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

ADVANCE DIRECTIVES, DO NOT RESUSCITATE, AND TERMINAL ILLNESS

IHSC Directive: 02-01
ERO Directive Number: 11720.3
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Effective Date: August 15, 2023

By Order of the Assistant Director
(b)(6),(b)(7)(C) DHSc, FACHE **(b)(6),(b)(7)(C)**

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1. **PURPOSE:** The purpose of this directive is to set forth policies and procedures to preserve end-of-life decisions for terminally ill patients through advance directives (e.g., living wills, health care proxies, medical powers of attorney) and do not resuscitate (DNR) orders.

2. **APPLICABILITY:** This directive applies to all U.S. Immigration and Customs (ICE) Health Service Corps (IHSC) personnel including, but not limited to, U.S. Public Health Service (PHS) officers and civil service employees, and contract personnel. It applies to contract personnel supporting health care operations in ICE-owned or contracted detention facilities and to IHSC headquarters (HQ) staff. This directive applies to contract personnel supporting IHSC in detention facilities and headquarters (HQ). Federal contractors are responsible for the management and discipline of their employees supporting IHSC.

3. **AUTHORITIES AND REFERENCES:**

   3-1. Title 38 Chapter I Part 17 Protection of Patient Rights § 17.32.

   3-2. Patient Self-Determination Act of 1990, Requirements for Advance directives under State Plans for Medical Assistance.

   3-3. ICE Directive 11022.1, *Detainee Transfers*.

4. **POLICY:** IHSC provides mentally competent patients, health care proxies (HCP) or medical powers of attorney (MPOA) the option to withhold or withdraw medical treatments when recovery or cure is not possible because of a terminal illness or injury.

4-1. IHSC provides translation services and/or special needs devices to patients as needed in accordance with IHSC Directive 03-03, *Patients with Chronic Health and Special Needs* located in the IHSC Policy Library.

4-2. No IHSC employee or contractor may serve as a health care proxy for a patient.

4-3. Each IHSC facility holding detained noncitizens shall establish written policy and procedures governing DNR orders. Facility local operating procedures for Advance Directives and DNR orders shall comply with state requirements and jurisdiction in which the facility is located.

5. RESPONSIBILITIES:

5-1. IHSC Medical Director, or designee.

5-1.1 Maintains the role of the clinical medical authority and notifies the IHSC assistant director who further notifies the ICE Office of the Principal Legal Advisor of the advance directive or DNR request.

5-1.2 Makes recommendations for available services within IHSC per IHSC Directive 01-38, *Appropriate Housing Placement for Complex Patients* found the IHSC Policy Library, or off-site resources and services capable of implementing the treatment plan.

5-1.3 Assigns an independent case medical reviewer within IHSC to review advance directive or DNR documents.

5-1.4 Reviews case documentation, approves the advance directive or DNR order, and communicates approval to the facility clinical director.

5-2. Regional Clinical Director (RCD) or designee.

5-2.1 Receives notification of terminal illness as per IHSC Directive 03-32, *Serious Detainee Illness* found in the IHSC Policy Library, and advance directive or DNR order or revocation from the IHSC Form 834, Med/Psych Alert.

5-2.2 Performs an independent review and forwards recommendation to the IHSC medical director for approval.

5-3. Clinical Director (CD).

5-3.1 Reviews all patients arriving with an active advance directive or DNR order to ensure alignment with the receiving state's requirements and IHSC policies.

5-3.2 Maintains familiarity with the laws of the jurisdictions for which they are responsible to manage the initiation or continuation of an advance directive or DNR order.

5-3.3 Reviews and approves the treatment plan for the terminally ill patient with appropriate medical and support services aimed at providing comfort, symptom control, pain management, palliative care, and quality of life issues.

5-3.4 Reviews advance directives, health care proxy determinations, and DNR order/forms to ensure they align with IHSC requirements and the receiving facility's state requirements.

5-3.5 Establishes site-specific guidelines following the state-specific requirements using state-approved forms for advance directives and DNR orders.

5-3.6 Writes the initial and renewal DNR orders at least every 90 days in the patient's health record upon approval by the IHSC medical director.

5-3.7 Notifies the health services administrator (HSA), RCD, and facility staff of a terminally ill patient's status and advance directive or DNR order.

5-4. Health Services Administrator (HSA) or designee

5-4.1 Notifies ICE stakeholders of active and approved advance directive or DNR orders based on information from the IHSC 834 form.

5-4.2 Ensures reporting of daily patient status for those housed in community facilities and informs ICE stakeholders.

5-4.3 Collaborates with ICE stakeholders to transfer a patient to a suitable IHSC or community facility to receive appropriate care.

5-4.4 Ensures health service staff receive initial and annual training on the appropriate delivery of care for terminally ill patients.

5-5. Advanced Practice Provider, Physician, or designee

5-5.1 Prepares the terminally ill patient's case summation in advance of an advance directive or DNR order.

5-5.2 Creates treatment plans aimed at providing comfort, symptom control, pain management, end of life care, and improved quality of life. Documents clinical updates in the patient's electronic medical record.

5-5.3 Requests behavior health provider (BHP) evaluations for patients with diminished mental capacity to make medical decisions.

5-5.4 Completes the patient's IHSC Form 834 Med/Psych Alert Form, Special Needs Form (819), and the IHSC Global Alert Form in the electronic health record.

5-6. Behavioral Health Professional (or designee).

5-6.1 Provides a mental health evaluation to include a mental status examination and recommends a forensic mental health examination, if needed, to determine the patient's capacity to make medical care decisions.

5-6.2 Identifies community-based end of life care programs with appropriate medical and support services to provide comfort, symptom control, pain management, and improved quality of life as a resource for the health service team.

6. PROCEDURES:

6-1. Advance Directives and DNRs

6-1.1 Health service staff provide patients and/or HCPs/MPOAs instructions on how to initiate or revoke advance directives and DNR orders.

6-1.2 The CD counsels patients on making informed, voluntary, and uncoerced decisions based on complete medical information and access to additional resources they understand.

6-1.3 Advance directives and DNR orders must comply with state-specific laws and forms from the state in which the patient resides.

6-1.4 Health service staff must provide full resuscitative efforts until the DNR order meets all requirements in this directive or the patient is transferred to another system of care.

6-2. DNR Order Requirements:

6-2.1 Medical staff do not initiate DNR orders unless the patient has a terminal illness or injury with a lifespan of less than one year.

6-2.2 Medical staff must refer all patient requests for DNR orders to the clinical director (CD) within 24 hours.

6-2.3 The CD must sign the DNR form and the IHSC medical director must approve the DNR order from the state where the patient resides.

6-2.4 Patients with a DNR order receive all therapeutic efforts short of resuscitation as required under state law (e.g., intravenous hydration, antibiotics).

6-2.5 Documentation in the health record must describe sufficient and appropriate information to ensure the DNR order is consistent with sound medical practice and specific state requirements, if any. Documentation must not in any way be associated with assisting suicide, euthanasia, or other such measures to hasten death.

6-3. Terminal Illness or Injury. The CD must refer patients with a lifespan of less than one year, or a fatal injury, to the IHSC Ethics Committee, Clinical Review Subcommittee for consultation regarding medical prognosis and facility assignment prior to a DNR order.

6-4. Advance Directive Election (e.g., Living Wills, HCP, MPOA).

6-4.1 IHSC must use a patient's state-specific advance directive (e.g., living will) to assist health care decisions for incapacitated patients. If they are unable to make health care decisions, appoint another individual to make advance decisions when there is no evidence of a formal HCP/MPOA in effect.

6-4.2 Patients may appoint, in advance, an HCP/MPOA to make critical health care decisions on their behalf, should they become incapacitated and unable to make such decisions.

6-4.3 The CD reviews all patients who arrive with an advance directive, to ensure alignment with the receiving state's requirements and respective IHSC policies.

6-4.4 Advance directive state guidelines and forms are available at their respective state and territorial departments of health websites. Health service staff can find more information at CDC - State and Territorial Health Departments - STLT Gateway. The "Caring Connections" website is specific for state advance directive information.

6-5. DNR Order Implementation.

6-5.1 The CD, upon notification of a request for a DNR order, immediately consults with local OPLA to ensure compliance with state requirements, reviews all available medical records and ensures the patient summary contains:

6-5.1.a Patient's diagnosis and prognosis.

6-5.1.b Specific wishes of the patient on the form(s).

6-5.1.c Immediate family's wishes, if the patient identified immediate family.

6-5.1.d Consensual decisions and recommendations by medical professionals, identified by name and title.

6-5.1.e Mental competency (psychiatric) evaluation, if the patient concurred but did not initiate the DNR decision.

6-5.1.f Informed consent evidenced, among other things, by the legibility of the DNR order, signed by the ordering physician, and facilities clinical medical authority or health services authority.

6-5.2 The RCD or designee performs the independent review and forwards to the IHSC medical director.

6-5.3 The CD writes the initial and renewal DNR orders every 90 days in the patient's electronic health record upon approval by the IHSC medical director.

6-5.4 Following local OPLA review and clearance, the order becomes effective upon receipt of the IHSC medical director's approval and the CD documents the DNR order in the patient's medical file.

6-6. Patient admitted to an IHSC facility with a DNR order.

6-6.1 The CD reviews all patients who arrive with an active DNR order and consults local OPLA to ensure the documents comply with the receiving state's requirements and IHSC policies.

6-6.2 After local OPLA review and clearance, IHSC physicians document the initial DNR order every 90 days, or as required by state law, in the patient's medical file. DNR orders are non-transferrable between detention facilities in different states.

6-7. Transfer of patients with a DNR order: The sending IHSC facility provides a copy of the DNR order, printed from the original form scanned into the health records. The receiving or off-site facility's physician assumes all medical decision-making authority immediately upon transfer.

6-8. Request to Revoke DNR Order:

6-8.1 Upon notification of a patient's request to revoke a DNR order, the CD immediately consults with local OPLA to determine state specific revocation requirements, reviews all available medical records, confirms the patient's request to revoke the DNR order and counsels the patient on additional resources as clinically indicated.

6-8.2 Once the CD obtains local OPLA clearance, the CD documents in the patient's medical record to revoke the DNR. The CD documents this information in the electronic medical record, completes the IHSC 819 and 834 forms, and communicates the DNR revocation to the HSA and RCD.

6-9. Special considerations:

6-9.1 Terminally Ill Children. The CD reports minors diagnosed with a terminal illness or fatal injury on the IHSC Form 834, Med/Psych Alert, in the terminal patient's medical record. Parents/Guardians may request DNR for their minor child(ren).

6-9.2 Terminally Ill Parent/Guardians.

6-9.2.a The CD reports minor's parents/guardians diagnosed with a terminal illness or fatal injury on the IHSC Form 834, Med/Psych Alert, in the patient's medical record.

6-9.2.b The ICE stakeholder creates a care plan that requires one-on-one supervision for any child(ren) in ICE custody whose parent(s)/guardian(s) become gravely ill and are unable to care for their child(ren). 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), approve the care plan.

7. HISTORICAL NOTES: This revision replaces IHSC Directive 02-01, *Advance Directives, Do Not Resuscitate and Terminal Illness,* dated September 7, 2021.

7-1. Summary of Changes:

7-1.1 Policy statement revised.

7-1.2 Distinguishes the DNR order process from the advance directive process.

7-1.3 Revised language for the medical director, clinical director, and regional clinical director responsibilities.

7-1.4 Addresses DNR order for terminally ill minors.

7-1.5 Added care plan requirement for children whose parents/guardians develop a terminal illness or fatal injury during detention.

7-1.6 Added topic-specific definitions.

8. DEFINITIONS:

8-1. **Advance directive** - Advance directives, including living wills, health care proxy, and medical power of attorney, allow a patient to communicate health care preferences when they can no longer make decisions. Advance directive requirements are state-specific.

8-2. **Do not resuscitate order** - A physician-written order that medical staff must not attempt to resuscitate a person should they suffer a cardiac or respiratory arrest.

8-3. **Fatal injury** - An accident or event that may lead to death, permanent total disablement, or permanent partial disablement.

8-4. **Health Care Proxy** - A person legally authorized to make health care treatment decisions for an incapacitated patient who is unable to make and/or communicate such decisions.

8-5. **ICE stakeholders** - Includes the U.S. Immigration and Customs Enforcement (ICE)/Enforcement and Removal Operations officer/field office director (FOD) and/or facility administrator and custody officials.

8-6. **Independent medical review** - A review completed by a designated physician uninvolved with the patient's treatment plan, to review documentation for an advance directive, health care proxy determination, DNR order/form and other information prior to validation and implementation. The review ensures the documentation is in accordance with the laws of the jurisdiction responsible for managing the advance directive/DNR order.

8-7. **Living will** - A written legal document that allows a person to state in advance his or her wishes regarding the use or removal of life-sustaining procedures in the event of illness or injury.

8-8. **Palliative Care** - Palliative care improves the quality of life for patients and their families who are facing problems associates with life-threatening illness. It prevents and relieves suffering through early identification, correct assessment and treatment of pain and other problems, whether physical, psychological, or spiritual. (World Health Organization Definition).

8-9. Terminal Illness - An illness or condition that cannot be cured and is likely to lead to the patient's death.

This term is more commonly used for progressive diseases such as cancer, dementia or advanced heart disease.

9. APPLICABLE STANDARDS:

9-1. Performance Based National Detention Standards 2011 rev. 2016.

9-1.1 4.7 Terminal Illness, Advance Directives and Death.

9-2. ICE Family Residential Standards 2020.

9-2.1 4.7 Terminal Illness, Advance Directives, and Death.

9-3. American Correctional Association: Performance-Based Standards for Adult Local Detention Facilities, 4th edition.

9-3.1 ALDF-4C-07, Treatment Plan.

9-4. National Commission on Correctional Health Care Standards for Health Services in Jails, 2018.

9-4.1 J-F-07, Care for the Terminally Ill.

10. PRIVACY AND RECORDKEEPING: ICE uses detainee 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 detainees. IHSC limits access to detainee 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 complete annual training on the protection of patient health information and Sensitive Personally identifiable information.

10-2. 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.

10-3. 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 directive is an internal statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

12. **POINT OF CONTACT**: IHSC Medical Director.