event of a resident's death, specified ICE/DRO officials and the resident's immediate family will be immediately notified.
4. In the event of a resident's death, required notifications will be made to ICE/DRO and to authorities outside of ICE/DRO (such as the coroner), and required procedures will be followed regarding such matters as autopsies, death certificates, burials, and the deceased's property.
5. The medical records of residents addressed herein will be complete.
6. Where required, residents have regular access to translation services and/or are provided information in a language that they understand.
7. The standard complies with federal laws and with DHS regulations regarding residents with special needs.

**III. DIRECTIVES AFFECTED.** None

### **IV. REFERENCES**

The First Edition National Residential Standards were written using a variety of methodologies including previous and current practices, review and comment from various subject matter experts, review and comment from various government and non-government organizations, and a review of current state codes in Pennsylvania and Texas. Each standard is written in a manner that affords each resident admission and continuous housing to a family residential facility in a dignified and respectful manner. There are no specific codes, certifications, or accreditations that deal specifically with unique management requirements of families awaiting the outcome of their immigration proceeding in a non-secure custodial environment.

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

## **V. EXPECTED PRACTICES**

### **1. Terminal Illness**

When a resident's medical condition becomes life-threatening, the facility's Clinical Director (CD), Health Services Administrator (HSA), or equivalent shall:

- Notify the facility administrator of the resident's condition by phone or in person, and document the resident's condition in a memorandum to the facility administrator, briefly describing the illness and prognosis.
- Arrange the transfer of the resident to an appropriate off-site medical facility.
- Notify family members, if known.

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

The JFRMU in consultation with the Field Office Director shall review and determine custody disposition of remaining family members when terminal illness is involved.

### **2. Living Wills and Advance Directives**

Facilities shall use an Advance Directive form, or its equivalent, of the state in which the facility is located. Guidelines for implementing Living Wills and Advance Directives will include instructions for residents who wish to:

- Have a Living Will other than the generic form the DIHS provides, or
- Appoint another individual to make advance decisions for him or her.

When a resident requests a Living Will other than the generic DIHS form, the opportunity to have an attorney prepare the documents (at the resident's expense), shall be facilitated.

When the medical professional responsible for the resident's care determines that the terms and conditions of the resident's advance directive should be implemented, he or she shall contact the CD/HSA and the respective ICE/DRO Chief Counsel.

ICE/DRO may seek judicial or administrative review of a resident's Advance Directive.

### **3. Do-Not-Resuscitate Orders (DNR)**

Each facility holding ICE/DRO residents shall establish written policy and procedures governing DNR orders, in accordance with the laws of the state in which the facility is located.

### **4. Organ Donation by Residents**

If a resident wants to donate an organ:

- a. The organ recipient must be a member of the donor's immediate family.
- b. All costs associated with the organ donation (hospitalization, fees, etc.) shall incur no Government expense.
- c. The resident 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, and a statement that the decision has been made of his or her own free will.
- Understanding that the Government shall not be held responsible for any medical complications or financial responsibilities.

## **5. Death of a Resident in ICE/DRO Custody**

Each facility shall immediately notify JFRMU and the Field Office Director (FOD) of a resident's death.

In the event of a resident's death, the following protocols will be followed:

### **a. Residential Facilities**

JFRMU and the Field Office shall follow established procedures to notify ICE/DRO officials, next-of-kin, and consulate officials of a resident's death.

### **b. During Transit in a Land Vehicle**

The transporting staffs shall notify the originating or receiving Field Office as soon as possible, including the resident's name and A-number; and the date, time, place, and apparent cause of death.

The closest ICE/DRO Field Office shall arrange for the local coroner and the Federal Bureau of Investigation (FBI) to meet the vehicle. 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 in order that local law enforcement can coordinate action, including rendezvous point with the FBI.

The interagency rendezvous point, the location at which the coroner shall remove the body from the vehicle, must be in the state where the death occurred. The transporting staff shall obtain a coroner's receipt in exchange for the body.

### **c. During Transit via Commercial Flight**

The escorting staff shall notify the FOD of the resident's in-flight death. If the aircraft makes a landing on foreign soil following the death, the staff shall contact the nearest U.S. consulate or embassy for immediate assistance before contacting the FOD.

### **d. During Transit via JPATS**

Established JPATS protocols shall be followed.

### **e. Vital Information**

The FOD shall assemble the following information concerning the deceased resident:

- Name
- Alien registration number (A-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

**f. Notification of ICE/DRO Officials**

**1). Immediate Notifications**

**a). Headquarters**

The FOD (or designee), or Chief, JFRMU, shall immediately telephone the DRO Assistant Director for Operations.

During non-business hours, the Assistant Director may be reached via the ICE/DRO Joint Intake Center (JIC).

In all instances, follow up via a Significant Event Notification (SEN) e-mail is required.

**b). Medical Reports**

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

**2). Notification of Family**

Each FOD shall have written procedures that provide for:

- Communicating news of a resident's serious illness or death to the resident's next-of-kin and other immediate family.
- Coordinating religious rituals, if requested.

**a). Immediate Telephonic Notification**

The facility 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 appropriate consulate.

**b). Letter of Condolences**

As soon as practical, the FOD shall send a condolence letter to the next-of-kin, 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.

#### **g. Notification of Consulate Officials**

The FOD (or designee) shall notify, by telephone, the respective consulate, with an official follow-up letter that explains the circumstances of the death.

### **6. 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 deceased in accordance with the ***Abandoned Property*** section of the Residential Standard on “**Funds and Personal Property.**”

Facilities shall turn over the property to ICE/DRO for processing and disposition.

### **7. 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 is responsible for researching and complying with airline rules and federal regulations on transporting the body; however, ICE/DRO shall coordinate the logistical details involved in returning the remains.

If family members cannot be located or decline to claim the remains, orally or in writing, ICE/DRO shall notify the consulate in writing. The consulate shall have seven calendar days after the written notification to claim the remains. The consulate shall be responsible for making the necessary arrangements and paying all costs incurred (transporting 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 resident’s record indicates U.S. military service, however, ICE/DRO shall first contact the Department of Veterans Affairs to determine if the deceased 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.

## **8. Case Closure**

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

- Sending the resident's fingerprint card to the FBI, stamped "Deceased," and identifying the place of death.
- Placing the resident'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).
- Closing any electronic files on the resident

## **9. Death Certificate**

The facility administrator shall specify policy and procedures identifying the staff member responsible for proper distribution of the death certificate, including:

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

## **10. 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.
- Since state laws vary greatly, including when to contact the coroner, the respective Chief Counsel shall be contacted when legal questions arise.
- 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, in accordance with state law and guidelines
- Scheduling the autopsy
- Identifying the person who will perform the autopsy
- Obtaining the official death certificate
- Transporting the body to the coroner's office

### **a. Who May Order an Autopsy**

The FBI, local coroner, or DIHS may order an autopsy and related scientific or medical tests to be performed in a homicide, suicide, fatal accident, or an 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 (for example, the coroner or next-of-kin). With such consent, DIHS may also authorize a

tissue transfer authorized in advance by the deceased.

**b. Making Arrangements for an Autopsy**

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.

**c. Religious Considerations**

It is critical that the FOD or designee verify the resident's religious preference prior to final authorizations for autopsies or embalming.

- Religions such as Judaism and Islam forbid embalming.
- There are other religious-specific requirements involving autopsies and embalming.

**Standard Approved:**

  
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**John P. Torres**  
**Director**  
**Office of Detention and Removal**

**DEC 21 2007**  
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**Date**