Health Care for Noncitizens in Immigration Detention

Alison Siskin
Specialist in Immigration Policy

January 29, 2009

Congressional Research Service
7-5700
www.crs.gov
RL34556

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Congressional hearings and press coverage critical of the medical care received by those in the custody of the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) have raised interest in the subject. The law provides broad authority to detain aliens while awaiting a determination of whether they should be removed from the United States and mandates that certain categories of aliens are subject to mandatory detention by DHS. Aliens not subject to mandatory detention may be detained, paroled, or released on bond.

The medical care required to be provided to aliens detained in ICE custody is outlined in ICE's National Detention Standards, which address standards for medical care; hunger strikes; suicide prevention and intervention; and terminal illness, advanced directives, and death. According to ICE's Detention Standards, "All detainees shall have access to medical services that promote detainee health and general well-being." In addition, every facility has to provide detainees with initial medical screening, "cost-effective" primary medical care, and emergency care.

The Division of Immigrant Health Services (DIHS), which is detailed indefinitely from the U.S. Public Health Service to ICE, is responsible for the health care of noncitizens detained by ICE. In some detention facilities, DIHS provides all medical care; in others, DIHS is responsible only for approving medical services that are not provided by the detention facility. ICE has established a covered benefits package that delineates the health care services available to detainees in ICE custody. Detainees who require non-emergency medical care beyond that which can be provided at the detention facilities must submit a Treatment Authorization Request (TAR) to the DIHS Managed Care Program. TARs are reviewed by DIHS nurses in Washington, DC, who review the paperwork submitted by physicians and decide whether to allow the treatment.

There have been press reports and congressional testimony of individuals in ICE custody who apparently received inadequate medical care. In addition, problems with access to medical care is one of the chief complaints of aliens in detention. However, others state that immigration detainees may receive better health care than some U.S. citizens, and assert that the death rate in ICE custody is lower than that of the prison and general populations. Overall, there seem to be two major policy questions: (1) do the Detention Standards and the covered benefits package allow for the provision of adequate services to the detained populations; and (2) are the procedures and standards for the provision of medical care being followed?

The report does not investigate the veracity of claims of substandard medical care made in the press, or ICE's rebuttals of such claims. This report will be updated to reflect legislative activity.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

Congressional hearings[1] and press coverage[2] critical of the medical care received by noncitizens[3] in the custody of the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) have increased congressional interest in the subject, including the introduction of legislation related to detainee health care. An overarching debate on this issue concerns the appropriate standard of health care that should be provided to foreign nationals in immigration detention.

The medical care required to be provided to detainees is outlined in ICE's National Detention Standards, and the Division of Immigrant Health Services (DIHS), which is detailed from the U.S. Public Health Service to ICE is ultimately responsible for the health care of noncitizens detained by ICE. However, the Florida Immigrant Advocacy Center has reported that problems with access to medical care is one of the chief complaints of aliens in detention.[4] Similarly, the National Immigrant Justice Center states that complaints about access to medical care are a constant theme in conversations with detained aliens.[5] In addition, the U.S. government recently admitted negligence in the death of Francisco Castaneda, a former ICE detainee.[6] Thus, although standards exist, one of the questions raised is are the standards being followed?

---

[1] The House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, has held two hearings on detainee medical care. The first hearing occurred in October 2007, and the second hearing was held on June 4, 2008. Hearing 110th Congress, 1st sess., "Detention and Removal: Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, October 4, 2007, Serial No. 110-53. (Hereafter, *House Subcommittee on Immigration, Detention and Removal: Immigration Detainee Medical Care*.) Hearing 110th Congress, 2nd sess., "Problems with Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, June 4, 2008.

[2] In June 2007, *The New York Times* published an article reporting on noncitizens who had died while in the custody of the Department of Homeland Security's Immigration and Customs Enforcement (ICE). On May 11, 2008, the *Washington Post* began a four-part series on problems with the medical care provided to immigration detainees. This series was accompanied by a piece on the CBS show *60 Minutes.* The articles and the *60 Minutes* segment highlighted the cases of detained aliens who appeared to have received substandard care, which in some instances led to the alien's death. ICE has publically rebutted the allegations in these stories. For ICE's response, see U.S. Immigration and Customs Enforcement, Public Information, *Detainee Health Care: The Rest of the Story*, May 14, 2008, available at http://www.ice.gov/pi/detention_health_care.htm, accessed May 20, 2008. The referenced articles are Nina Bernstein, "New Scrutiny as Immigrants Die in Custody," *The New York Times*, June 26, 2007, p. A1, and Dana Priest and Amy Goldstein, "System of Neglect: As Tighter Immigration Policies Strain Federal Agencies, The Detainees in their Care Often Pay a Heavy Cost," *Washington Post*, May 11, 2008, p. A1. For more on the cases of individual detainees, see House Subcommittee on Immigration, *Detention and Removal: Immigration Detainee Medical Care*.

[3] A *noncitizen* is anyone who is not a citizen or national of the United States, and is synonymous with *alien*.

[4] Statement by Cheryl Little, Executive director Florida Immigrant, hearing 110th Congress, 1st sess., "Detention and Removal: Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, October 4, 2007.Serial No. 110-53, p. 71. (Hereafter *Little, Detention and Removal: Immigration Detainee Medical Care*.)

[5] Testimony of Mary Meg McCarthy, Executive Director, National Immigrant Justice Center, in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008. (Hereafter, McCarthy, *Problems with Immigration Detainee Medical Care*.)

[6] Castaneda spent 11 months in ICE custody and died of cancer approximately one year after he was released. Defendant United States of America's Notice of Admission of Liability for Medical Negligence, Castaneda v. United States, No. CV07-07241 (C.D. Cal. April 24, 2008).

This report begins with an overview of noncitizen detention and then examines the procedures and policies related to the provision of health care to detainees. The report concludes with a discussion of the issues surrounding detainee health care. The report does not investigate the veracity of claims of substandard medical care made in the press or ICE's rebuttals.

Overview of Noncitizen Detention

The law provides broad authority to detain aliens while awaiting a determination of whether they should be removed from the United States, and mandates that certain categories of aliens are subject to mandatory detention (i.e., the aliens must be detained) by the Department of Homeland Security (DHS).[7] Aliens not subjected to mandatory detention can be paroled,[8] released on bond, or continue to be detained.

Any alien can be detained while DHS determines whether the alien should be removed from the United States. Although some detainees are criminal aliens,[9] others are asylum seekers who have not committed a crime, and others are aliens who are present without status (illegal aliens) who, while in violation of their immigration status and immigration law, have not committed a criminal offense.[10] In addition, some of the criminal alien detainees are legal permanent residents who have resided in the United States for many years. Other detained aliens include those who arrive at a port-of-entry without proper documentation (e.g., fraudulent or invalid visas, or no documentation), but most of these aliens are quickly returned to their country of origin through a process known as *expedited removal*.[11] The majority of aliens arriving without proper documentation who claim asylum are held until their "credible fear hearing" and then released; however, some asylum seekers are held until their asylum claims have been adjudicated.

Although noncitizens in immigration detention are in the custody of ICE, only a minority are detained at facilities owned or fully contracted by ICE. In October 2007, 65% of noncitizen detainees were detained at state and local prisons,[12] 19% at contract facilities, 14% at Service Processing Centers (SPCs) owned and operated by ICE, and 2% at Bureau of Prisons (BOP)

[7] Mandatory detention is required for certain criminal and terrorist aliens who are removable, pending a final decision on whether the alien is to be removed. For a full discussion of the immigration detention of noncitizens, see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by (name redacted).

[8] "Parole" is a term in immigration law which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States, and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

[9] Criminal aliens are aliens who committed a crime while in the United States, have served their criminal sentence, and are detained while undergoing deportation proceedings. Criminal aliens may be legal permanent residents, nonimmigrants, or present without authorization (illegal aliens).

[10] It is a civil violation, not a criminal offense, to be illegally present in the United States. Nonetheless, it is a crime to enter the United States without inspection or with false documents.

[11] For a full discussion on expedited removal, see CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by (name redacted) and (name redacted).

[12] ICE uses over 300 state and local jails, which are paid for through reimbursement agreements called Intergovernmental Service Agreements (IGSAs). U.S. Immigration and Customs Enforcement, Office of Detention and Removal, *Semiannual Report on Compliance with ICE National Detention Standards: January—June 2007*, May 9, 2008, p. 6.

facilities.[13] Notably, all facilities housing immigration detainees must comply with ICE's National Detention Standards (discussed below).[14]

Overview of Detention Population

On an average day, up to 33,000 immigration detainees are in ICE's custody in more than 300 facilities nationwide. The average stay is 37.5 days.[15] For FY2008, as of December 31, 2007, the average daily detained population was 31,244.[16] In FY2008, approximately 311,000 aliens were detained by ICE.[17] As of April 30, 2007, ICE reported that, cumulatively, 25% of all detained aliens were removed within four days, and 90% within 85 days.[18] Nonetheless, in FY2006, more than 7,000 aliens were in detention longer than six months.[19] For FY2006, approximately 48% of the aliens in detention were criminal aliens.[20] (For a more detailed discussion of the detention population, see **Appendix A**.)

Oversight of Detention Facilities

Currently, ICE contracts with Creative Corrections, L.L.C., to perform the annual inspections of detention facilities.[21] ICE also contracts with another company, the Nakamoto Group Inc.,[22] to serve as on-site, full-time quality assurance inspectors at the 40 largest detention facilities. The Detention Facilities Inspection Group (DFIG) within the ICE's Office of Professional Responsibility (OPR) is primarily responsible for oversight of detention facilities. The DFIG,

[13] ICE operates eight detention facilities, called Service Processing Centers (SPCs). They are located in Aguadilla, Puerto Rico; Batavia, New York; El Centro, California; El Paso, Texas; Florence, Arizona; Miami, Florida; Los Fresnos, Texas; and San Pedro, California.ICE also has seven contract detention facilities. These facilities are located in Aurora, Colorado; Houston, Texas; Laredo, Texas; Seattle, Washington; Elizabeth, New Jersey; Queens, New York; and San Diego, California. ICE also uses state and local jails on a reimbursable detention day basis and has joint facilities with the Bureau of Prisons. Immigration and Customs Enforcement, *Public Information: Office of Detention and Removal*, updated March 26, 2007. Statement by Gary E. Mead, Assistant Director ICE Detention and Removal, hearing 110th Congress, 1st sess., "Detention and Removal: Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, October 4, 2007, Serial No. 110-53, p.10. (Hereafter Mead, *Detention and Removal: Immigration Detainee Medical Care*.)

[14] Mead, *Detention and Removal: Immigration Detainee Medical Care*, p. 10.

[15] Detention and Removal Office, *DRO: Detainee Health Care*, May 7, 2008. (Hereafter DRO, *DRO: Detainee Health Care*.)

[16] Unpublished DHS data obtained from the Bureau of Immigration and Customs Enforcement Office of Congressional Affairs, Department of Homeland Security, January 31, 2008.

[17] Department of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2007*, December 2008.

[18] Government Accountability Office, *Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance*, GAO-07-875, July 2007, p. 48.

[19] CRS analysis of data in U.S. Immigration and Customs Enforcement, *FY2006 Detained Asylum Seekers, Report Pursuant to §904 of the Haitian Refugee Immigration Fairness Act (P.L. 105-277)*; and U.S. Immigration and Customs Enforcement, *FY2006 Detainees Not Seeking Asylum, Report Pursuant to §904 of the Haitian Refugee Immigration Fairness Act (P.L. 105-277).*

[20] U.S. Immigration and Customs Enforcement, *FY2006 Detainees Not Seeking Asylum, Report Pursuant to §904 of the Haitian Refugee Immigration Fairness Act (P.L. 105-277).*

[21] Inspections were formerly performed by ICE employees. For information on Creative Corrections, go to http://www.correctionalexperts.com, accessed May 28, 2008.

[22] Its website is http://www.nakamotogroup.com/, accessed May 28, 2008.

which began in February 2007, provides oversight and independent validation of the annual detention facility inspection program (done by Creative Corrections). DFIG also conducts investigations of serious incidents involving detainees.[23] Lastly, DRO's Detention Standards Compliance Unit is tasked with ensuring that facilities that detain aliens comply with ICE's National Detention Standards.[24] The press has reported that a DHS Inspector General's 2008 draft report finds that previous oversight has not been effective in identifying serious problems at the facilities.[25]

Health Care for Detained Aliens

> The US Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO) is responsible for ensuring safe and humane conditions of confinement for detained aliens in federal custody, including the provision of reliable, consistent, appropriate and cost-effective health services.[26]—Immigration and Customs Enforcement

ICE's Detention Standards for Detainee Medical Care

Overview of Detention Standards

In 2000, the former Immigration and Naturalization Service (INS) created National Detention Standards for aliens in detention, which are published in the Detention Operations Manual.[27] In late 2008, ICE—reportedly with input from detention experts, non-governmental organizations, and DHS' Civil Rights and Civil Liberties Office—published new Detention Standards in a performance-based format.[28] The standards specify the detention conditions appropriate for immigration detainees.[29] In most cases, the standards mirror American Correctional Association (ACA) standards,[30] though some of ICE's Detention Standards provide more specificity or are unique to the needs of alien detainees.[31] The Detention Standards, however, do not have the force

[23] Detention and Removal Office, *DRO: Detainee Health Care*, May 7, 2008, available athttp://www.ice.gov/pi/news/factsheets/detaineehealthcare.htm, accessed June 30, 2008. (Hereafter DRO, *DRO: Detainee Health Care*.)

[24] Immigration and Customs Enforcement, Office of Detention and Removal Operations, *Semiannual Report on Compliance with ICE National Detention Standards, January 2007-June 2007*, May 9, 2008.

[25] Deborah Howell, "The Ombudsman Reacts to Feedback from U.S. Immigration and Customs Enforcement," *Washington Post*, June 8, 2008.

[26] DRO, *DRO: Detainee Health Care*.

[27] These standards are derived from the *American Correctional Association Third Edition, Standards for Adult Local Detention Facilities*.

[28] In fall 2007, Senator Edward Kennedy and Representative Zoe Lofgren sent letters to ICE expressing concern about the new performance-based detention standards and the fact that there was not much collaboration on the new standards. Both lawmakers requested that Congress be allowed to review the standards. ICE may have taken their concerns into account, as ICE reported that it received input on the standards from many sources. Letter from Representative Zoe Lofgren to DHS Assistant Secretary Julie Myers, September 7, 2007. Letter from Senator Edward Kennedy to DHS Assistant Secretary Julie Myers, October 1, 2007.

[29] Immigration and Customs Enforcement, *Public Information: Office of Detention and Removal*, updated March 26, 2007.

[30] The ACA evaluates and accredits correctional health care programs in the United States. An independent, nonprofit organization, ACA is the nation's main standards-setting and accrediting body for correctional facilities. For information on ACA, see http://www.aca.org/, accessed June 24, 2008.

[31] Government Accountability Office, *Alien Detention Standards: Telephone Access Problems Were Pervasive at* (continued...)

of law, thus detainees do not have legal recourse for violations of the standards.[32] The Detention Operations Manual contains a section on health services, which addresses standards for medical care; hunger strikes; suicide prevention and intervention; and terminal illness, advanced directives, and death.

The American Civil Liberties Union (ACLU) and the National Immigration Law Center have complained about the standards. They note that ICE lacks written guidelines for how to rate a facility's adherence to the Detention Standards, and that ICE notifies the facilities 30-days before their annual reviews, giving facilities opportunities to prepare for the reviews. In addition, they note that annual reviews do not require detainee interviews and are only observational reviews of the facilities and files.[33] In 2007, the Assistant Secretary of ICE directed that ICE's Office of Detention and Removal (DRO) report semiannually on agency-wide adherence with the National Detention Standards. The semiannual reports explain the standards used to rate the detention facilities. The first report under this directive was issued in May 2008.[34]

Detention Standards on Medical Care

According to ICE's Detention Operations Manual the Detention Standards ensure, "that detainees have access to emergent, urgent or non-emergent medical, dental, and mental health care that are within the scope of services provided by the DIHS, so that their health care needs are met in a timely and efficient manner."[35] According to the Detention Operations Manual, every facility has to provide detainees with initial medical screening, primary medical care, and emergency care. The ICE Officer in Charge (OIC) must arrange for specialized health care, mental heath care, and hospitalization within the local community. All facilities are required to employ a medical staff large enough to provide basic exams and treatments to all detainees.[36] Medical care at facilities ranges from small clinics with contract staff to facilities with on-site medical staff and diagnostic equipment.[37]

The facilities are required to have a mechanism (normally paper request slips) that allows detainees to request health care services provided by a physician or other qualified medical officer in a clinical setting.[38] The facilities are required to have regularly scheduled times, known

(...continued)

Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance, GAO-07-875, July 2007, p. 8. (Hereafter GAO, *Alien Detention Standards*.)

[32] American Bar Association (ABA), Commission on Immigration, *Summary of Select ICE Detention Standards*.

[33] American Civil Liberties Union and National Immigration Law Center, *U.S. Immigration Detention System: Substandard Conditions of Confinement and Ineffective Oversight*, prepared for the United Nations Special Rapporteur in the Human Rights of Migrants, May 3, 2007.

[34] U.S. Immigration and Customs Enforcement, Office of Detention and Removal, *Semiannual Report on Compliance with ICE National Detention Standards: January—June 2007*, May 9, 2008.

[35] Immigration and Customs Enforcement/Detention and Removal Office, *Detention Standard: Medical Care*, December 2, 2008.

[36] Reportedly, at the Pinal County jail, Florence Arizona, which houses immigration detainees for ICE, in Feburary 2008, approximately one-third of the medical positions were vacant, and there was no full-time doctor at that facility or at the two nearby detention centers. Deborah Howell, "The Ombudsman Reacts to Feedback from U.S. Immigration and Customs Enforcement," *Washington Post*, June 8, 2008.

[37] GAO, *Alien Detention Standards*, p. 18.

[38] All request slips are to be received by the medical facility in a timely manner, and assistance is to be provided to aliens who need assistance filling out the request slips (e.g., non-English speakers).

as *sick call*, when medical personnel are available to see detainees who have requested medical services. All detainees, without exception, have access to sick call, and the facilities have to have procedures in place that ensure that all sick call requests are received and triaged by medial personnel within 48 hours after the detainee submits the request.

ICE detainee policy requires that all detainees receive an initial health screening immediately upon arrival at the detention facility to determine the appropriate necessary medical, mental health, and dental treatment. In addition to the initial screening, ICE policy also requires that detainees receive a health appraisal and physical examination within 14 days of arrival to identify medical conditions that require monitoring or treatment. In addition, all detainees are supposed to receive a mental health screening within 12 hours of admission. Detainees also receive a mental status evaluation during their physical examination, which is required to take place within 14 days of admission.[39] According to ICE, a detainee with a medical condition will be scheduled for as many follow-up appointments as necessary. In addition, detainees have access to sick call (i.e., the opportunity to request non-emergeny health care provided by a health service provider during scheduled times at the detention facility).[40]

In addition, the manual states that an initial dental screening exam should be performed within 14 days of the detainee's arrival, and if an on-site dentist is not available, the initial dental screening may be performed by a physician, physician's assistant, or nurse practitioner. All detainees are afforded authorized emergency dental treatment.[41] Aliens detained for more than six months are eligible for routine dental treatment.[42] Detainees' dental care, reportedly, is often limited to extractions, and care for painful dental conditions is often delayed or denied. Dentures are not provided, nor are eyeglasses, unless the glasses were broken while the alien was in detention. In addition, detainees may not use their own money to get medical or dental care.[43]

Under the Medical Standards, detainees also have access to medication from an on-site pharmacy or a pharmacy in the community. Detainees may get medicine from their family members, provided that the medicine can be verified as appropriate for the detainee to take and is not contraband.[44] There have been reports, however, of detainees having problems getting medications even when their families have been willing to provide them.[45]

---

[39] Written response to questions, ICE testimony, p. 264.

[40] Statement by Gary E. Mead, Assistant Director ICE Detention and Removal, hearing 110th Congress, 1st sess., "Detention and Removal: Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, October 4, 2007, Serial No. 110-53, pp. 7-8.

[41] Such treatment includes procedures directed toward the immediate relief of pain, trauma, and acute oral infection that endangers the health of the detainee. It also includes repair of prosthetic appliances to prevent detainee suffering.

[42] Routine dental treatment includes amalgam and composite restorations, prophylaxis, root canals, extractions, X-rays, the repair and adjustment of prosthetic appliances, and other procedures required to maintain the detainee's health.

[43] Testimony of Cheryl Little, Executive Director Florida Immigrant Advocacy Center, in U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Detention and Removal: Immigration Detainee Medical Care*, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 91. (Hereafter Little, *Detention and Removal: Immigration Detainee Medical Care Hearing*.)

[44] Mead, *Detention and Removal: Immigration Detainee Medical Care Hearing*, p. 8.

[45] Testimony of Edwidge Danticat, niece of Reverend Joseph Danticat, deceased detainee, in U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, (continued...)

Provision of Health Services

The Division of Immigrant Health Services (DIHS), which is indefinitely detailed from the U.S. Public Health Service to ICE, is ultimately responsible for the provision of health care to noncitizens detained by ICE. At 15 of over 300 detention facilities, DIHS provides on-site health care, while in the others, mostly for detainees in local prisons and jails, health care is provided by contract workers who are not affiliated with DIHS.[46] The amount of care available on-site at detention facilities is variable. Some facilities have full-time, on-site medical staff, while other facilities make use of local providers.[47] Notably, DIHS is responsible for the approval of any off-site medical care, regardless of where the alien is detained.[48]

Some immigration advocates maintain that since the Detention Standards do not have the force or law or regulation, DIHS policy exercises the largest influence over the provision of medical care to detainees.[49] Although the medical care that is supposed to be received is detailed in the Detention Standards Manual, one stated concern is that the procedures and standards are not followed.[50] Another concern focuses on the covered benefits package (discussed below) and whether that and the Detention Standards allow for the provision of adequate services to the detained populations.

Role of Division of Immigrant Health Services

DIHS is a stand-alone medical unit consisting of U.S. Public Health Service (PHS) Officers and contract medical professionals who work under DIHS supervision. DIHS serves as the medical authority for ICE.[51] Prior to October 1, 2007, ICE received the medical services of DIHS through the Department of Health and Human Services's (HHS's) Health Resources and Services Administration (HRSA). In other words, HRSA oversaw DIHS, including the U.S. Public Health Service Officers assigned to DIHS.

(...continued)

Detention and Removal: Immigration Detainee Medical Care, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 46. Also, Dana Priest and Amy Goldstein, "In Custody and In Pain," *Washington Post*, May 12, 2008, p. A1.

[46] Immigration and Customs Enforcement, *Detention Management Program*, updated January 27, 2007.

[47] Government Accountability Office, *Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance*, GAO-07-875, July 2007.

[48] Immigration and Customs Enforcement, *Detention Management Program*, updated January 27, 2007.

[49] Testimony of Mary Meg McCarthy, Executive Director, National Immigrant Justice Center, in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008. (Hereafter, McCarthy, *Problems with Immigration Detainee Medical Care*.)

[50] *House Subcommittee on Immigration, Detention and Removal: Immigration Detainee Medical Care. House Subcommittee on Immigration, Problems with Immigration Detainee Medical Care.*

[51] *DIHS Medical Dental Detainee Covered Services Package.* This document lists all covered and non-covered services offered to aliens in detention. It also clarifies which services must be requested by a Treatment Authorization Request (TAR).

ICE Issues with DIHS

According to DHS, ICE was interested in greater administrative control over DIHS for a variety of reasons, including HRSA's inability to fill DIHS vacancies in a timely manner and unwillingness to provide Public Health Service (PHS) Officers to support ICE law enforcement missions.[52] In October 2007, DIHS was detailed indefinitely to ICE.[53] The detail of the PHS Officers in DIHS was accomplished via a memorandum of agreement (MOA), which also covers the assignment of PHS resources elsewhere within DHS.[54] Since the detail became effective, ICE has provided both administrative support to DIHS and oversight of the administration of DIHS.[55] Under the MOA, DHS is responsible for the day-to-day conduct of PHS Officers under its detail and assumes liability for their negligence or malpractice. Lawyers in the DHS Office of Health Affairs (OHA) handle such claims.[56]

In addition, beginning on October 1, 2007, ICE has stated that it has been collaboratively working with OHA on a variety of improvement initiatives, including selecting a new Director for DIHS at the appropriate rank; implementing aggressive hiring strategies to address staffing needs;[57] identifying and implementing a new electronic medical records system; and reviewing (or changing, if necessary) the process by which Treatment Authorization Requests (TARS) are approved. ICE is also working with OHA to develop an enhanced process for TAR appeals.[58]

Additional Health Care Services/Treatment Authorization Requests

ICE has established a covered benefits package that delineates the health care services available to detainees in ICE custody, in addition to the minimum scope of services provided by the detention facilities.[59] This package, known as the *DIHS Medical Dental Detainee Covered Services Package* (CSP), primarily provides health care services for emergency care, which is

[52] Personal email communication with Immigration and Customs Enforcement, Congressional Relations, May 15, 2008. For a discussion of staffing issues and the possible impact of staffing levels on care, see Dana Priest and Amy Goldstein, "System of Neglect: As Tighter Immigration Policies Strain Federal Agencies, The Detainees in their Care Often Pay a Heavy Cost," *Washington Post*, May 11, 2008, p. A1.

[53] *Memorandum of Agreement between the Department of Homeland Security and the U.S. Department of Health and Human Services, U.S. Public Health Service,* August 23, 2007. The MOA became effective on October 1, 2007.

[54] Commissioned Corps (CC) Officers of the U.S. Public Health Service are assigned to agencies throughout the government (e.g., DOD, DHS, EPA, State, DVA, Bureau of Prisons, and the U.S. Marshals Service). Typically, the U.S. Public Health Service executes a Memorandum of Agreement (MOA) with the receiving agency that provides terms for assignment of CC Officers. The receiving agency is responsible for the CC Officer's salary and benefits. It may also be responsible for training, leave, etc.

[55] According to ICE, DIHS remains solely responsible for detainee health care.

[56] *Memorandum of Agreement between the Department of Homeland Security and the U.S. Department of Health and Human Services, U.S. Public Health Service,* August 23, 2007. The MOA became effective on October 1, 2007.

[57] The series in the *Washington Post* reported DIHS officials complaining that inadequate medical staff was a problem and was impacting the quality of care provided. Dana Priest and Amy Goldstein, "System of Neglect: As Tighter Immigration Policies Strain Federal Agencies." Deborah Howell, "The Ombudsman Reacts to Feedback from U.S. Immigration and Customs Enforcement," *Washington Post*, June 8, 2008.

[58] Testimony of Julie L. Myers, Assistant Secretary U.S. Immigration and Customs Enforcement, in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008. (Hereafter, Myers, *Problems with Immigration Detainee Medical Care*.)

[59] Mead, *Detention and Removal: Immigration Detainee Medical Care*, p. 8.

defined as "a condition that is threatening to life, limb, hearing or sight,"[60] rather than elective or non-emergency conditions.[61] The CSP states that:

> [accidental] or traumatic injuries incurred while in the custody of ICE or BP [Border Patrol] and acute illnesses will be reviewed for appropriate care. Other medical conditions which the physician believes, if left untreated during the period of ICE/BP custody, would cause deterioration of the detainee's health or uncontrolled suffering affecting his/her deportation status will be assessed and evaluated for care.... Elective, non-emergent care requires prior authorization.... Requests for pre-existing, non-life threatening conditions, will be reviewed on a case by case basis.[62]

Detainees who require non-emergency medical care beyond that which can be provided at the detention facilities must get preauthorization. They submit a Treatment Authorization Request (TAR), which is evaluated by the DIHS Managed Care Program.[63] The TAR must be approved before the detainee may receive care. According to ICE, more than 40,000 TARs are submitted each year; the average turn-around time is 1.4 days, and 90% are approved.[64] Nonetheless, some detainees have described waiting weeks or months to get basic care.[65] In addition, reportedly, detainees have been told that biopsies were "elective surgery" and, as such, have had trouble getting the diagnostic test.[66] According to a 2007 GAO report, officials at several detention facilities reported difficulties obtaining approval for outside medical and mental health care.[67]

TAR reviews for care are conducted by DIHS nurses in Washington, DC, who review the paperwork submitted by physicians.[68] These nurses are known as Managed Care Coordinators (MCCs). The nurses are on duty Monday through Friday, 7:30 a.m to 4 p.m. Regardless of where the alien is held, approval from DIHS is required for diagnostic testing, speciality care, or surgery. However, when an ICE detainee is hospitalized, the hospital assumes medical decision-making authority, including the patient's drug regimen, lab tests, X-rays, and treatments.[69] Off-site

---

[60] *DIHS Medical Dental Detainee Covered Services Package*, p. 1.

[61] Mead, *Detention and Removal: Immigration Detainee Medical Care*, p. 8.

[62] *DIHS Medical Dental Detainee Covered Services Package*, p. 1.

[63] Mead, *Detention and Removal: Immigration Detainee Medical Care*, p. 8.

[64] Mead, *Detention and Removal: Immigration Detainee Medical Care*, p. 8.

[65] Testimony of Francisco Castaneda, former ICE detainee, at in U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Detention and Removal: Immigration Detainee Medical Care*, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 15. (Hereafter Castaneda, *Detention and Removal: Immigration Detainee Medical Care Hearing*.)

[66] Many diagnostic tests, such as biopsies or MRIs, must receive prior approval. Castaneda, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 17. Jawetz, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 57.

[67] U.S. Government Accountability Office, *Alien Detention Standards: Telephone Access Problems Were Pervasive; Other Deficiencies Did not Show A Pattern of Noncompliance*, GAO-07-875 (July 2007).

[68] There were four nurses who conducted reviews, but reportedly, the workload is now spread among three people. According to testimony, these three nurses need to review and respond to approximate 50 requests a day. McCarthy, *Problems with Immigration Detainee Medical Care*.

[69] Testimony of Cheryl Little, Executive Director Florida Immigrant Advocacy Center, at in U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Detention and Removal: Immigration Detainee Medical Care*, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 72. (Hereafter Little, *Detention and Removal: Immigration Detainee Medical Care Hearing*.)

medical care for people in the custody of the U.S. Marshals service is handled in a similar manner.[70]

Review Process for Declined TARs

According to ICE, DIHS has a formal appeals process that is similar to industry standards and comparable to that of the Bureau of Prisons for declined Treatment Authorization Requests (TARs). Facilities and individual detainees have the right to appeal denial determinations. TARs denied for lack of medical necessity may be resubmitted for reconsideration to the Managed Care Coordinator (MCC) (i.e., the DIHS nurses in Washington DC). If a TAR is denied for lack of timely submission, the medical records are forwarded to the Managed Care Coordinator (MCC) Branch Chief for review.

According to DIHS Standard Operating Procedure, the Managed Care Review Committee (MCRC) conducts a second level review for all appeals which are upheld by the MCC. The MCRC is comprised of the DIHS Medical Director, appropriate medical, dental, or mental health consultants, and MCC(s). Decisions of the MCRC are made in writing within three working days of the appeal. ICE, DIHS, and OHA are working to develop a more independent appeal body outside of DIHS and ICE.[71]

Preauthorization Issues and Concerns

The preauthorization (also called pre-certification of medical necessity) requirement is similar to those of many managed care/health insurers.[72] Nonetheless, some contend that this procedure can prevent detainees from getting the necessary care, and note that off-site nurses have the ability to deny care that was requested by on-site medical personnel.[73] Reportedly, the *DIHS Medical Dental Detainee Covered Services Package* (CSP) has been amended several times since 2005, to limit the scope of medical care for detainees.[74] A repeating theme in press reports and

[70] However, some argue that the U.S. Marshals Service relies on the principle of medical necessity in establishing criteria for an outside referral, whereas, ICE requires an assessment of whether the condition will impact the alien's deportation. ICE counters that other medical conditions which physicians believe would cause suffering or the deterioration of the detainee's health are assessed and evaluated by DIHS for treatment. Immigration and Customs Enforcement, responses to post-hearing questions, U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Detention and Removal: Immigration Detainee Medical Care*, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 261. (Hereafter ICE, *Detention and Removal: Immigration Detainee Medical Care Hearing*.) Testimony of H. Venters, M.D., in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008. (Hereafter, Venters, *Problems with Immigration Detainee Medical Care Hearing.)*

[71] Personal email communication with Immigration and Customs Enforcement, Congressional Relations, June 16, 2008. Myers, *Problems with Immigration Detainee Medical Care*.

[72] For a discussion of managed care and other types of health insurance systems, see CRS Report RL32237, *Health Insurance: A Primer*, by (name redacted).

[73] For example, see testimony of Tom Jawetz, ACLU National Prison Project, U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Detention and Removal: Immigration Detainee Medical Care*, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 56. (Hereafter Jawetz, *Detention and Removal: Immigration Detainee Medical Care Hearing*.) Also, McCarthy, *Problems with Immigration Detainee Medical Care Hearing*.

[74] Venters, *Problems with Immigration Detainee Medical Care Hearing.*

congressional testimony concerned difficulties getting biopsies when there is a concern about cancer.[75]

The ACLU is involved in a class action suit regarding inadequate medical care for immigration detainees at the San Diego Correctional Facility, and contends that there are serious deficiencies in the CSP which should be fixed to ensure that detainees receive adequate medical care consistent with the ICE Detention Standards on Medical Care.[76] The CSP primarily provides health care services for emergencies only. According to the ACLU, as recently as August 2005, the CSP did not extend to pre-existing conditions. In his testimony, Tom Jawetz of the ACLU argued that there is a disconnect between ICE's Detention Standards and the CSP. In addition, he contends that "the standard is inconsistent with established principles of constitutional law and basic notions of decency."[77]

Representative Zoe Lofgren also stated in a question to ICE at the October 2007 hearing that there seems to be an inconsistency between the CSP and the Detention Standards because the CSP states that medical conditions will be evaluated for treatment based on the criteria that, "if left untreated during the period of ICE/BP custody [the medical condition] would cause deterioration of the detainee's health or uncontrolled suffering *affecting his/her deportation status* [emphasis added]," (i.e., the detainees health issues would have to jeopardize the ability of ICE to remove the alien before treatment would be rendered.)[78] ICE responded that it disagrees that the Detention Standards and CSP are inconsistent. ICE contends that all detainees receive medical treatment when DIHS determines that care is required, "regardless of whether the alien is about to be deported or not."[79]

Other Reported Issues with Detainee Health Care

There have been reports of problems with detainees being transferred without their medical records.[80] ICE does not have a system to track the transfer of medication and medical records of detainees.[81] Some lawyers described difficulties getting access to medical records on their client's behalf.[82] Other detainees have complained about problems with getting interpreters during

[75] See Dana Priest and Amy Goldstein, "In Custody, In Pain," *Washington Post*, May 12, 2008, p. A1. Castaneda, *Detention and Removal: Immigration Detainee Medical Care Hearing*.

[76] Complaint for Injunctive and Declaratory Relief, Woods v. Myers, docket number unavailable, (S.D.Cal. filed June 13, 2007). Also, Jawetz, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 56.

[77] Jawetz , *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 58.

[78] Statement by Representative Zoe Lofgren, hearing 110th Congress, 1st sess., "Detention and Removal: Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, October 4, 2007, Serial No. 110-53.

[79] ICE, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 275.

[80] McCarthy, *Problems with Immigration Detainee Medical Care Hearing*.

[81] ICE, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 262.

[82] Little, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 93.

medical treatment.[83] Female detainees have also reported not getting regular gynecological or needed obstetric care.[84]

Governmental Reports on Compliance with the Medical Care Detention Standards

The following section synthesizes the finding in three U.S. government reports that examined selected detention facilities' compliance with all or some of the National Detention Standards. All three reports examined compliance with the Medical Care standard. The reports are as follows:

- U.S. Immigration and Customs Enforcement, Office of Detention and Removal (DRO), *Semiannual Report on Compliance with ICE National Detention Standards: January—June 2007*, May 9, 2008.
- Government Accountability Office (GAO), Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance, GAO-07-875, July 2007.
- Department of Homeland Security, Office of the Inspector General (DHS OIG), *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, OIG-07-01, December 2006.

Table 1 presents the time period of the reviews, the number of facilities reviewed, and the total number of standards evaluated for the studies discussed.

Table 1. Overview of Selected Government Studies on Compliance with Detention Standards

Study	Time-Frame for Review	Facilities Evaluated	Standards Evaluated
DRO	January 2007 to June 2007	175	All (38)
GAO	May 2006 to May 2007	23	8
DHS OIG	June 2004 to January 2006	5	4

DRO Semiannual Report

In May 2008, ICE released its first semiannual report on compliance with the National Detention Standards. The report covers reviews conducted during the first six months of 2007 and includes

[83] Testimony of Dr. Allen S. Keller, Associate Professor of Medicine, NYU, Director Bellevue/NYU program for Survivors of Torture, U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Detention and Removal: Immigration Detainee Medical Care*, hearings, 110th Congress, 1st sess., October 4, 2007, Serial No. 110-53 (Washington: GPO, 2007), p. 65.

[84] Little, *Detention and Removal: Immigration Detainee Medical Care* Hearing, p. 76.

the inspections of more than 175 facilities.[85] The report rated the facilities on the Detention Standards as either "acceptable" or "deficient."[86] Overall, on the medical care standard, 98% of the facilities were rated acceptable, while 2% were rated deficient. Of the evaluated Service Processing Centers (SPCs) owned and operated by ICE, 80% were rated acceptable, while 20% were rated deficient.[87]

GAO Alien Detention Standards

In July 2007, the Government Accountability Office (GAO) released an audit of 23 detention facilities. GAO found a lack of adherence to the medical care standards at 3 of the 23 facilities, including failing to administer the mandatory physical exams within 14 days of admission and failure to administer medical screening immediately after admission. In addition, GAO found that concerns about medical care were common reasons for aliens to file complaints.[88]

DHS OIG Report

The DHS Office of the Inspector General (OIG) conducted an audit of compliance with selected detention standards at five facilities used to house immigration detainees.[89] Of the five facilities reviewed, DIHS managed and administered health care at two facilities. At the other three facilities, DIHS was responsible for approving off-site care, but the on-site care was administered by contractors at those facilities. The OIG identified instances of non-compliance with the medical care standards at four of the five detention facilities, including failure to provide timely initial medical care. The one facility found to be in full compliance with the standards for initial medical screening and physical examination was Krome SPC, where medical care is provided by DIHS.[90]

The OIG stated in its review that the Detention Standards on sick calls do not clearly define what is considered a timely response to a non-emergency sick call request. Thus, the report found that in the absence of standards, local detention facilities have established differing policies regarding response time to non-emergency care. Nonetheless, at three of the detention facilities (two local prisons and one contract facility), 196 out of 481 detainee non-emergency medical requests were

[85] In 2007, the Assistant Secretary of ICE directed that the Office of Detention and Removal (DRO) report semiannually on agency-wide adherence with the National Detention Standards. This is the first report issued under this directive. U.S. Immigration and Customs Enforcement, Office of Detention and Removal, *Semiannual Report on Compliance with ICE National Detention Standards: January—June 2007*, May 9, 2008.

[86] *Acceptable* is the baseline for the ratings system meaning that the detention functions are being adequately performed. *Deficient* means that the function is not being performed at an acceptable level.

[87] There are eight SPCs, and seven were rated.

[88] Government Accountability Office, *Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance*, GAO-07-875, July 2007. (Hereafter GAO, *Alien Detention Standards*.)

[89] The facilities included the Krome Service Processing Center in Miami, FL; the Corrections Corporation of America Facility in San Diego, CA (a contract facility); and three local jails—Berks County Prison, Leesport, PA; Hudson County Corrections Center, Kearny, NJ; and Passaic County Jail, Paterson, NJ. Department of Homeland Security, Office of the Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, OIG-07-01, December 2006. (Hereafter OIG, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*.)

[90] OIG, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, p. 3.

not responded to in the time-frame specified by the facility.[91] As a result, the OIG recommended that ICE develop specific criteria to define a reasonable time for medical treatment. ICE responded to the recommendation, concurring in part and promising to examine the merits of the issue, but contending that its medical program provides adequate detainee care and is consistent with industry standards. ICE also stated that it "must rely on its service providers to make medical decisions regarding the provision of medical care and any criteria to be established that would determine timeliness."[92]

Selected Issues

Reports of inadequate care being provided to detainees raise several policy issues pertaining to the health care provided to the detained noncitizen population. First, the detention population, both in funded bed space and in the total detention population, increased between FY2003 and FY2007 raising interest in spending on detainee medical care, and concerns that spending has not increased in the same proportion as the detained population. In addition, ICE has the authority to release aliens due to medical and psychological problems, elevating interest in the existing guidelines and practices for medical release, and their adequacy. Similarly, due to the likely special needs of asylum seekers in detention, another policy issue focuses on whether proper care is and can be provided to this population within a detention setting.

While every death is regrettable, preventable deaths of aliens in detention who are reliant on the government for medical care heighten concerns about the quality of health care. Doubts about the propriety of the number of deaths in detention as a reliable measure of standard of care, lead to the policy question of which measures would provide insight into the adequacy and quality of care. Finally, an overarching debate on this issue concerns the appropriate standard of health care that should be provided to foreign nationals in immigration detention. This debate is especially emotional because of the balancing act between basic human rights and the cost of health care when U.S. citizens also face barriers in accessing health care.[93]

Spending on Detainee Health Care[94]

Concerns about the adequacy of health care for detained aliens has increased interest in funding for detainee medical care. As shown in **Table 2**, from FY2003 to FY2007, the total amount spent on detainee medical care increased by 83%, from $50 million to $92 million.[95] During that same time period, the total amount of funded bed space increased by 41%.[96] The total amount of funds

[91] OIG, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, p. 4.

[92] OIG, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, p. 46.

[93] For more information on the uninsured, see CRS Report 96-891, *Health Insurance Coverage: Characteristics of the Insured and Uninsured Populations in 2007*, by (name redacted) and (name redacted).

[94] ICE reimburses DHS's Office of Health Affairs (OHA), and OHA reimburses HHS for the services performed by the PHS Officers.

[95] During the same time period, the total annual detained population increased 34% and the average daily detention population increased 43% (see **Figure A-1**). Nonetheless, to have a fair comparison of whether the increase in medical care expenditures has matched the increase in the detention population, one would have to know the number of person-days of aliens in detention.

[96] A better comparison would be the number of detention-days of detainees (i.e, if one detainee was detained for five days and another detainee for 10 days, the total number of detention days would be 15.) Unfortunately, these data were (continued...)

spent on ICE detainee health care increased between FY2003 and FY2004. Between FY2004 and FY2006, the total expenditures on detainee health care fluctuated but remained between $70 and $74 million. Between FY2006 and FY2007, the total expenditures increased from $74 million to $92 million.

Most of the increase in total spending on detainee health care was from increases in program operations, not in medical claims, which are for services rendered by an off-site health care provider to detainees. The total amount of money spent on detainee health care program operations doubled between FY2003 and FY2007. However, the funds expended for medical claims increased between FY2003 and FY2004, then decreased between FY2004 and FY2005. Between FY2005 and FY2007, expenditures on medical claims remained almost constant. During the same time, the funded amount of bed space increased by 49%.[97]

Table 2. Expenditures on Health Care for Detainees and Funded Bed Space, FY2003-FY2007

FY	Program Operations	Medical Claims	Total	Funded Bed Space
2003	$30,065,834	$20,000,000	$50,065,834	19,444
2004	$33,851,607	$40,443,028	$74,294,635	19,444
2005	$39,777,000	$30,672,928	$70,449,928	18,500
2006	$43,310,792	$30,301,850	$73,612,642	20,800
2007	$60,900,000	$30,714,307	$91,614,307	27,500
Total	**$207,905,233**	**$152,132,113**	**$360,037,346**	

Source: DHS, Office of Public Affairs, U.S. ICE Fact Sheet, *Mortality Rates at ICE Detention Facilities*, May 2008, p. 2.

Note: Program operations refer to the operational costs for the program area. Medical claims are services rendered by an off-site health care provider to detainees.

Medical Release From Detention

ICE has the authority to release aliens due to medical and psychological problems; however, how often this authority is exercised and whether it is used effectively is unknown. ICE has prosecutorial discretion in determining custody for aliens with humanitarian (including medical) concerns. The alien may be released into an Alternatives to Detention program,[98] released on an Order of Supervision, or released on his or her own recognizance. These decisions are made on a

(...continued)

not available.

[97] Dr. Homer Venters testified that by comparison Rikers Island Jail in New York City annually detains roughly half the people that ICE detains on a given day, but has spent over $100 million annually during the last decade for a population that averages less time in detention than ICE detainees. Venters, *Problems with Immigration Detainee Medical Care Hearing*.

[98] The program provides less restrictive alternatives to detention, using such tools as electronic monitoring devices (e.g., ankle bracelets), home visits, work visits, and reporting by telephone, to monitor aliens who are out on bond while awaiting hearings during removal proceedings or the appeals process.

case-by-case basis, "whenever a medical or psychiatric evaluation makes the alien's detention problematic and/or removal [from the United States] unlikely." ICE does not keep track of how often this discretion is exercised.[99]

Health Care for Detained Asylum Seekers

While there is general debate about the merits of detaining asylum seekers, asylum seekers often have medical and psychological issues and it is not clear how well-equipped the detention health care system is to deal with the specific physical and psychological needs of asylum seekers.[100] As discussed, aliens in expedited removal must be detained, and thus aliens in expedited removal who claim asylum are detained while their "credible fear" cases are pending, and they may then be detained while their case is decided. In FY2006, 5,761 asylum seekers were detained, and 1,559 (27%) were detained for more than 180 days.[101] Notably, some claim that the practice of detaining asylum seekers has helped reduced the number of fraudulent asylum claims.[102]

However, the position of the United Nations High Commission on Refugees is that detaining asylum seekers is "inherently undesirable." It argues that detention may be psychologically damaging to an already fragile population such as those who are escaping from imprisonment and torture in their countries. Often, the asylum seeker does not understand why he or she is being detained, which can increase psychological stress.[103] In addition, asylum seekers may have unusual medical conditions resulting from the imprisonment and torture suffered in their home countries.[104]

Nonetheless, ICE reports that it routinely provides medical care for life-threatening conditions, such as cardiac arrest, kidney disease, HIV/AIDS, hypertension, and diabetes. As discussed earlier in the report, according to ICE detainees receive dental care, physical exams, sick call visits, prescription drugs, and mental health services. ICE states that staff are trained to spot detainees who may be at risk of suicide, and to use prevention and intervention techniques to

[99] Immigration and Customs Enforcement, responses to post-hearing questions, hearing 110th Congress, 1st sess., "Detention and Removal: Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, October 4, 2007, Serial No. 110-53, p. 263.

[100] For example, see Venters, *Problems with Immigration Detainee Medical Care Hearing.).* Also, see Little, *Detention and Removal: Immigration Detainee Medical Care Hearing*.

[101] U.S. Immigration and Customs Enforcement, *FY2006 Detained Asylum Seekers, Report Pursuant to §904 of the Haitian Refugee Immigration Fairness Act (P.L. 105-277).*

[102] David A. Martin, *The 1995 Asylum Reforms: A Historical and Global Perspective*, (Washington, DC: Center for Immigration Studies, May 2000). Available at http://www.cis.org/articles/2000/back500.html.

[103] Office of the of the United Nations High Commissioner for Refugees, *UNHRC Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, February 1999, p. 1.

[104] In 2003-2004, the National Immigrant Justice Center (NIJC) conducted a program to educate jail staff on the medical and mental health needs of the detained immigrant population, and to help them better understand the unique experiences of asylum seekers, torture victims, and victims of domestic violence in immigration detention. The training also included information on tropical medicine and infectious diseases. Reportedly, the project was well received, and NIJC reached out to DIHS without success to share findings and seek their involvement. Testimony of Mary Meg McCarthy, Executive Director, National Immigrant Justice Center, in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008. (Hereafter, McCarthy, *Problems with Immigration Detainee Medical Care*.) Little, *Detention and Removal: Immigration Detainee Medical Care Hearing*.

assist such detainees. Between May 2007 and May 2008, psychologists and social workers have managed a daily population of over 1,350 seriously mentally ill detainees without a single suicide.[105] Thus, current ICE procedures may adequately address the health care needs of detained asylum seekers.

Deaths in Custody

Two policy issues become highlighted when a detainee dies in custody. The first issue concerns the quality of oversight when a death occurs and whether there is enough oversight to identify possible cases of inadequate care. Secondly, while a detainee's death may heighten concerns about the quality of health care, there are doubts about the propriety of using deaths in detention as a reliable measure of standard of care. What follows is a discussion of these two issues.

Procedures

Although there is a system to report the death of a detainee, some question whether there is effective oversight when a death occurs in detention.[106] Current ICE procedure dictates that when a detainee dies while in the custody of ICE's Detention and Removal Office (DRO), the death is to be reported to ICE headquarters via a system known as the Significant Event Notification (SEN) system. Under its proceedures, DRO is also supposed to report detainee deaths to the ICE Office of Professional Responsibility (OPR) and to the DHS Office of the Inspector General (OIG) so that they can conduct independent reviews of the incident. In addition, deaths are referred to the local medical examiner's office, which decides whether to perform an autopsy. The OIG is also notified of the death by the Joint Intake Center (JIC), which is notified by the SEN system and sends all records regarding the death (including those from the local medical examiner) to the OIG. The OIG may accept the case for investigation or may decline and refer the case back to the JIC for referral to the Office of Professional Responsibility.[107]

Table 3. Number of Deaths in Custody, Calendar Year 2004-2007

Calendar Year	Number of Deaths
2004	29
2005	15
2006	16
2007	7
2008 (as of May 2, 2008)	4

Source: DHS, Office of Public Affairs, U.S. ICE Fact Sheet, *Mortality Rates at ICE Detention Facilities*, May 2008.

105

Immigration and Customs Enforcement, *Detainee Health Care: The Rest of the Story*, May 19, 2008. Available at http://www.ice.gov/pi/detention_health_care.htm, accessed July 1, 2008.

106 Nina Bernstein, "New Scrutiny as Immigrants Die in Custody," *The New York Times*, June 26, 2007, p. A1.

107 Immigration and Customs Enforcement, *Detention and Removal: Immigration Detainee Medical Care Hearing*, p. 274.

Death Rates

ICE has reported a decline in the number of deaths of aliens in detention between 2004 and 2008. Some, however, question whether mortality rates should be used in appraising health care in a transitional population, and truly reflect the quality of care provided to detainees. In May 2008, ICE published a fact sheet reporting that there were 71 deaths in immigration detention facilities from calendar year 2004 (inclusive) through May 2, 2008 (see **Table 3**). ICE reported a decline in the number of detainee deaths between 2004 and 2008, a period when the detainee population increased. ICE also asserted that the mortality rate in its facilities is lower than in U.S. prisons and jails and the general U.S. population.[108]

A critical analysis of the death rates was published by physicians at the New York University School of Medicine, who commented that ICE's comparisons were not valid because, among other things, the respective mortality rates had not been adjusted for age or for length of detention.[109] These doctors stated that mortality is an imprecise method for appraising health care in a transitional population, and that morbidity which refers to sickness or having a disease would be a better measure of ICE healthcare. They also stated that, in their calculations, the length-adjusted mortality rate for detainees increased between 2006 and 2007.[110] In addition, critics of the reported death rates stated that those who die outside the facilities but whose deaths were precipitated by their time in detention are not included in the mortality rates.[111]

Proper Standard of Care

There is debate about the appropriate standard of care that should be provided to aliens in detention. Many U.S. citizens lack health insurance and face barriers in accessing health care,[112] and there are issues of patient safety in many medical settings, not just in correctional facilities.[113]

---

[108] DHS, Office of Public Affairs, *U.S. ICE Fact sheet, Mortality Rates at ICE Detention Facilities*, May 2008.

[109] H. Venters, MD, and A. Keller, MD, "Response to Immigration and Customs Enforcement Fact Sheet on Detainee Deaths," letter, May 12, 2008. See also Venters, *Problems with Immigration Detainee Medical Care Hearing*. According to John M. Last, *A Dictionary of Public Health*, "It is called a 'crude' death rate because no adjustment is made to allow for age composition of the population or for other conditions or circumstances. Thus, comparisons of crude death rates in different populations are of limited value and must be interpreted with caution." Oxford University Press, 2007, p. 81, definition of "crude death rate." Because of varying lengths of detention, it is argued that valid comparisons between ICE and other federal detention facilities could be made only by comparing person-days of detention, though data in that format may not be available. In order to be valid, comparisons to the U.S. general population would require, at a minimum, age adjustment and some type of adjustment for detentions that are less that one year in duration.

[110] Venters, *Problems with Immigration Detainee Medical Care Hearing*.

[111] For example, Francisco Castaneda was in ICE detention for 11 months, and during that time, he reportedly did not receive a biopsy to confirm the diagnosis of penile cancer or any treatment for his cancer. He died a year after being released, and some contend that his death was hastened by the lack of care that he received while in ICE custody. The U.S. government has admitted negligence in Castaneda's death. Castaneda, *Detention and Removal: Immigration Detainee Medical Care Hearing*. Defendant United States of America's Notice of Admission of Liability for Medical Negligence, Castaneda v. United States, No. CV07-07241 (C.D. Cal. April 24, 2008).

[112] For more information on the uninsured, see CRS Report 96-891, *Health Insurance Coverage: Characteristics of the Insured and Uninsured Populations in 2007*, by (name redacted) and (name redacted).

[113] Edward Harrison, President of the National Commission on Correctional Health Care, testified that each year as many as 15 million patient injuries occur in health care settings, and between 100,000 to 200,000 deaths occur from unintended injury. He also stated that within the world of corrections, treatment can be more complicated and more susceptible to problems than in the community. Testimony of Edward Harrison, President National Commission on Correctional Health Care, in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, (continued...)

In addition, a proportion of aliens are in detention who are not authorized to be in the country. The cost of care for aliens in detention is paid by the American taxpayer. Reportedly, the health care provided to detained aliens tends to be similar to that provided to those in criminal incarceration. According to a press report, ICE has argued that some aliens are getting better health care in detention than they would in their home countries and that they had received earlier in their lives.[114] Assistant Secretary of ICE, Julie Myers testified that in FY2007, 34% of detainees screened were diagnosed with and treated for preexisting chronic conditions (e.g., hypertension, diabetes), and many of these detainees would not have known of their medical condition or received treatment if it were not for the comprehensive health screening they obtained when entering the detention system.[115] In addition, some health care decisions need to be made with the consideration that the alien is going to be removed to a country where he or she may not be able to get any follow-up care.[116]

Some contend that despite ICE's acknowledgment of the substantial burden of chronic diseases among the detained population, the ICE health plan focuses on an acute care model, and is not crafted for a population with significant chronic medical or mental health needs.[117] Some aliens in detention, especially long-term residents, do have health insurance but are unable to use it. Some further allege that officers frequently view ICE detainees as criminals, even when they do not have a criminal record, and as such are sometimes quick to assume that the detainees are faking their illnesses, and sometimes slow to get the aliens care.[118]

(...continued)

Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008.

[114] Deborah Block, "US Immigration Detainees Lack Health Care," *Voice of America News.Com*, July 16, 2007. Available at http://www.voanews.com/english/archive/2007-07/2007-07-16-voa29.cfm?CFID=7508474&CFTOKEN=99920865, accessed July 1, 2008.

[115] Myers, *Problems with Immigration Detainee Medical Care*.

[116] For example, when providing antibiotics, the medical providers need to take into account whether the alien will be able to finish a course of treatment before removal or will have access to the medication when he or she is removed, as a partial course of antibiotics could make the patient worse or create a drug-resident microbe. Personal conversation with U.S. Public Health Service Officers at the El Paso SPC, August 2004.

[117] Venters, *Problems with Immigration Detainee Medical Care Hearing*.

[118] Testimony of Rev. E. Roy Riley, in the U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Problems with Immigration Detainee Medical Care*, hearings, 110th Cong., 2nd sess., June 4, 2008. Little, *Detention and Removal: Immigration Detainee Medical Care Hearing*, p. 95. See also, Venters, *Problems with Immigration Detainee Medical Care Hearing*.

Appendix A. Detention Statistics

On an average day, up to 33,000 immigration detainees are in ICE's custody in more than 300 facilities nationwide. The average stay is 37.5 days.[119] In FY2007, a total of 311,213 aliens were detained by ICE.[120] As of April 30, 2007, ICE reported that, cumulatively, 25% of all detained aliens were removed within four days, 50% within 18 days, 75% within 44 days, 90% within 85 days, 95% within 126 days, and 98% within 210 days (see **Table A-1**). For FY2006, approximately 48% of the aliens in detention were criminal aliens.[121]

Table A-1. Percentage Removed and Percentage Remaining in Detention, April 30, 2007

Days	Cumulative Percentage Removed	Cumulative Percentage Remaining in Detention
0	0%	100%
4	25%	75%
18	50%	50%
44	75%	25%
85	90%	10%
126	95%	5%
210	98%	2%

Source: CRS presentation of data from Government Accountability Office, Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance, GAO-07-875, July 2007, p. 48.

As **Figure A-1** shows, the average daily detained population increased between FY2003 and FY2004 and then decreased between FY2004 and FY2006. The daily average detained population increased significantly between FY2006 and FY2007, from 20,594 to 30,295 detainees. As of December 31, 2007, the average daily detention population for FY2008 was larger than the FY2007 average daily population. For FY2008, as of December 31, 2007, the average daily detained population was 31,244.[122]

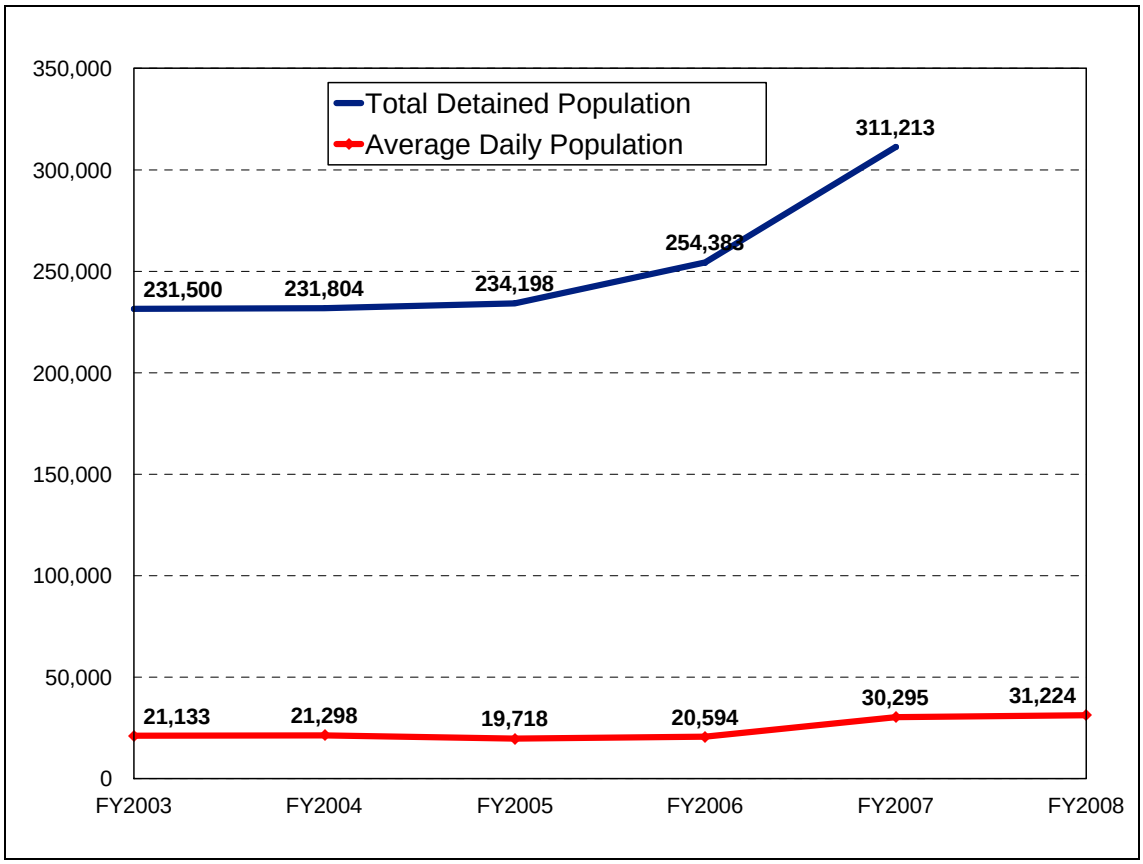
[119] Detention and Removal Office, *DRO: Detainee Health Care*, May 7, 2008. (Hereafter DRO, *DRO: Detainee Health Care*.)

[120] DHS, Office of Public Affairs, U.S. ICE Fact sheet, *Mortality Rates at ICE Detention Facilities*, May 2008.

[121] U.S. Immigration and Customs Enforcement, *FY2006 Detainees Not Seeking Asylum, Report Pursuant to §904 of the Haitian Refugee Immigration Fairness Act (P.L. 105-277).*

[122] Unpublished DHS data obtained from the Bureau of Immigration and Customs Enforcement Office of Congressional Affairs, Department of Homeland Security, January 31, 2008.

Figure A-1. Total Detained Population and Average Daily Detention Population, FY2003-FY2008



Source: CRS presentation of DHS data. Average daily detention population: *FY2003, Yearbook of Immigration Statistics; FY2004-FY2005, Immigration Enforcement Actions*; FY2006-FY2008 unpublished DHS data. The total detained population is CRS presentation of DHS, Office of Public Affairs, U.S. ICE Fact sheet, *Mortality Rates at ICE Detention Facilities*, May 2008. Average daily detention population is as of Dec. 31, 2007, and is unpublished data from DHS. Total detained population for FY2008 was not available as of the publication date.

As illustrated in **Figure A-1**, the total number of aliens detained by ICE during the fiscal year was fairly consistent between FY2003 and FY2005, and then increased in both FY2006 and FY2007. In FY2007, ICE detained 79,713 (34%) more noncitizens than in FY2003. Some of the increase in the total annual detention population was due to the expansion of expedited removal. Aliens in expedited removal are mandatorily detained but tend to be in detention for shorter periods of time than other aliens because they are not entitled to the same judicial review as aliens who are not subject to expedited removal (i.e., who are in removal proceedings under INA §241).[123]

[123] Those in expedited removal may be removed without any further hearings or review, unless the alien indicates a fear of persecution. For more on expedited removal, see CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by (name redacted) and (name redacted).

Appendix B. Legislation in the 110th Congress

P.L. 110-329

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329) appropriated $2 million for the Office of Professional Responsibility to undertake an immediate comprehensive review of the medical care provided to ICE detainees. The Act also directed ICE to immediately implement the Government Accountability Office's recommendation to improve medical services.

H.R. 5950/S. 3005

The Detainee Basic Medical Care Act of 2008, H.R. 5950, was introduced by Representative Zoe Lofgren on May 1, 2008. The companion bill, S. 3005, was introduced by Senator Robert Menendez on May 12, 2008. The bills would have required the Secretary of Homeland Security (DHS) to establish procedures for the timely and effective delivery of medical and mental health care to immigration detainees, designed to ensure continuity of care throughout the alien's detention. The procedures would have been required to address all health needs, including but not limited to primary care, emergency care, prenatal care, dental care, eye care, and mental health care. The procedures would have to have been designed to ensure that

- each detainee received a comprehensive medical and mental health screening upon intake;
- each detainee received a comprehensive medical and mental health examination and assessment within 14 days after arrival at the detention facility;
- each detainee taking prescribed medications was allowed to continue taking such medications on schedule and without interruption; and
- each detainee with a serious medical or mental condition, subject to immigration laws, been given priority consideration for release on parole, bond, or an alternative to detention program.

The procedures would also have been required to ensure that medical records are accessible by the detainee or his or her designate, and were transferred if the detainee was moved to another detention facility. Also, H.R. 5950/S. 3005 would have required the procedures to include "discharge planning" for aliens with serious medical or mental health conditions to ensure continuity of care, for a reasonable period of time, upon removal or release from detention.[124]

The bills would also have required the Secretary of DHS to establish an administrative appeals process for denials of medical or mental health care. The process would have included the opportunity to appeal the denial of services to an impartial board. H.R. 5950/S. 3005 would have

[124] During the hearing on detainee health care held on June 4, 2008, several Members raised concern about the meaning of "a reasonable period of time," stating that it could mean that the U.S. government would have to provide care indefinitely for certain aliens. Representative Lofgren stated that indefinite care was not the intent of the language and she would be willing to work with her colleagues on the committee to amend the wording. Hearing 110th Congress, 2nd sess., "Problems with Immigration Detainee Medical Care," before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, June 4, 2008.

required that the Secretary report to the Inspector Generals of the Departments of Homeland Security and Justice information regarding a detainee's death no later than 48 hours after the death of the detainee. The bills would have also require an annual report to Congress detailing any detainee deaths during the previous fiscal year.

Author Contact Information

(name redacted)
Specialist in Immigration Policy
[redacted]@crs.loc.gov, 7-....