

# 4.7 Terminal Illness, Advance Directives, and Death

## Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard ensures that each Center's continuum of health care services addresses terminal illness and advance directives, and provides specific guidance in the event of a resident's death.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

## Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

### A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

## Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. The continuum of health care services provided to adult residents will address terminal illness and advance directives. Appropriate to the circumstances, each adult resident will be provided with an option to complete an advance medical directive for themselves and/or their minor child(ren).
2. The Center will be in compliance with standards set by ICE in its provision of medical care to terminally ill residents.
3. In the event of a resident's death, or if a resident becomes gravely ill, specified officials as listed herein and required by ICE policies as well as the resident's designated next-of-kin will be notified immediately.

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4. In the event of a resident's death, required notifications will be made to authorities outside of ICE/Enforcement and Removal Operations (ERO) (e.g., the local coroner or medical examiner), and required procedures will be followed regarding matters such 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 resident death while in custody. In addition, specific procedures required by ICE policy on notification and reporting of deaths in custody will be followed.
5. The Health Services Administrator (HSA) at the Center where the resident was housed at the time of his/her death will ensure the decedent's medical record is reviewed for completeness and closed out.
6. In the event of a resident death, all property of the resident will be returned within two weeks to the resident's next-of-kin, unless property of the decedent is being held as part of an investigation into the circumstances of death.
7. In the event an adult resident becomes gravely ill and is unable to care for his/her child(ren), a care plan that requires one-on-one supervision for any child(ren) in ICE custody will be developed by the Center administrator. The ERO Field Office Director (FOD) and the Juvenile and Family Residential Management Unit (JFRMU) Chief, in conjunction with the Office of the Principal Legal Advisor (OPLA) will approve this plan.
8. Should an adult resident die, the Center Administrator will coordinate with the FOD, OPLA, and the JFRMU Chief to determine appropriate next steps with regard to the resident's child(ren) in ICE custody.

### Standards Affected

This standard replaces the ICE Family Residential Standard on *Terminal Illness, Advance Directives, and Death* dated 12/21/2007.

### Expected Practices

#### A. Terminal Illness

When a resident's medical condition becomes life-threatening, the Center's Clinical Medical Authority (CMA) or HSA will:

- Arrange the transfer of the resident to an appropriate off-site medical or community facility if appropriate and medically necessary;
- Immediately notify the Center Administrator and/or ICE/ERO FOD both verbally and in writing of the resident's condition. The memorandum will describe the resident's illness and prognosis.

The Center Administrator or the FOD will notify family members, if known (unless the resident has expressed a wish to the contrary) and the resident's attorney of record, if known (unless the resident has expressed a wish to the contrary).

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The Center Administrator, or designee, will notify ICE/ERO and ICE Health Services Corps (IHSC) immediately.

A resident in a community hospital remains detained under ICE/ERO authority, such that ICE/ERO retains the authority to make administrative, non-medical decisions affecting the resident (visitors, movement, authorization of care services, etc.). However, upon physical transfer of the patient to the community hospital's care, the hospital assumes:

- Medical decision-making authority consistent with the facility agreement (drug regimen, lab tests, X-rays, treatments, etc.); and
- Authority over the resident's treatment, which is exercised by the hospital's medical staff once IHSC is notified of admission. However, IHSC-managed care and the Center's HSA will follow up on a daily basis to receive information about major developments.

To that end, the hospital's internal rules and procedures concerning seriously ill, injured, and dying patients will apply to residents. The FOD or designee will, unless the resident has expressed a wish to the contrary, immediately notify (or make reasonable efforts to notify) the resident's next-of-kin and attorney of record of the resident's medical condition and status, the resident's location, and the visiting hours and rules at that location, in a language or manner that they can understand.

ICE/ERO, in conjunction with the medical provider, will provide family members and any others as much opportunity for visitation as possible, in keeping with safe and secure Center and facility operations. Center and hospital staff will be reminded to observe and maintain safety and security measures while finding ways to accommodate the family and resident needs respectfully at this sensitive time.

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

Once a resident is diagnosed as having a terminal illness or remaining life expectancy of less than one year, the adult resident will be provided an opportunity to complete an advance medical directive for themselves and/or their minor child(ren). Medical staff will offer adult residents access to forms or other related materials on Advance Directives or Living Wills, including the appropriate translation services when needed. Likewise, when the resident is held at an off-site facility, staff at that facility may assist the resident in completing an Advance Directive and/or Living Will.

All Centers will use the state "Advance Directive" form, or its equivalent, appropriate to the state in which the Center is located, for implementing Living Wills and Advance Directives, the guidelines for which include instructions for residents 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 them.

At any time, a resident may request forms or other related materials on Advance Directives or Living Wills. These may be prepared by the resident's attorney at the resident's expense.

When the terms of the Advance Directive must be implemented, the medical professional overseeing the resident's care will contact the appropriate ICE/ERO representative.

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

### C. Do Not Resuscitate (DNR) Orders

Each Center housing residents will 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 Center 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, then appropriate resuscitative aid will be rendered until the existence of an active, properly executed DNR is verified.

Each Center's DNR policy will comply with the following stipulations:

- A DNR written by a staff physician requires the CMA's approval;
- The policy will protect basic patient rights and otherwise comply with state requirements and the jurisdiction in which the Center is located;
- A decision to withhold resuscitative services will be considered only under specified conditions:
  - The resident is diagnosed as having a terminal illness;
  - The resident has requested and signed the order (if the resident is unconscious, incompetent, or otherwise unable to participate in the decision, staff will attempt to obtain the written concurrence of an immediate family member, and the attending physician will document these efforts in the medical record); and
  - The decision is consistent with sound medical practice, and is not in any way associated with assisting suicide, euthanasia, or other such measures to hasten death.
- The resident's medical file will include documentation validating the DNR order:
  - A standard stipulation at the front of the in-patient record, and explicit directions: "Do Not Resuscitate" or "DNR"; and
  - Forms and memoranda recording:
    - Diagnosis and prognosis;
    - Express wishes of the resident (e.g., living will, advance directive, or other signed document);
    - Immediate family's wishes, if immediate family has been identified;
    - Consensual decisions and recommendations of medical professionals, identified by name and title;
    - Mental competency (psychiatric) evaluation, if resident concurred in, but did not initiate, the DNR decision; and
    - Informed consent evidenced, among other things, by the legibility of the DNR order,

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signed by the ordering physician and CMA.

- A resident with a DNR order may receive all therapeutic efforts short of resuscitation;
- The Center will follow written procedures for notifying attending medical staff of the DNR order; and
- As soon as practicable, the CMA or HSA will notify the IHSC Medical Director and the Office of the Principal Legal Advisor of the basic circumstances of any resident for whom a DNR order has been filed in the medical record.

### D. Organ Donation by Residents

If an adult resident wants to donate an organ:

- The organ recipient must be a member of the donor's immediate family;
- The resident may not donate blood or blood products;
- All costs associated with the organ donation (e.g., hospitalization, fees) will be at the expense of the resident, involving no government funds;
- The resident will sign a statement that documents his/her:
  - Decision to donate the organ to the specified family member;
  - Understanding and acceptance of the risks associated with the operation;
  - Acknowledgement that the decision was undertaken of his/her own free will and without coercion or duress; and
  - Understanding that the government will not be held responsible for any resulting medical complications or financial obligations incurred.
- IHSC medical staff will assist in the preliminary medical evaluation, contingent on the availability of resources; and
- The Center will coordinate arrangements for the donation.

### E. Death of a Resident in ICE/ERO Custody

Each Center will have written policy and procedures to notify ICE/ERO officials of a resident's death. ICE/ERO officials will take action in accordance with ICE policy on notification and reporting of deaths in custody, including notifying the resident's next-of-kin and consular officials.

Should a parent/guardian die while in ICE/ERO custody at a Family Residential Center, the Center will work with the FOD, OPLA, and the JFRMU Chief to determine the appropriate course of action for that individual's child(ren) in ICE custody. The Center will implement a care plan approved by the JFRMU Chief pending transfer or discharge.

### F. Disposition of Property

Centers will turn over the property of the decedent to ICE/ERO within one week for processing and disposition. Unless property of a decedent is being held as part of an investigation into the

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circumstances of death, that property should be returned to the decedent's next-of-kin, if known, within two weeks.

### G. Disposition of Remains

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

If the family wishes to claim the remains but cannot afford the transportation costs, then ICE/ERO 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/ERO 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, then ICE/ERO will notify the consulate, in writing, after which the consulate will have seven calendar days to claim the remains and be responsible for making the necessary arrangements and paying all costs incurred (e.g., moving the body, burial).

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

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

Under no circumstances will ICE/ERO authorize cremation or donation of the remains for medical research.

### H. Death Certificate

The Center Administrator will specify policy and procedures regarding responsibility for proper distribution of the death certificate, as follows:

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

### I. Autopsies

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

- The Center Chaplain will be involved in formulation of the Center's procedures;

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- Because state laws vary greatly, including when to contact the coroner or medical examiner, the ICE Office of the Principal Legal Advisor will be consulted; and
- A copy of the written procedures will be forwarded to the ICE Office of the Principal Legal Advisor.

The written procedures will address, at a minimum, the following:

- 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 Federal Bureau of Investigation (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, fatal accident, or other resident'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 (e.g., the local coroner or medical examiner, or next-of-kin), or authorize a tissue transfer authorized in advance by the decedent.

### 2. Making Arrangements for an Autopsy

Medical staff will 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 will be taken that will affect the validity of the autopsy results; and
- Local law also may require an autopsy for death occurring when the decedent was otherwise unattended by a physician.

### 3. Religious Considerations

It is critical that the FOD or designee verify the decedent's religious preference prior to final authorizations for autopsies or embalming, and accommodate religion-specific requirements.

## References

- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes

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- ICE Policy 11003.2, Notification and Reporting of Resident Deaths, May 19, 2011
- National Commission on Correctional Health Care, Standards for Health Care in Jails (2008): 109