

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

NONCITIZEN MEDICAL GRIEVANCE SYSTEM

IHSC Directive: 01-05

ERO Directive Number: 11704.2

Federal Enterprise Architecture Number: 306-112-002b

Effective Date: October 19, 2023

**By Order of the Assistant Director
Stewart D. Smith, DHSc, FACHE**

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- 1. PURPOSE:** The purpose of this directive is to set forth the policy and procedures for investigating and addressing medical complaints and medical care grievances submitted by noncitizens.

 - 2. APPLICABILITY:** This directive applies to all U.S. Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) federal staff working in IHSC-staffed facilities, IHSC Headquarters (HQ), and medical case management staff. This directive also applies to contract personnel when supporting IHSC-staffed facilities. IHSC-staffed facilities must implement a grievance system as described in the 2011 ICE Performance Based National Detention Standards (PBNDS), section 6.2 "Grievance System" standards and in the supplemental guidance included in this IHSC directive.

 - 3. AUTHORITIES AND REFERENCES:**
 - 3-1.** Section 322 of the Public Health Service Act (42 USC § 249(a)). Medical Care and Treatment of Quarantined and Detained Persons.
 - 3-2.** Section 232 of the Immigration and Nationality Act, as amended (8 USC § 1222). Detention of aliens for physical and mental examination.
 - 3-3.** 8 CFR § 232. Detention of Aliens for Physical and Mental Examination.
 - 3-4.** 42 CFR § 34. Public Health, Medical Examination of Aliens.
 - 3-5.** 2011 ICE Performance-Based National Detention Standards, 6.2 Grievance System.

4. **POLICY:** All IHSC-staffed facilities must implement a grievance system that provides noncitizens with a procedure to file informal, formal and emergency medical grievances related to medical care. Facility staff must provide timely responses to grievances.

5. **RESPONSIBILITIES:**

5-1. **Health Services Administrator (HSA) or Designee.** The HSA or designee is responsible for:

5-1.1 **Medical Grievance Officer (MGO).** The HSA designates a federal employee as the IHSC facility's MGO. The assistant health services administrator (AHSA) should be the primary choice. The nurse manager (NM) should be the second choice.

5-1.1.a. **Appeal.** Designates a federal employee as the first line of appeal. The clinical director (CD) is the preferred designee for medical care complaints. The HSA is the preferred designee for medical administration complaints.

5-1.1.b. **Log.** Maintains and updates a grievance log in a timely manner. The format of the grievance log can be one of three types:

- A report generated either through the IHSC electronic medical record system (i.e., eCW).
- Manually in an electronic format.
- Paper.

5-1.2 **Documentation.** Ensures that health care staff assigned to the grievance document the circumstances and resolution of all grievances in the health record and in the grievance log, and then forward the grievance to the facility's grievance officer (GO).

5-1.3 **Training.** Ensure IHSC staff assigned to the facility receive training on grievance process upon entry into employment and annually thereafter.

5-1.4 **Grievance Resolution:**

5-1.4.a. The CD or the HSA must review the grievance resolution.

5-1.4.b. The CD or HSA should share and discuss issues brought up through the grievance process at staff meetings.

5-2. **Medical Grievance Officer.** The MGO is responsible for the following five noncitizen grievance duties:

- 5-2.1 Liaises with the detention facility's grievance officer (GO) and the IHSC-staffed facility to process, investigate and act on medical grievances.
- 5-2.2 Follows timeframes set by ICE/Enforcement and Removal Operations (ERO) detention facility and IHSC policies and procedures.
- 5-2.3 Responsible for conducting the initial adjudication of a formal or emergency grievance.
- 5-2.4 Consults with the HSA to assign the responsibility of processing, investigating and responding to a grievance to an IHSC staff member when it is a conflict of interest for the MGO or other issues prevent the MGO from performing these duties.
- 5-2.5 Maintains the IHSC grievance log.
- 5-2.6 Informs the facility's GO of all informal, emergency and formal grievances submitted to the medical clinic.

5-3. IHSC Staff. The IHSC staff member assigned to investigate a grievance documents the medical grievance and outcome in the noncitizen's health record and forwards pertinent information to the MGO.

6. PROCEDURES:

6-1. Types of Medical Grievances. IHSC staff must inform the MGO of all informal, emergency and formal grievances submitted directly to staff members.

6-1.1 Informal Grievances. Grievances that IHSC staff resolve verbally and informally in their daily interactions with noncitizens. (See PBNDS 2011; Section 6.2 Grievance System, Subsection V.C.1. "Informal Grievances" for more information.)

6-1.1.a. Staff members who receive a noncitizen's informal complaint or grievance should attempt to resolve the issue informally or notify the MGO or designee of the grievance as soon as practical.

6-1.1.b. Noncitizens may proceed directly to a formal grievance at any time.

6-1.1.c. If IHSC staff do not have to provide written confirmation of the outcome of an informal grievance to the noncitizen.

6-1.1.d. **Informal Grievance Summary.** The IHSC staff member that resolved the grievance must document the circumstance and resolution in the noncitizen's health record. IHSC staff write and forward a summary of the grievance to the MGO. The grievance summary should include the following elements:

- The date staff received the grievance.
- The date of the response.
- A grievance summary (one to three sentences).
- The decision and the rationale for the decision.
- The noncitizen's acceptance or rejection of the decision.
- The steps or actions that either the staff or the noncitizen take to resolve the issue. (For example, schedule a follow-up appointment or file an appeal).

6-1.1.e. The MGO must deliver a grievance summary to the designated GO for entry in the noncitizen's detention file.

6-1.1.f. The MGO must document the grievance summary information and delivery of the grievance summary to the GO in the IHSC grievance log.

6-1.2 **Emergency Grievances:** Time-sensitive grievances that involve an immediate threat to health, safety or welfare. (See PBNDS 2011; Section 6.2 Grievance Systems, Subsection V.C.2. "Emergency Grievances" for more information).

6-1.2.a. Staff members immediately bring a patient's emergency grievance to the MGO, HSA or CD for their review.

6-1.2.b. If the MGO, HSA or CD is not present, staff must alert the senior clinical staff on duty.

6-1.2.c. If the MGO or HSA is not a clinician, they must refer the emergency medical grievance to the CD, a physician, or senior clinical staff on duty.

6-1.2.d. If the CD, physician or senior clinical staff determine that the grievance does not involve an immediate threat to health, safety or welfare, then standard grievance procedures apply.

6-1.3 **Formal Grievances.** Noncitizen grievances filed in accordance with established procedures that require a written response. There are levels to formal grievance review at every facility. For more details see the Grievance Appeals Board (GAB) and appellate review in PBNDS 2011; Section 6.2 Grievance System, Subsection V.C.3. "Formal Written Grievances."

6-1.3.a. **Right to File Written Formal Grievance.** The noncitizen may file a formal written grievance at any time during, after or in lieu of lodging an informal grievance.

6-1.3.b. **Direct Submission to the IHSC Medical Clinic.** Noncitizens may submit formal written grievances regarding medical care directly to any IHSC staff member.

6-1.3.c. **Sealed Grievance.** A patient has the right to seal the grievance in an envelope, clearly marked "Medically Sensitive." Staff deliver each grievance form in a sealed envelope without altering it to the MGO.

6-1.3.d. **Receipt of Formal Written Grievance.** The GO, MGO or designee should directly receive formal medical grievances. Upon receipt of the formal grievance, the MGO or designee must log the grievance in the grievance log within 24 hours or the next business day.

6-1.3.e. **Responses to Formal Written Medical Grievances.** The MGO should accept the grievance forms signed and dated by noncitizens, except for sealed grievances, and arrange a meeting with the noncitizen to attempt to resolve the issue.

6-1.3.f. If the grievance involves the MGO, the MGO must forward the grievance to the HSA who designates another IHSC employee to address the grievance.

6-1.3.g. The MGO must conduct the initial adjudication of the grievance. They provide the noncitizen with a written decision within five working days of receipt of the written grievance. The MGO documents their written decision on the grievance form submitted by the noncitizen. The written decision to the noncitizen's formal grievance must address the following issues:

- The date of the decision.

- The rationale for the decision.
- The outcome of the decision such as the noncitizen's acceptance or rejection of the decision.
- The steps or actions that the staff or the noncitizen will take to resolve the issue (for example, schedule a follow-up appointment or file an appeal).

6-2. Health Record Documentation.

- 6-2.1 The MGO or designee assigned to resolve the grievance should scan a copy of the written medical grievance and any related documents into the patient's health record.
- 6-2.2 The MGO or designee should document the grievance via an "Admin" encounter in the electronic health record. At a minimum the documentation should include:
- 6-2.2.a. The date the grievance was filed and received.
 - 6-2.2.b. The nature of the grievance.
 - 6-2.2.c. The background or investigation results.
 - 6-2.2.d. The grievance decision and rationale for the decision.
 - 6-2.2.e. The date the MGO provided the decision to the noncitizen.
 - 6-2.2.f. The outcome of the decision (i.e., the noncitizen's acceptance, rejection or appeal of the decision).
 - 6-2.2.g. Steps or actions taken by staff or the noncitizen following the decision.
 - 6-2.2.h. The MGO verifies that the grievance facility's GO received the grievance.
 - 6-2.2.i. The disposition of the original grievance form and related documents should follow all IHSC's health information management guidelines.

6-3. Grievance Log Documentation.

- 6-3.1 Each IHSC clinic must maintain a secure IHSC noncitizen grievance log subject to regular inspection by the HSA and select IHSC HQ staff. The MGO maintains the grievance logs. The noncitizen grievance log should contain the following categories:
- 6-3.1.a. The date the MGO filed the grievance (i.e., the date the facility or MGO received the grievance).

- 6-3.1.b. The grievance log number (if formal, must match the grievance number on the form).
- 6-3.1.c. The type of grievance (i.e., informal, formal, or emergency).
- 6-3.1.d. The grievance's classification (e.g., medical, dental, mental health or other).
- 6-3.1.e. The name and alien file number of the noncitizen who filed the grievance.
- 6-3.1.f. One sentence on the nature of the grievance.
- 6-3.1.g. The date the MGO provided a decision to the noncitizen.
- 6-3.1.h. Identifying information (rank, first & last name, discipline and position of the MGO, or medical staff member who adjudicated the grievance).
- 6-3.1.i. The date of the appeal (if applicable).
- 6-3.1.j. The outcome of the adjudication (e.g., nuisance, petty, resolved, or rejected).
- 6-3.1.k. The date staff sent a copy of the grievance to the GO.
- 6-3.1.l. The full name of the facility's GO.
- 6-3.2 The MGO must obtain a log number for each noncitizen grievance from the facility's GO, enter it in the space provided on the noncitizen grievance form and record it in the noncitizen grievance log in chronological order. The log entry number and the noncitizen grievance number must match.

6-4. Unresolved Grievances. Noncitizens have the right to appeal grievance resolutions if they are dissatisfied.

- 6-4.1 IHSC must inform noncitizens that they have the right to appeal the decisions of their grievances at all levels.
- 6-4.2 The GO forwards appeals of grievances pertaining to medical care to the CD or federal physician to address. The HSA addresses appeals of grievances related to medical administration. Section 6-4 details the second level appeal documentation.
- 6-4.3 The noncitizen has the right to appeal to the Grievance Appeals Board (GAB) if they are dissatisfied with the decision from the second level. IHSC or facility staff may assist the noncitizen in writing their appeal.

6-4.4 **Grievance Appeals Board.** If the first appeals level does not resolve the grievance, the HSA must refer the grievance to the ICE administrator to coordinate a Grievance Appeals Board (GAB). The GAB must include at least one IHSC federal staff member for medical grievance appeals.

6-4.4.a. The GAB reviews the appeal and provides a written decision on the grievance within five working days of the receipt of the appeal.

6-4.4.b. The GAB must not include any individuals included in the grievance or who responded to the initial grievance or the first appeal.

6-4.4.c. If the outcome of the appeal is unfavorable to the noncitizen, the GAB must forward the grievance and all supporting documentation to the facility's administrator within 24 hours of issuing a decision.

6-4.4.d. IHSC staff or GAB staff, must notify the noncitizen of their right to appeal the GAB's decision with the field office director (FOD) or assistant field office director (AFOD).

6-4.4.e. The AHA or designee documents the outcome of the GAB in the noncitizen's medical record.

6-4.5 **Appellate Review.** IHSC or GAB staff must notify the noncitizen of their right to appeal the GAB's decision with the FOD or AFOD. (See PBNDS 2011, section 6.2: "Grievance System" and ICE policy for information on facility administrator and FOD requirements).

6-5. Continuous Quality Review of the Medical Grievance Process. Each IHSC facility's Continuous Quality Improvement program reviews the medical grievance process and creates corrective action plans as needed.

6-6. Noncitizen Abuse of Grievance System. See PBNDS 2011, section 6.2 "Grievance System" and local ICE policies, for information on responding to noncitizens with a pattern of filing nuisance complaints.

6-7. Allegations of Staff Misconduct or Retaliation. See PBNDS 2011, section 6.2 "Grievance System" and ICE Policy. Upon receipt, facility staff must forward all noncitizen grievances containing allegations of staff misconduct to a supervisor or higher-level official in their chain of command.

7. HISTORICAL NOTES:

7-1. This directive replaces IHSC Directive 01-05, *Detainee Medical Grievance System* dated, June 25, 2018.

7-2. Summary of Changes:

7-2.1 Title changed to Noncitizen Medical Grievance System

7-2.2 Changed "password protected" to "secure".

7-2.3 Removed "(i.e., Excel spreadsheet)" from section 5-6.1 as it is already defined in section 5-1.2.

7-2.4 Removed "The date of the decision" from Section 5-4.3g.

7-2.5 Moved the following content from Responsibilities to Procedure section: Type of Medical Grievances, Health Record Documentation, Grievance Log, Unresolved Grievance, Continuous Quality Review, Noncitizen Abuse of Grievance System, Allegation of Staff Misconduct or Retaliation

7-2.6 Changed the approved term from detainee to noncitizen.

8. **DEFINITIONS:** See definitions for this policy in the [IHSC Glossary](#).

9. APPLICABLE STANDARDS:

9-1. Performance Based National Detention Standards (PBNDS):

9-1.1 PBNDS 2011 Revised 2016: Part 6: Justice; 6.2: Grievance System.

9-2. Family Residential Standards 2020:

9-2.1 Part 6: Justice; 6.2: Grievance System.

9-3. American Correctional Association (ACA):

9-3.1 4-ALDF-6B-01: Grievance Procedure.

9-4. National Commission on Correctional Health Care (NCCHC): Standards for Jails, 2018:

9-4.1 J-A-10: Grievance Process for Health Care Complaints.

10. **PRIVACY AND RECORDKEEPING.** ICE uses noncitizen health records and information maintained in accordance with the DHS/ICE-013 Alien Health Records System of Records to provide for the care and safety of noncitizens. IHSC limits access to noncitizen health records and information to those individuals who need to know the information for the performance of their official duties, and who have appropriate clearances or permissions.

IHSC secures paper records in a locked cabinet or room when not under the direct control of an officer or employee with a need for the paper record to perform their duties.

- 10-1.** IHSC staff log grievances by fiscal year and maintains them for six years after the respective fiscal year has ended.
- 10-2.** IHSC staff complete annual training on the protection of patient health information and Sensitive Personally identifiable information.
- 10-3.** IHSC staff reference the Department of Homeland Security Handbook for Safeguarding Sensitive PII (Handbook) at DHS Handbook for Safeguarding Sensitive PII for additional information concerning safeguarding sensitive PII.
- 10-4.** All relevant documents produced or provided in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule (GRS) or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification. Prior to the disposition of any records referenced in this directive, ICE Records Officer approval must be obtained.

11. NO PRIVATE RIGHT STATEMENT: This document is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

12. POINT OF CONTACT: Chief, Health Operations Unit.