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Medical Care Standards in Immigrant Detention Facilities

In recent years, the COVID-19 pandemic and [whistleblower complaints](#) about medical neglect and unnecessary gynecological procedures have led to concerns over the medical care of noncitizens in the custody of Immigration and Customs Enforcement (ICE). This In Focus provides background on Immigrant Detention Facility medical care standards, medical care delivery, and the oversight of ICE detention facilities.

ICE's Enforcement and Removal Operations (ERO) is responsible for immigration enforcement in the interior of the United States, including managing and overseeing the immigrant detention system. Federal law provides ICE with broad authority to detain noncitizens while awaiting a determination of whether they should be removed from the United States, and describes certain categories of noncitizens who are subject to mandatory detention (e.g., when the noncitizen is removable on account of certain criminal or terrorist activity) (8 U.S.C. §§1225, 1226, 1226a, 1231, and 1357). Federal law also provides authority for medical care for those in immigration detention (42 U.S.C. §§249 and 34.7(a)).

ICE Detention Facilities

Some detention facilities exclusively house adult ICE detainees (*dedicated facilities*) while others are state or local facilities or privately run facilities that house both state or local inmates as well as ICE detainees (*non-dedicated facilities*). [ICE owns and operates some of its own facilities](#); others are owned and operated by private companies or state or local governments, which have contracts or intergovernmental agreements, respectively, with ICE. Generally, facilities housing adult immigrant detainees must comply with one of several sets of ICE detention standards.

Detention Standards

ICE detention standards cover a wide range of areas related to safety, security, order, care (including medical care), activities (such as visitation), justice (such as a grievance system), and the administration and management of facilities.

Generally, three sets of standards are applied at facilities that house the detained adult immigrant population. (There are other standards for specific types of immigration detention facilities, such as family detention centers and facilities under contract with the U.S. Marshals Service, which are outside the scope of this In Focus.) Contracts or agreements between ICE and the detention facility determine the standards to which the facility is required to adhere. The [2011 Performance-Based National Detention Standards](#) (PBNDS) are applied at dedicated facilities that house 68% of the detained immigrant population. First

developed in 2008, the updated 2011 PBNDS were revised in 2016 to meet detention standards consistent with federal legal and regulatory requirements as well as ICE policies and policy statements. Improvements to medical and mental health services were a significant part of the revision. (Although it was revised in 2016, the standards are still referred to as the 2011 PBNDS.) Some facilities still adhere to the [2008 PBNDS](#). These facilities hold 10% of the detained immigrant population. The [National Detention Standards](#) (NDS) 2000/2019 are applied at facilities that house 22% of all detainees. The revised 2011 PBNDS are considered to be the highest-quality set of detention standards and [ICE aims](#) to implement them in the one-third of facilities not currently using them.

Medical Care Standards

Under all three standards, the services that are required to be provided directly or contractually to detainees include

- initial medical, dental, and mental health screenings;
- routine and preventive care, specialty care, emergency care, and hospitalization, as medically indicated;
- timely responses to medical complaints; and
- language services when needed during any appointment, treatment, or consultation.

The 2011 PBNDS also include an array of protocols for staff, such as notifying detainees of health care services and guidance on informed consent and involuntary treatment. In addition, the 2011 PBNDS include a section dedicated to medical care specifically for women, including routine gynecological and obstetrical healthcare, and consideration of requests to be seen by a same-gender healthcare provider. In July 2021, [ICE announced a new directive](#) that specifies that immigrants who are pregnant, nursing, or postpartum will not be detained while they wait for immigration court proceedings, unless they are subject to mandatory detention.

Delivery of Medical Care

All detained immigrants' healthcare falls under the authority of the ICE Health Services Corps (IHSC). [According to IHSC](#), in FY2023 just over 40% of those in ICE custody received direct services from the IHSC for routine care. In non-IHSC staffed facilities, local government staff or private contractors provide similar services, with oversight by IHSC.

Each facility has a health service administrator who is responsible for overall health care services within facilities. Every facility also has a designated [clinical medical authority](#) (CMA) who is a doctor (MD or DO) responsible

for overall medical clinical care, and may designate a clinically trained professional to have authority if they are not available. In addition, each facility has a *facility administrator* who negotiates arrangements with nearby medical facilities to provide care unavailable at the facility and transportation for offsite care.

All facilities that house ICE detainees for more than 72-hours are required to have some type of [onsite clinical setting](#) for examinations and treatment of routine conditions, though they vary in terms of the levels of care they are capable of delivering. Offsite emergency room visits and care by specialists must be approved by the IHSC.

Detention Standards Oversight

ICE employs a [multifaceted, layered approach](#) to oversight of detention facilities. The inspections are conducted by different entities depending on the size and type of facility. In addition, ICE deploys a detention monitoring program.

ICE Contractor Inspections

An ICE contractor, the Nakamoto Group, provides the most frequent inspections of the larger ICE detention facilities. It conducts annual inspections of facilities that have an Average Daily Population (ADP) of immigrant detainees over 50 and hold individuals for over 72 hours. It evaluates approximately 100 facilities a year on [42 or 39](#) detention standards (depending on whether the facility operates under PBNDS or NDS), comprised of over 650 components. It also completes an additional Quality of Medical Care Assessment.

Multiple government agencies (e.g., U.S. Department of Homeland Security [DHS] Office of Inspector General [OIG] and the Government Accountability Office [GAO]) have criticized Nakamoto inspections. For example, the DHS OIG found Nakamoto to have [inconsistent inspection practices](#) and [inadequate interviews](#) with detainees (e.g., not conducted in private, very brief, only interviewing English speakers, utilizing facility staff as translators). Nakamoto was found to rely on written policies and procedures or brief staff answers rather than observing and evaluating facility conditions itself. Moreover, inaccuracies were found in its post-inspection reporting to ERO. The OIG concluded that Nakamoto inspections are too broad and they cannot reasonably cover 650 elements in three days using a small number of inspectors. Also, inspections are preannounced, allowing facilities the opportunity to make temporary changes in order to pass the inspection.

Office of Detention Oversight Inspections

ICE's [Office of Detention Oversight](#) (ODO) inspects over 72-hour facilities with an immigrant detainee ADP of more than 10. These inspections, which occur once every three years, are more in-depth than contractor inspections. However, they only evaluate [15 or 16](#) core standards (depending on which set of standards the facility adheres to). These [inspections are praised](#) by DHS OIG for being more thorough on the factors they review, albeit less comprehensive; but they are also criticized for only being performed every three years. As with contractor inspections, ODO inspections are preannounced.

Self-Assessments

Facilities with an immigrant detainee ADP under 10 conduct annual self-assessments against the NDS 2000 standards. For all self-identified deficiencies, the facility must work with the ERO field office and ICE Custody Management to develop a corrective action plan.

Detention Monitoring Program

The detention monitoring program, overseen by ICE Custody Management, was established in 2010. As of December 2019, there were [39 Detention Service Managers](#) (DSMs) at 54 detention facilities, covering 67% of the ADP of immigrant detainees. DSMs continuously monitor detention facilities for compliance, working with the facility directly to resolve any deficiencies. However, DSMs do not have the authority to require these corrective actions. Their effectiveness often relies on their personal relationships with facility staff and support of ERO field officers.

Reports on Compliance Challenges

There are multiple DHS OIG and GAO reports that indicate inadequate compliance with detention standards; some focus specifically on health care issues. For example, see

- GAO, *Immigrant Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care*, [GAO-16-321](#), February 2016;
- DHS OIG, *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, [OIG-18-32](#), December 11, 2017;
- DHS OIG, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, [OIG-19-18](#), January 29, 2018;
- DHS OIG, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, [OIG-18-67](#), June 26, 2018;
- DHS OIG, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, [OIG-19-47](#), June 3, 2019;
- GAO, *Immigrant Detention: Care of Pregnant Women in DHS Facilities*, [GAO-20-330](#), March 2020;
- DHS OIG, *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019*, [OIG-20-45](#), July 1, 2020;
- GAO, *Immigrant Detention: ICE Should Enhance Its Use of Facility Oversight Data and Management of Detainee Complaints*, [GAO-20-596](#), August 2020;
- DHS OIG, *Medical Processes and Communication Protocols Need Improvement at Irwin County Detention Center*, [OIG-22-14](#), January 3, 2022;
- GAO, *Immigrant Detention: ICE Needs to Strengthen Oversight of Informed Consent for Medical Care*, [GAO-23-105196](#), October 2022;
- GAO, *Immigration Detention: ICE Can Improve Oversight and Management*, [GAO-23-106350](#), January 2023; and
- DHS OIG, *ICE and CBP Deaths in Custody during FY 2021*, [OIG-23-12](#), February 1, 2023.

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