

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

CONSENT FOR TREATMENT

**IHSC Directive: 02-07
ERO Directive Number: 11726.2
Federal Enterprise Architecture Number: 306-112-002b
Effective: 4 Mar 2016**

**By Order of the Acting Assistant Director
Stewart D. Smith, DHSc/s/**

- 1. PURPOSE:** The purpose of this directive is to set forth the policies and procedures for obtaining a detainee's consent prior to initiating any health care services.

- 2. APPLICABILITY:** This directive applies to all U.S. Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) personnel, including but not limited to, Public Health Service (PHS) officers, civil service employees and contract personnel. It is applicable to IHSC personnel supporting health care operations in both ICE-owned and contracted detention facilities, and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of its 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** Section 232 of the Immigration and Nationality Act, as amended, Title 8, U.S. Code, Section 1222 ([8 U.S.C. § 1222](#)), Detention of Aliens for Physical and Mental Examination;

 - 3-3.** Title 8, Code of Federal Regulations, Part 232 ([8 CFR 232](#)), Detention of Aliens for Physical and Mental Examination;

 - 3-4.** Section 322 of the Public Health Service Act, as amended, Title 42, U.S. Code, Section 249(a) ([42 U.S.C § 249\(a\)](#)), Medical Care and Treatment of Quarantined and Detained Persons;

- 3-5. Title 42, U.S. Code, Section 252 ([42 U.S.C. § 252](#)); Medical Examination of Aliens;
 - 3-6. ICE Amended Medical Escort Policy, Policy No. 11010.1, January 9, 2008; and
 - 3-7. IHSC Directive No. 07-02, *Behavioral Health Services*, dated 14 May 2014.
4. **POLICY:** Adult detainees/residents (hereafter referred to as “detainees”) must consent to treatment in writing prior to initiating any health care processes (e.g., intake screening, physical examination, diagnostic procedures, and treatment), unless an exception to consent is authorized by another section of this policy.
- 4-1. **Medical Consent for Adults (18 years of age or older and other special circumstances outlined below).** Detainees complete a Medical Consent Form (**IHSC Form 793**) by electronic signature in the electronic health record (eHR), or a paper Medical Consent Form (**IHSC Form 793**) when the system is inoperable. If a paper Medical Consent Form is used, the form must be scanned into the eHR when it is operable. The consent form is completed before the detainee receives a full intake screening exam.
- a. Scope of Consent. Completion of the Medical Consent Form (**IHSC Form 793**) authorizes IHSC to provide routine health care services. Completion of this form also authorizes IHSC to disclose the contents of the detainee’s medical records to other health care providers and other health care provider agencies.
 - b. Limitations of Consent. Completion of the Medical Consent Form (**IHSC Form 793**) does not authorize IHSC to administer psychotropic medications, or conduct non-routine diagnostic, therapeutic, or invasive procedures. Each of these medical activities requires its own consent.
 - c. Implied consent. If a detainee does not refuse care and requires immediate medical intervention due to a sight, life or limb-threatening condition (where obtaining electronic or written consent is not possible or practical), consent is considered implied. Implied consent may also be inferred in emergency situations that require immediate medical intervention where the detainee does not have the mental capacity (due to intoxication, injury, physical/mental illness, or other reason) to understand the proposed treatment.

- (1) Emergency Care. Emergency care necessary to preserve sight, life and limb may be administered if written consent is obtained prior to treatment or consent is implied.
 - (2) Documentation of Implied Consent. When treatment is provided and consent is implied, health care staff document a detailed description of the incident in the detainee's health record.
- d. Involuntary Treatment. Involuntary treatment is given only when the Clinical Director (CD) makes a decision under strict legal restrictions.
- (1) When a detainee refuses medical treatment and the licensed health care provider determines that a medical emergency exists, the physician may authorize involuntary medical treatment. A mid-level provider (MLP) may authorize treatment during a medical emergency, but should seek concurrence of treatment from a physician as soon as possible after the emergency.
 - (2) Prior to any involuntary treatment involving non-emergent care, the Health Services Administrator (HSA) must consult the respective ICE Office of the Chief Counsel.
 - (3) A detainee who refuses examination or treatment may be separated from the general population, when the CD or staff physician determines the separation medically necessary. Such separation should only be for medical reasons that are documented in the medical record.
- e. Signatures. Detainees must sign all consent forms using the electronic signature pad provided by ICE. If the system is inoperable, the appropriate paper consent form must be signed by the detainee, the provider and a witness, and scanned into the eHR at a later date/time when it is operable.
- 4-2. Approved Consent Forms.** The following IHSC approved consent forms are located in the eHR:
- a. IHSC Form 003, Authorization for Release of Confidential Health Information.
 - b. IHSC Form 003-S, Authorization for Release of Confidential Health Information/Autorización para Divulgación de Información sobre la Salud.

- c. IHSC Form 141-E/S, Seasonal Influenza Vaccination Consent Form/Formulario de Consentimiento de Vacunación Influenza Estacional.
- d. IHSC Form 792, Consent to Receive Tele-Psychiatry Services.
- e. IHSC Form 793, Medical Consent Form.
- f. IHSC Form 880, Consent for Psychotropic Medications for Adults.
- g. IHSC Form 881, Consent for Psychotropic Medications for Minors.
- h. IHSC Form 901, Dental Endodontic Treatment Consent.
- i. IHSC Form 902, Dental Periodontal Treatment Consent.
- j. IHSC Form 903, Oral Surgery Treatment Consent.
- k. IHSC Form 903, Permiso Para Cirugía Dental.
- l. IHSC Form 904, Dental Nitrous Oxide Sedation Consent.
- m. IHSC Form 908, Dental Restorative Treatment Consent.
- n. Standard Form 522, Request for Administration of Anesthesia and for Performance of Operations and Other Procedures.
- o. Consent for Estrogen/Antiandrogen Treatment
- p. Consent for Emergency Contraception

4-3. Medical Consent for Minors. In the case of minors, the informed consent of a parent, guardian, or a legal custodian applies when required by law. When the minor is unaccompanied, ICE Office of the Chief Counsel should be consulted for questions regarding consent. Rights of those under the age of 18 vary from state to state.

4-4. Consent to Receive Psychotropic Medications. Prior to receiving psychiatric medications, a detainee's informed consent must be obtained and documented on a Consent for Psychotropic Medications for Adults form (IHSC Form 880) or Consent for Psychotropic Medications for Minors form (IHSC Form 881). Prior to getting electronic or written consent, the physician or MLP prescribing the medications must counsel the detainee.

- a. Education. The provider explains why the medication, procedure, or treatment is necessary, how the care could improve the detainee's

condition, possible side effects, the risks and consequences of not complying with the provider's recommendations and any alternative forms of treatment.

- b. Prior Medication. Detainees who book into the facility with psychotropic medications may continue taking the medications on a temporary basis with the approval of an authorized provider.
- c. Psychiatric Emergencies and Medication. If the detainee is suffering from a mental illness, which creates an immediate threat of bodily harm to self or others, serious destruction of property, or extreme deterioration of functioning secondary to psychiatric illness, it is considered a psychiatric emergency. During a psychiatric emergency, psychiatric medication may be administered without the detainee's consent, when the medication constitutes an appropriate treatment for the mental illness and less restrictive alternatives (e.g., seclusion or physical restraint) are not available or indicated, or would not be effective. Refer to IHSC Directive 07-01, *Medical Restraints/Therapeutic Seclusion*.
- d. Involuntary Medication during Removal. IHSC medical staff will not administer psychotropic medications without detainee consent to sedate him or her during removal, unless a court order specifically authorizes such action. Emergent or exigent circumstances are not grounds for departure from this policy.
- e. Court Orders. Only the CD or federal physician determines if a court order is necessary for non-emergent involuntary medication, in coordination with ICE personnel. The request must show that administration of medication is medically necessary.

4-5. Consent to Operate, Perform Procedures or Administer Anesthesia.

A detainee's informed consent must be obtained and documented on a Request for Administration of Anesthesia and for Performance of Operations and Other Procedures Form (Standard Form 522) prior to receiving non-routine diagnostic, therapeutic and invasive procedures (e.g., ingrown toenail removal, needle aspirations, punch biopsies, surgical procedures). Detainees undergoing an invasive dental procedure are required to complete the appropriate dental consent form based on the planned procedure.

- a. Positive Verification. IHSC staff must witness the detainee's electronic signature or signature on the paper form if the system is inoperable. Two patient identifiers must be used and documented in the health record.

- b. Detainee Counseling. Prior to getting electronic or written consent, the physician, dentist, nurse practitioner, or physician's assistant performing the procedure/intervention counsels the detainee to explain the nature of the proposed procedure/intervention, attendant risks involved, expected results, potential problems related to recuperation, possible results of non-treatment, and significant alternative therapies. This counseling must be documented in the medical record.

4-6. Limited English Proficiency Detainees. All consent forms must be explained to the detainee in a manner and language which he or she can understand. The use of translation services to obtain consent must be documented in the detainee's medical record. An IHSC employee must document in the appropriate area of the record that they witnessed the detainee sign the signature pad or paper form.

4-7. Refusal of Treatment. See IHSC Directive 02-08, *Refusal of Treatment*.

5. PROCEDURES: None.

6. HISTORICAL NOTES: This directive replaces IHSC Directive 02-07, *Consent for Treatment*, dated 12 June 2015. Changes made to Sections 4-5 a and b. It also adds definitions.

7. DEFINITIONS:

Clinical Director (CD) – The Clinical Director is a physician and is the clinical medical authority at a specific facility. Duties include clinically supervising the Staff Physician (if applicable) and mid-level providers, evaluating patient care through an ongoing quality assurance program, providing training and mentoring to health care staff, and evaluating and treating medically complex patients. The CD is board certified in family medicine, internal medicine, or related primary care specialty to maintain employment. (IHSC Operational Definition)

Health Services Administrator (HSA) – The HSA is the designated IHSC administrator at a facility who provides administrative and supervisory oversight of day to day operational activities at IHSC staffed medical facilities. (IHSC Operational Definition)

8. APPLICABLE STANDARDS:

8-1. Performance-Based National Detention Standards (PBNDS) 2011:
4.3 Medical Care, X. Informed Consent and Involuntary Treatment.

8-2. American Correctional Association (ACA):

- a. Performance-Based Standards for Adult Local Detention Facilities, 4th edition: 4-ALDF-4D-15, Informed Consent.
- b. Standards for Adult Correctional Institutions, 4th edition: 4-4397, Informed Consent.
- c. Performance-Based Standards for Correctional Health Care in Adult Correctional Institutions, 1st edition: 1-HC-3A-04, Informed Consent.

8-3. National Commission on Correctional Health Care (NCCHC):

Standards for Health Services in Jails, 2014: J-1-05, Informed Consent and Right to Refuse.

- 9. PRIVACY AND RECORDKEEPING.** IHSC maintains detainee 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 ten (10) years from the date the detainee 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).

- 9-1.** Staff must keep all medical records, whether electronic or paper, secure with access limited only to those with a need to know. Staff should 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.
- 9-2.** Staff are trained at 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.
- 9-3.** 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.

10. **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.