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

TREATMENT CONSENT AND REFUSAL

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By Order of the Assistant Director
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1. **PURPOSE.** The purpose of this directive is to set forth policies and procedures for obtaining a detainee's informed consent or refusal for health care services while in U.S. Immigration and Customs Enforcement (ICE) custody.

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

3. **AUTHORITIES AND REFERENCES.**

   3-1. Title 8, Code of Federal Regulations, Section 235.3 (8 CFR § 235.3),Inadmissible Aliens and Expedited Removal.

   3-2. Title 42, U.S. Code, Section 252 (42 U.S.C. § 252); Medical Examination of Aliens.

   3-3. ICE Amended Medical Escort Policy, Policy No. 11010.1, January 9, 2008.

   3-4. Immigration and Nationality Act of 1952, as amended, 8 U.S.C § 1222, Detention of Aliens for Physical and Mental Examination (2020).

   3-5. Public Health Service Act, as amended, 42 U.S.C. § 249, Medical Careand Treatment of Quarantined and Detained Persons (2020).

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3-6. Detention of Aliens for Physical and Mental Examination, 8 C.F.R. § 232 (2020). IHSC Directive No. 07-02, *Behavioral Health Services*, dated 25 September 2020.

4. POLICY. A detainee noncitizen hereinafter known as patient, has the right to make informed decisions regarding their health care, including the right to refuse care. The patient, or their parent/guardian where applicable, must consent to treatment in writing prior to initiating any healthcare procedure on-site or at an off-site setting including examinations, diagnostic and invasive procedures, and treatments, unless an exception to consent is authorized by another section of this policy.

4-1. Health services staff must support the ethical principle that patients havethe right to refuse health interventions and must not punish patients for exercising the right to refuse care.

4-2. Refusal of care is an informed decision pertaining to a specific medical issue. Health staff must explain the health consequences of the refusal to the patient. The patient does not waive the right to all health care by refusing a specific medical treatment or course of health care at a particular time. Health care personnel staff must document all forms of patient consent or refusal of care in the patient health record.

4-3. Health care providers can provide involuntary treatment, when medically necessary, during an emergency or if a court order authorizes involuntary treatment. Health care providers must notify the clinical director (CD), or designee, as soon as possible after addressing the emergency.

5. RESPONSIBILITIES:

5-1. All IHSC Health Care Providers

5-1.1 Provide sufficient information and education regarding medical treatment to permit patients to make informed decisions concerning their medical care.

5-1.2 Provide written information about the informed consent and refusal processin a language the patient understands.

5-1.3 Use a professional interpreter for oral communication or a translation service for written documents, as necessary, and document the use in the patient's medical record.

5-2. Clinical Director (CD)

5-2.1 In the event that a patient's refusal results in the need for

involuntary medical treatment, the CD or designee, and the facility administrator must examine such refusals to ensure the declination is not the result of miscommunication or misunderstanding.

5-2.2 Authorizes involuntary medical treatment when the patient requires immediate medical intervention or needs emergency care.

5-2.3 Consults the facility ICE Enforcement and Removals Operation (ERO) field operations leadership to determine whether IHSC can pursue non-emergency involuntary treatment.

5-3. Physician

5-3.1 Performs delegated duties of the CD when required.

5-4. Advanced Practice Provider (APP)

5-4.1 Provides involuntary medical treatment for a patient when staff identify a life-threatening health emergency. The APP must notify the CD, or designee, as soon as possible after addressing the emergency.

5-4.2 Provides involuntary medical care for a patient when staff identify a life-threatening health emergency and/or when a court order authorizes involuntary treatment.

5-5. Health Services Administrator (HSA)

5-5.1 Notifies facility ERO field operations leadership when staff identify a patient as requiring non-emergent involuntary medical treatment.

5-6. Facility ERO Field Operations Leadership

5-6.1 Upon notification by IHSC that a patient requires non-emergent involuntary medical treatment, the facility ERO field operations leadership notifies their respective ICE Office of Chief Counsel. This office facilitates the request for a court order to involuntarily medicate the patient.

5-7. Registered Nurse (RN)

5-7.1 Routes refusal of care documentation to the appropriate clinical discipline for staff awareness and appropriate action.

5-7.2 Obtains and documents informed consent for care, at the time of intake screening.

5-7.3 Provides involuntary medical treatment for a patient with a life-threatening health emergency. The care provided must align with established protocols or IHSC Clinical Nursing Guidelines. The RN must notify the CD, or designee, as soon as feasible.

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5-7.4 Provides involuntary medical care when a court order authorizes involuntary treatment.

5-8. Licensed Practical Nurses, Behavioral Health Technicians, and Medical Assistants

5-8.1 Facilitate and document informed consent and refusal processes, as directed by licensed health staff.

5-8.2 Assist in the provision of involuntary medical care during a medical emergency.

5-9. Behavioral Health Providers (BHP)

5-9.1 Evaluates a patient when the CD determines that segregation from the general population is medically necessary due to the patient's refusal of an examination or treatment.

5-9.2 The BHP must determine that placement in segregation will not adversely affect the mental health of the patient before the transfer to segregation occurs.

6. PROCEDURES:

6-1. General Informed Consent to Receive Care. Adult patients must complete the medical informed consent form (IHSC Form 793) upon arrival at the detention facility. The patient must sign IHSC Form 793 either by electronic signature in the electronic health record (eHR) or on a paper copy of the form. If the patient signs a paper copy of IHSC Form 793, the medical records technician must scan the form into the patient's eHR.

6-1.1 Scope of Consent. Completion of the medical informed consent form (IHSCForm 793) authorizes IHSC staff to provide routine medical, mentalhealth, immunizations, and dental health care. Completion of this form also authorizes IHSC to disclose the contents of the patient's health records to other health care providers and health care staff at other health care provider agencies.

6-1.2 Limitations of Consent. Completion of the medical informed consent form (IHSC Form 793) does not authorize IHSC staff to administer psychotropic medications or conduct non-routine diagnostic, therapeutic, or invasive procedures. IHSC staff must obtain written documentation of informed consent for each of these medical activities using the required form.

6-1.3 Informed Consent and Refusal for Minors: IHSC health staff must obtain written informed consent or refusal of care from the parent or

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guardian if the patient is a minor in all instances in which health care is provided to a minor child prior to providing treatment.

6-1.3.a IHSC staff cannot obtain consent for medical care for unaccompanied children (UAC). UAC are children heldin ICE custody without a parent or legal guardian accompanying them.

6-1.3.b ERO Juvenile and Family Residential Unit (JFRMU) staff serve as the legal custodian for any UACs held in IHSC detention facilities and will give consent for medical care.

6-1.4 Effective Communication. The facility will provide communication assistance to patients with disabilities and patients who are limited in their English proficiency (LEP). The facility will provide patients with disabilities with effective communication devices, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers,telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide patients who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.

6-2. Exceptions to General Consent.

6-2.1 Medical Emergency. Health care personnel will provide involuntary emergency medical treatment when necessary to address a patient's life-threatening condition. Health care personnel will notify the CD or designee as soon as possible after addressing the emergency.

Exceptions: See IHSC Directive 02-01, *Advance Directives, Do Not Resuscitate and Terminal Illness.*

6-3. Psychotropic Medications. A health care provider must obtain and document a separate informed consent for psychiatric medications. Refer to the IHSC 07-02 G-01, *Behavioral Health Services Guide* for detailed guidance about psychotropic consent.

6-3.1 Transferability of Psychotropic Consent. IHSC does not require a new consent for the psychotropic medication if the patient transfers between IHSC-staffed facilities and the psychotropic medication continues at the receiving facility.

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6-3.2 Psychiatric Emergency. During a psychiatric emergency, health care personnel may administer a psychiatric medication without the patient's consent pursuant to the specific, written, and detailed authorization of a physician. The physician must document the need for such treatment and note that less restrictive alternatives are not available or effective. Refer to IHSC Directive 03-44, *Emergency Psychotropic Medications Clinically Ordered Restraint and Seclusion.*

6-3.3 Non-Psychiatric Emergencies. Absent a declared medical emergency, IHSC personnel cannot administer psychotropic medication involuntarily to a patient. The HSA must notify the facility ERO field operation leadership about the patient's condition. The facility ERO field operation leadership staff must contact the facility ICE Office of Chief Counsel staff to decide whether to pursue a request for a court order to involuntarily medicate the patient.

6-4. Invasive Procedures Performed in the Detention Facility.

6-4.1 A health care personnel must document a patient's informed consent on a Request for Administration of Anesthesia and for Performance of Operations and Other Procedures Form (Optional Form 522) prior to receiving non-routine diagnostic, therapeutic, and invasive procedures (e.g., ingrown toenail removal, needle aspirations, punch biopsies, surgical procedures) performed in the detention facility by IHSC staff. Patients who undergo an invasive dental procedure must complete the appropriate dental consent form based on the planned procedure.

6-4.2 The health care provider must counsel the patient and documentin the eHR the following information:

6-4.2.a Reason for the medication, procedure, or treatment;

6-4.2.b How the care could improve the patient's condition;

6-4.2.c Possible side effects;

6-4.2.d Risks and consequences of refusal; and

6-4.2.e Any alternative forms of treatment.

6-5. Invasive Procedures Performed by Off-Site/Community Medical Providers. Invasive procedures performed by off-site providers require informed consent from patients, documented prior to the procedure. All consent forms for procedures performed by off-site providers must be

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requested and received by IHSC health services staff for inclusion in the patient's health record. IHSC Health services staff may only obtain consent for procedures performed by IHSC health care providers.

6-6. IHSC Consent Forms. Staff can locate additional IHSC-approved consent forms in the IHSC SharePoint forms page. If a consent form is not available in a language the patient understands, IHSC staff utilize professional interpretation services to discuss the consent process and document the interpreter identification information on the consent form.

6-7. Refusal of Treatment or Health Evaluation. Refusal of health care services occurs between health care providers and the patient. The refusal process must not be punitive for the patient. Instead, it is an opportunity for health care providers to advocate for optimal health outcomes through education, adjusted therapies, and follow up. Facilities should make efforts to involve trusted individuals, such as clergy or family members, should a patient refuse treatment.

6-7.1 **Informing a patient who refuses care.** Health care providers must provide the patient with sufficient information to make an informed decision to accept or refuse the proposed treatment. In addition, health staff must provide a reasonable explanation of viable alternatives.

6-7.2 **Follow up after treatment refusal:** Health care providers must answer patient questions regarding treatment. Health services staff must provide follow up health care appointments as required.

6-7.3 **Refusal of Medications:** Health care providers must document a patient's refusal of medication on the IHSC refusal form. Refer to the IHSC 03-16 G-01, *Medication Administration Guide*, in the IHSC Policy Library for details.

6-7.4 **IHSC Refusal Form (IHSC Form 820).** Health care providers must complete the IHSC Refusal Form (IHSC Form 820), or electronic equivalent, each time the patient refuses health evaluation or treatment. The IHSC staff member completing the IHSC Refusal Form (IHSC Form 820) must obtain and document the following information:

6-7.4.a Description of service refused.

6-7.4.b Reason for refusal.

6-7.4.c Evidence the patient received information about adverse health consequences that may occur because of the refusal.

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6-7.4.d Signature of the patient.

6-7.4.e Signature of health staff witness.

6-7.4.f If the patient does not sign the refusal form, documents the refusal on the form and obtains a signature by a second health or custody staff witness.

6-7.5 **Placement in Administrative Segregation Due to Health Care Refusal:** The CD may determine segregation placement is medically necessary for a patient who refuses examination or treatment. The CD must document the justification in the patient's-health record. IHSC staff must not use segregation housing for punitive purposes. Placement in administrative segregation for refusing health examination or treatment only occurs after a BHP determines placement will not adversely affect the patient mental health.

6-7.5.a IHSC staff must notify facility ERO field operations leadership within 72 hours of the placement of any patient in administrative segregation. Such notice will include the reason for the placement as well as any additional pertinent information, such as, but not limited to, physical disability, medical or mental illness, suicide risk, hunger strike, status as a sexual assault victim, or other special vulnerability.

6-8. Involuntary Treatment for Non-Emergency Care: If a patient refuses treatment and the CD, or designee, determines that treatment is necessary, the HSA notifies the facility ERO field operations leadership. The CD, or designee, must provide justification for the involuntary treatment order and document all findings in the patient 's health record. Refer to IHSC 03-24, *Hunger Strike*, for guidance for a patient on hunger strike who requires involuntary treatment.

6-8.1 When an external medical provider obtains a court order for involuntary treatment (e.g., during inpatient psychiatric hospitalization), IHSC staff may continue such involuntary treatment if the order is deemed enforceable within IHSC. The prescribing provider should consult with the Office of Chief Counselas needed to review such orders.

6-9. No Waiver of Future Treatment. The IHSC health care provider must advise the patient that refusal of treatment at a particular time does not waive the right to subsequent health care.

7. HISTORICAL NOTES. This directive replaces IHSC Directive 02- 07, *Treatment Consent and Refusal* dated April 12, 2022.

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7-1. Summary of Changes:

7-1.1. Added expectation for request and receipt of all patient consent forms for off-site invasive care.

7-1.2. Clarification for parent/guardian written consent for all care provided to minors.

7-1.3. Updated language alignment from detainee to patient and from medical to health records.

8. DEFINITIONS.

8-1. Informed Consent - Informed consent is the agreement by a patient to a treatment, examination, or procedure after the patient receives: the material facts about the nature, consequences, and risks of the proposed treatment, examination, or procedure; the alternatives to the treatment, examination, or procedure; and the possible results of not taking the proposed action.

8-2. Psychiatric Emergencies - The demonstration or verbal communication of an immediate threat of bodily harm to self or others, serious destruction of property, or extreme deterioration of functioning as a result of a psychiatric illness.

9. APPLICABLE STANDARDS.

9-1. Performance-Based National Detention Standards (PBNDS) PBNDS2011, revised 2016:

9-1.1. Part 4: Care; 4.3 Medical Care; AA. Involuntary Treatment and Informed Consent.

9-2. Family Residential Standards 2020:

9-2.1 Part 4: Care; 4.3 Health Care; AA. Involuntary Treatment and Informed Consent.

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

9-3.1 4-ALDF-4D-15, Informed Consent.

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

9-4.1. J-G-05, Informed Consent and Right to Refuse.

10. PRIVACY AND RECORDKEEPING. IHSC maintains patients health records in accordance with the Privacy Act and as provided in the Alien Health Records System of Records Notice, 80 Federal Register 239 (January 5, 2015). The records in the eHR/eClinicalWorks (eCW) are destroyed 10 years from the date the

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patient leaves ICE custody. Retention periods for records of minors may differ. Paper records are scanned into eHR and are destroyed after upload is complete.

Protection of Medical Records and Sensitive Personally Identifiable Information (PII).

10-1. Staff must keep all medical records, whether electronic or paper, secure with access limited only to those with a need to know. Staff must lock paper records in a secure cabinet or room when not in use or not otherwise under the control of a person with a need to know.

10-2. IHSC trains staff during orientation and annually on the protection of patient medical information and sensitive PII. Only authorized individuals with a need to know are permitted to access medical records and sensitive PII.

10-3. Staff should reference the Department of Homeland Security *Handbook for Safeguarding Sensitive Personally Identifiable Information* (March 2012) at: **(b)(7)(E)** when additional information is needed concerning safeguarding sensitive PII.

11. **NO PRIVATE RIGHT STATEMENT.** This directive is an internal policy 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.** Chief, Medical Services Unit.

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