United States Government Accountability Office

Report to Congressional Requesters

October 2022

IMMIGRATION DETENTION

ICE Needs to Strengthen Oversight of Informed Consent for Medical Care

Accessible Version

GAO-23-105196

October 2022

GAO Highlights

Highlights of GAO-23-105196, a report to congressional requesters

IMMIGRATION DETENTION

ICE Needs to Strengthen Oversight of Informed Consent for Medical Care

Why GAO Did This Study

Within the Department of Homeland Security, ICE is responsible for providing safe, secure, and humane confinement for detained noncitizens in the United States. In that capacity, ICE oversees and at some detention facilities provides on-site medical care services. ICE also oversees referrals and pays for off-site medical care when services are not available at detention facilities.

GAO was asked to review issues related to informed consent for medical care for noncitizens in immigration detention facilities. Among other things, GAO examined the extent to which ICE has policies for obtaining informed consent for medical care, and how selected facilities implemented the policies; and oversees implementation of policies related to informed consent to help ensure compliance.

GAO interviewed ICE officials and medical staff from six facilities selected, in part, based on whether ICE staff provided on-site medical care. GAO also reviewed 48 medical files from these facilities. Further, GAO analyzed oversight results for fiscal years 2019 through 2021, and reviewed ICE documentation in light of federal internal control standards.

What GAO Recommends

GAO is making three recommendations, including that ICE require detention facilities to collect informed consent documentation from off-site providers, and then require a review of this documentation as part of its oversight mechanisms for detention facilities. The Department of Homeland Security concurred with each of the recommendations.

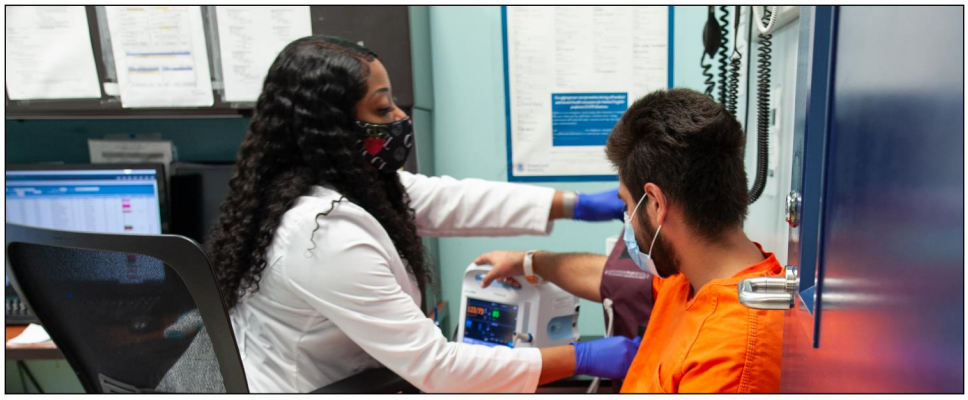
View GAO-23-105196. For more information, contact Carolyn L. Yocom at (202) 512-7114 or yocomc@gao.gov, or Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov.

What GAO Found

U.S. Immigration and Customs Enforcement (ICE) has established policies for obtaining and documenting informed consent for medical care provided on-site at detention facilities. Informed consent involves the provider speaking to the patient in detail about the risks, benefits, and alternatives of individual procedures. Medical care not available at detention facilities is provided off-site at clinics, hospitals, or other facilities. ICE relies on these community providers to obtain and document informed consent for care they provide off-site. However, ICE policies do not require facilities to collect documentation of informed consent for detained noncitizens' off-site medical care from community providers.

The 48 medical files GAO reviewed from selected facilities generally contained documentation of informed consent for care provided on-site at the facilities. However, less than half of the medical files included off-site consent documentation. Establishing and communicating a requirement for detention facility staff to collect informed consent documentation for off-site medical care would help provide assurance that community providers obtain informed consent from noncitizens they treat. Informed consent helps ensure noncitizens have the information needed to make informed choices about their medical care.

Medical Staff and U.S. Immigration and Customs Enforcement (ICE) Detained Noncitizen



Source: ICE Health Service Corps. | GAO-23-105196

ICE uses various oversight mechanisms—such as annual inspections and daily compliance reviews—to help ensure detention facilities are complying with informed consent requirements. GAO identified seven such mechanisms that included reviews for on-site informed consent documentation. However, only one type of oversight, a biannual inspection, includes a review for off-site informed consent documentation. This oversight mechanism identified informed consent deficiencies at 25 facilities in fiscal year 2021. However, it was unclear from the documentation how many of the informed consent deficiencies were related to on-site or to off-site medical care. As discussed above, requiring detention facilities to collect informed consent documentation for off-site care would help provide greater assurance that community providers obtain consent. By requiring its oversight mechanisms to check for this information, ICE could better ensure that community providers are consistently obtaining informed consent from noncitizens in detention.

Contents

Tables

Figures

Abbreviations

DHS	Department of Homeland Security
ICE	U.S. Immigration and Customs Enforcement
IHSC	ICE Health Service Corps
LOU	letter of understanding
ODO	Office of Detention Oversight

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

October 18, 2022

Congressional Requesters

In fiscal year 2021, U.S. Immigration and Customs Enforcement (ICE), within the Department of Homeland Security (DHS), detained an average of almost 19,000 adult noncitizens a day in 156 facilities, according to ICE data. ICE is the lead agency responsible for providing safe, secure, and humane confinement for detained noncitizens who may be subject to removal while they await the resolution of their immigration cases, or who have been ordered removed from the United States.

The ICE Health Service Corps (IHSC) oversees or provides health care services to all detained noncitizens in immigration detention facilities. In fiscal year 2021, IHSC staff provided medical, dental, and mental health services directly to adult noncitizens at 15 immigration detention facilities. These facilities housed an average daily population of almost 5,000 individuals, according to ICE data. In addition to the 15 facilities, IHSC oversaw how facility operators—local government personnel or private contractors—provided health services to noncitizens at 141 other facilities. ICE data indicate these facilities housed an average daily population of almost 14,000 individuals in fiscal year 2021. Across all detention facilities, IHSC also oversaw referrals of noncitizens for medical care not available on-site to community providers: medical care professionals who treat detained noncitizens at settings outside detention facilities, such as clinics or hospitals.

ICE has established standards for immigration detention that cover a variety of areas, including medical care. These detention standards define how a detention facility should operate. Within these standards, the medical care requirements define informed consent as an agreement by a patient to a treatment, examination, or procedure after the patient receives the following information: (1) the material facts about the nature, consequences, and risks of the proposed treatment, examination, or procedure; (2) the alternatives to it; and (3) the prognosis if the proposed action is not undertaken. Further, it is generally accepted that patients should consider the potential risks and benefits flowing from their medical decisions and that patients must acknowledge those potential risks and

benefits to make informed decisions.[1] Given that detained noncitizens come from many countries and speak a wide variety of languages, they may require language services, such as translation, in order to provide informed consent.

Questions have been raised that detained noncitizens may not be fully informed about the medical procedures they are undergoing and their potential ramifications. Questions have also been raised about efforts to translate medical information into the patient's language if they did not speak English.

You asked us to review issues related to informed consent for medical care in immigration detention facilities. This report examines the extent to which ICE

1. has established policies for obtaining informed consent for medical care from detained noncitizens, and how selected facilities have implemented the policies;
2. has established policies for conveying information in a language detained noncitizens understand during the informed consent process, and how selected facilities have implemented the policies; and
3. oversees implementation of policies related to informed consent to help ensure compliance.

To do this work, we interviewed ICE officials and reviewed and analyzed documentation, such as ICE detention standards and IHSC directives, letters of understanding (LOU) between IHSC and community providers, and ICE oversight guidance and inspection information covering fiscal years 2019 through 2021, the most recent years for which information was available at the time we conducted our work. Further, we reviewed available guidance from medical associations—the American Dental

[1]See, for example, T.J. Paterick et al., "Medical Informed Consent: General Considerations for Physicians," *Mayo Clinical Proceedings*, vol. 83, no.3 (2008) 313-319. Also see American Medical Association, *Informed Consent Code of Medical Ethics Opinion*, accessed June 17, 2022, https://www.ama-assn.org/delivering-care/ethics/informed-consent; American Dental Association, *Informed Consent/Refusal Guidelines for Practice Success, Managing Patients, Policies*, accessed February 7, 2022, https://www.ada.org/resources/practice/practice-management/managing-patients-informed-consent-refusal; and American Society for Health Care Risk Management, *Enterprise Risk Management, Legal & Regulatory Clarifying Informed Consent*, accessed June 17, 2022, https://forum.ashrm.org/2019/02/27/clarifying-informed-consent/.

Association, the American Medical Association, and the American Society for Health Care Risk Management of the American Hospital Association—and interviewed officials from one association about their guidance related to informed consent.

In addition, we selected six detention facilities that housed adults for longer than 72 hours at a time—referred to as over-72-hour facilities—and which were among those facilities that housed detained noncitizens as of September 2021.[2] Among other criteria, we selected facilities with a relatively large number of approved off-site surgical events during fiscal year 2021. The facilities included three IHSC-staffed detention facilities and three non-IHSC-staffed facilities. For each facility, we conducted semi-structured interviews with IHSC and other medical staff responsible for providing on-site medical care about policies for informed consent and the use of language services during the consent process. While these interviews with facility medical staff are not generalizable and may not be indicative of all detention facilities, they provided us with perspectives on our review topics.

We also reviewed a non-generalizable sample of 48 individuals' medical files from these six facilities to examine how these facilities implemented policies for informed consent and the use of language services. For each facility, we reviewed three to 10 files depending on the number of surgical procedures for detained noncitizens housed at each facility that occurred during fiscal year 2021.

For our objectives on whether ICE established polices for obtaining informed consent and conveying information in a language noncitizens understand, we determined that the control and communication activities components of *Standards for Internal Control in the Federal Government* were significant, along with the underlying principles that management should implement control activities through policies and management should internally communicate the necessary quality information to achieve the entity's objectives.[3]

For our objective on ICE oversight of policies related to informed consent, we also determined that the monitoring activities component of internal controls was significant, along with the underlying principle that

[2]ICE also houses noncitizens for fewer than 72 hours at short-term facilities.

[3]See GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 10, 2014).

management should establish and operate activities to monitor the internal control system and evaluate the results.

We assessed the information ICE provided about informed consent, whether information was provided in a language noncitizens understand, and the extent to which agency oversight established control activities through policies, communicated this information in a way that achieved the agency's objectives, and monitored activities related to informed consent. (See app. I for additional information on our scope and methodology.)

We conducted this performance audit from April 2021 through October 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

ICE Detention Facilities

ICE is responsible for detaining certain noncitizens in civil custody for the administrative purpose of holding, processing, and preparing them for removal from the United States.[4] Detained noncitizens include individuals from a wide variety of countries and with criminal and noncriminal backgrounds.[5] ICE owns and operates some of the detention facilities it

[4]The Immigration and Nationality Act, as amended, provides DHS with broad discretion (subject to certain legal standards) to detain, or release, noncitizens on bond, conditional parole, or terms of supervision, depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of noncitizens, such as those deemed inadmissible for certain criminal convictions or terrorist activity; or those ordered removed; during the removal period. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

[5]ICE generally does not detain children. Prior to March 2022, ICE detained children who arrived with their families at a family residential facility. According to ICE officials, as of March 2022, the agency discontinued detaining children and the family residential facilities were closed. For children who arrive without families, DHS components, including ICE, must transfer unaccompanied noncitizen children in their custody—minors under 18 years of age who lack lawful immigration status and do not have a parent or legal guardian present or available in the United States to provide care and physical custody—to the Department of Health and Human Services' Office of Refugee Resettlement's custody within 72 hours of determining that they are unaccompanied noncitizen children. See 8 U.S.C. § 1232(b)(3); 6 U.S.C. § 279(g)(2).

uses. Others are owned and are operated by private companies through contracts with ICE, or owned by state or local governments or private entities and operated under intergovernmental agreements with ICE. Additionally, some facilities exclusively house detained noncitizens, while others house noncitizens and other confined populations, either together or separately. During fiscal year 2021, ICE detained adult noncitizens in 156 over-72-hour facilities. Table 1 describes the types of these facilities that exclusively housed adults for over 72 hours.

Table 1: ICE Over-72-Hour Detention Facility Types, Fiscal Year 2021

Facility type	Description	Number of facilities
Service processing center	Owned and primarily operated by ICE with assistance from contractors; exclusively houses detained noncitizens.	5
Contract detention facility	Owned and operated by private company under direct ICE contract; exclusively houses detained noncitizens.	13
Dedicated intergovernmental service agreement facility	Owned by state or local government, or private entity, operated under an agreement with ICE; exclusively houses detained noncitizens.	21
Non-dedicated intergovernmental service agreement facility	Owned by state or local government, or private entity, operated under an agreement with ICE; houses detained noncitizens and other confined populations, either together or separately.	66
U.S. Marshals Service intergovernmental agreement or contract facility	Owned by state or local government, or private entity, operated under an agreement or contract with U.S. Marshals Service; houses detained noncitizens and other populations, either together or separately.	51
Total		**156**

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) information. | GAO-23-105196

Note: This table presents information on facilities that exclusively house adults for over 72 hours. ICE also houses adults for fewer than 72 hours at short-term facilities.

ICE Detention Standards

ICE detention standards define how facilities should operate to ensure safe, secure, and humane confinement for detained noncitizens, including standards for the provision of medical care. ICE has updated the detention standards several times since they were developed in 2000, resulting in versions—or sets—of standards. Contracts or agreements between ICE and the detention facilities specify which set of standards the facilities are required to follow. While each detention facility's contract or agreement with ICE specifies the set of detention standards the facility is to follow, the type of facility or on-site medical provider does not dictate the applicable detention standards. See table 2 for an overview of the four primary sets of detention standards applicable to adult over-72-hour facilities.

Table 2: ICE Detention Standards for Over-72-Hour Facilities

Detention standards	Description
2000 National Detention Standards	These standards were derived from American Correctional Association standards and developed by the former Immigration and Naturalization Service within the Department of Justice in 2000.
2008 Performance-Based National Detention Standards	These standards are a revised version of the 2000 National Detention Standards that also prescribe both the expected outcomes of each detention standard and the expected practices required to achieve them.
2011 Performance-Based National Detention Standards (rev. 2016)	These standards, and a successive revision in 2016, codified changes resulting from federal laws, Department of Homeland Security regulations, and ICE policies that had been established since the 2008 standards. Changes included those related to standards for sexual abuse and assault prevention and intervention, and disability protections. These standards also introduce provisions that represent optimal levels of compliance with the standards.
2019 National Detention Standards	In December 2019, ICE issued the 2019 National Detention Standards in which it condensed or eliminated several of the 2000 standards. In the 2019 update, ICE also streamlined certain detention standards, such as those pertaining to food service, and expanded others, such as those related to medical care and disability access.

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) information. I GAO-23-105196

Note: This table presents information on standards for facilities that exclusively house adult detained noncitizens for over 72 hours. ICE developed a set of detention standards—the 2007 Family Residential Standards—to apply to its facilities that house families in detention, which were updated in 2020. Additionally, facilities under private contract with the U.S. Marshals Service are to adhere to the Federal Performance-Based Detention Standards, which incorporate elements of American Correctional Association standards, Department of Justice standards, and the 2000 National Detention Standards.

Roles and Responsibilities for Medical Care and Detention Facility Oversight

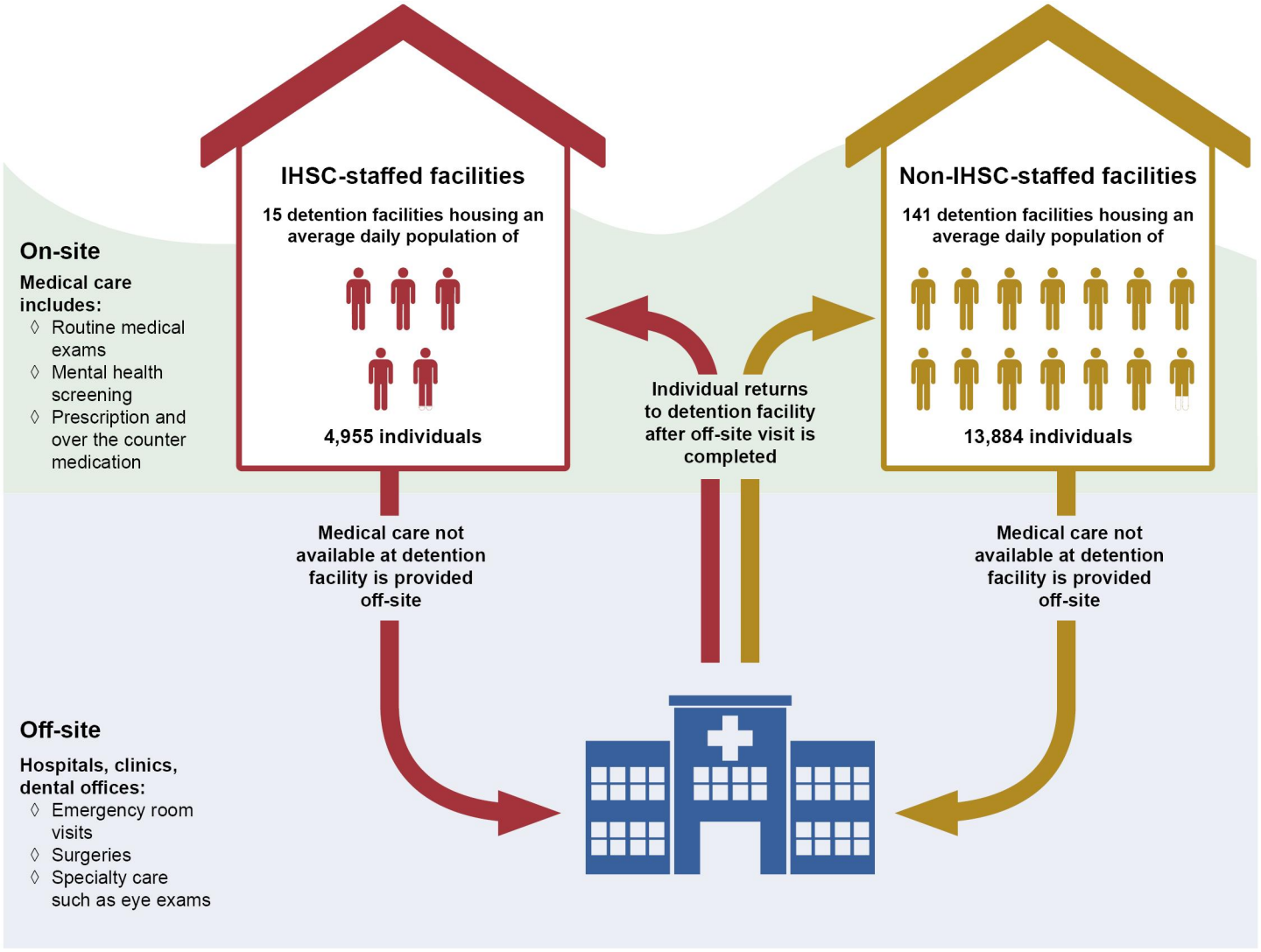
Various ICE offices have roles and responsibilities for providing medical care and overseeing detention facilities.

Medical care. IHSC, within ICE's Enforcement and Removal Operations, is responsible for overseeing or providing health care services to all detained noncitizens in immigration detention facilities. In particular, at some detention facilities, IHSC staff directly provide on-site medical care, and at others, non-IHSC staff (local government personnel or private contractors) provide this care and IHSC oversees the care. During fiscal year 2021, IHSC staff provided on-site medical services in 15 ICE facilities that exclusively housed adults for over 72 hours. IHSC offices at ICE headquarters oversee medical operations and provide medical guidance and instruction to staff who deliver medical, mental, and dental health care to noncitizens at these IHSC-staffed facilities. At the 141 detention facilities not staffed with IHSC personnel that exclusively housed adults for over 72 hours, local government personnel or private contractors provide on-site medical care and IHSC oversees the care.

IHSC aims to address the medical needs of noncitizens through a range of medical care services—from routine exams and tuberculosis screenings to off-site emergency room visits and care for chronic diseases, such as diabetes. Medical care not available at a detention facility is provided off-site by community providers; medical care professionals who treat individuals at settings outside detention facilities, such as clinics or hospitals.[6] Figure 1 shows the relationship between on-site medical care provided at IHSC-staffed and non-IHSC-staffed detention facilities and off-site care administered by community providers.

[6]IHSC has the authority to provide health care to detained noncitizens, as well as to authorize treatment for them in hospitals outside of detention facilities while in ICE custody. See 42 U.S.C. § 249; 42 C.F.R. § 34.7(a).

Figure 1: Locations of Medical Care for Detained Noncitizens, as of Fiscal Year 2021



Legend: IHSC=ICE Health Service Corps.

1 per 1 thousand individuals

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) information. | GAO-23-105196

Note: Information on facilities in this figure is for ICE facilities that exclusively housed adults for over 72 hours.

Across all detention facilities, IHSC officials utilize the Medical Payment Authorization Request system to approve or deny individual visits to off-site medical providers. The on-site facility provider determines the need

for off-site care, identifies an off-site provider, and schedules an appointment. Then facility staff submit a request for authorization in the Medical Payment Authorization Request system. If IHSC staff approve the request, the facility forwards a copy of the authorization request to the off-site provider and the individual attends the off-site appointment. After the appointment, the facility staff obtain progress notes from the off-site provider and ICE pays the provider for their services.[7]

Facility oversight. Within ICE, multiple entities oversee over-72-hour detention facilities' compliance with ICE detention standards through a variety of oversight mechanisms, including inspections and compliance reviews.[8] The oversight mechanisms performed at each facility are determined by factors including the size of the detained population it holds and whether IHSC staff provide medical care. For example, facilities that house an average daily population of 10 or more undergo inspections by Custody Management contractors and the Office of Detention Oversight (ODO), while smaller facilities conduct self-assessments. Additionally, IHSC field medical coordinators conduct site visits at facilities where IHSC officials do not provide on-site medical care. Further, Custody Management detention services managers also conduct ongoing monitoring at certain facilities.[9] (See table 3.)

[7]The U.S. Department of Veterans Affairs Financial Services Center manages ICE noncitizen medical claims and payments to outside providers. This system tracks monetary amounts for all payments to outside medical providers for services rendered to noncitizens and provides ICE with information for these costs.

[8]This report focuses on ICE's oversight mechanisms; however, detention facilities receive additional oversight from other groups within the Department of Homeland Security, such as the Office of Civil Rights and Civil Liberties

[9]Ongoing monitoring is conducted by Detention Services Managers and by Detention Standards Compliance Officers. Both titles have the same role and responsibilities. For brevity, this report uses the term Detention Services Manager to encompass both groups.

Table 3: ICE Oversight Mechanisms for Assessing Compliance with Detention Standards at Adult-Only Over-72-Hour Detention Facilities

Oversight mechanism	Roles
Enforcement and Removal Operations[a]	
Custody Management inspections[b]	Inspections of detention facilities with an average daily population of 10 or more detained noncitizens. These inspections are conducted by a contractor.
ICE Health Service Corps (IHSC) field medical coordinator site visits[b]	Site visits of detention facilities where IHSC staff are not the on-site medical provider. These site visits are conducted by field medical coordinators.
Custody Management ongoing compliance reviews	Ongoing monitoring at selected detention facilities with an average daily population of 10 or more noncitizens. These reviews are conducted by detention services managers.
Operational review self-assessments	Operational self-assessments of facilities with an average daily population of less than 10 noncitizens. The self-assessments are performed by Enforcement and Removal Operations field office and facility staff.[c]
Office of Professional Responsibility[d]	
Office of Detention Oversight inspections (ODO)	Inspections of detention facilities with an average daily population of 10 or more noncitizens. These inspections are conducted by ODO Inspections staff and contractors.

Source: GAO analyses of .U.S. Immigration and Customs Enforcement (ICE) documentation. | GAO-23-105196

[a]ICE's Enforcement and Removal Operations has primary responsibility for overseeing the compliance of ICE detention facilities with applicable detention standards.

[b]In addition to assessing facility compliance with detention standards, this oversight mechanism includes a Quality of Medical Care review against clinical standards of care. In particular, Quality of Medical Care reviews assess medical care against nationally accepted guidelines and industry best practices. The reviews include assessments against 20 medical care practices, including a review of informed consent documentation and treatment for chronic diseases, such as hypertension or diabetes.

[c]Enforcement and Removal Operations field office and facility staff also perform these self-assessments of under-72-hour facilities.

[d]ICE's Office of Professional Responsibility carries out inspections and investigations to uphold ICE professional standards and promote organizational integrity.

ICE Policies Require Documentation of Informed Consent for On-Site Medical Care, but Do Not Ensure Consistent Documentation of Consent for Off-Site Care

ICE Has Informed Consent Policies for Medical Care Provided On-Site at Detention Facilities

ICE detention standards and internal directives include informed consent policies for detained noncitizen medical care provided on-site at IHSC-staffed and non-IHSC-staffed detention facilities.

Detention standards. For both IHSC-staffed and non-IHSC-staffed facilities, facilities must adhere to the detention standards per their contracts or agreements with ICE. Each of the four primary sets of detention standards—the 2000 National Detention Standards, 2008 Performance-Based National Detention Standards, 2011 Performance-Based National Detention Standards (2016 revision), and 2019 National Detention Standards—contain a section that outlines requirements for medical care provided at detention facilities. In particular, the standards generally establish informed consent requirements in three areas.[10]

- Consent for routine care: ICE's detention standards require that facility medical staff obtain and document informed consent from noncitizens prior to any medical care, including the medical screening that is to occur during the intake process when an individual is admitted to a detention facility.[11]

[10]While the specific language and level of detail varies across the sets of standards, they generally include informed consent requirements for routine care, non-routine care, and refusal of consent.

[11]When a detained noncitizen is admitted to a detention facility, facility staff are to complete an intake process comprising various steps, including a medical screening. Specifically, according to the detention standards, individuals are required to receive a comprehensive medical, dental, and mental health intake screening as soon as possible, but no later than 12 hours after arrival at each detention facility. These screenings are to involve a tuberculosis skin test, collection of vital signs, and other general routine care.

- Consent for non-routine care: Generally, ICE detention standards require that facility medical staff obtain separate consent for certain types of non-routine care.[12] For example, the 2011 Performance-Based National Detention Standards (2016 revision) specifies that a separate informed consent document is required for invasive procedures, including surgeries and dental extractions. Additionally, these standards require that, prior to administering psychotropic medications, medical staff must obtain a separate documented informed consent that includes a description of the medication's side effects.[13]
- Refusal of consent: In the event that an individual refuses to consent to medical treatment, the standards require that facility medical staff explain the need for and the risks associated with refusing the recommended treatment. Furthermore, the standards instruct medical staff to document and place refusals in the individual's medical record.

Internal directives. For IHSC-staffed facilities, ICE has also established policies for on-site medical care through internal directives, which outline procedures for adhering to the detention standards. For example, *IHSC Directive* 02-07: *Treatment Consent and Refusal* outlines procedures for obtaining an individual's consent before initiating any medical care on-site at an IHSC-staffed detention facility.[14] This directive instructs IHSC staff to obtain and document informed consent for routine and non-routine care, including the responsibilities of various members of the facility medical staff (e.g., nurses, physicians, or behavioral health providers) during the consent process. For additional information on the informed consent procedures outlined in Directive 02-07, see table 4.

[12]The 2000 National Detention Standards do not address informed consent for non-routine care, because the facilities did not provide non-routine care at that time. Specifically, the facilities arranged non-routine care (i.e., specialized health care such as mental health care) within the local community.

[13]Psychotropic and psychiatric medications are prescription drugs used to treat behavioral health conditions.

[14]IHSC Directive 02-07 defines informed consent as the agreement by a patient to treatment, examination, or procedure after the patient receives the material facts about the nature, consequences, and risks of the proposed treatment, examination, or procedure; the alternatives to the treatment, examination, or procedure; and the possible results of not taking the proposed action. See U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, ICE Health Service Corps, *Treatment Consent and Refusal,* IHSC Directive 02-07 (Mar. 17, 2021).

Table 4: Informed Consent Procedures Outlined in ICE's Health Service Corps (IHSC) Directive 02-07

Area requiring informed consent	Procedures
Routine medical care	
General informed consent to receive care	• Facility medical staff are to request that adult detained noncitizens complete the medical consent form upon arrival at the detention facility. • Completion of the form authorizes IHSC staff to provide routine medical, mental health, and dental health care and immunizations. • Completion of the form does not authorize IHSC staff to administer psychotropic medications or conduct non-routine diagnostic, therapeutic, or invasive procedures. IHSC staff must obtain written documentation of informed consent for each of these medical activities using the required form.
Non-routine medical care	
Psychotropic medications[a]	• Staff must obtain and document a separate informed consent for psychotropic medications. An IHSC Behavioral Health Services Guide provides detailed guidance for the informed consent process for psychotropic medications.

Invasive procedures performed on-site at the detention facility	• Staff must document an individual's informed consent on a Request for Administration of Anesthesia and for Performance of Operations and Other Procedures Form prior to receiving non-routine diagnostic, therapeutic, and invasive procedures performed in the detention facility by IHSC staff.
	• Detained noncitizens who undergo an invasive dental procedure must complete the appropriate dental consent form based on the planned procedure.
	• Staff must counsel the noncitizen and document in the electronic health record the following information:
	  • reason for the medication, procedure, or treatment;
	  • how the care could improve the condition;
	  • possible side effects;
	  • risks and consequences of refusal; and
	  • any alternative forms of treatment.

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) documentation. I GAO-23-105196

[a]Psychotropic medications are prescription drugs used to treat behavioral health conditions.

As previously noted, IHSC directives do not apply to non-IHSC-staffed facilities, but the entities that operate these facilities may establish their own policies for adhering to the informed consent requirements outlined in the detention standards. For example, officials from one entity that operates several ICE facilities stated that the facilities they operate follow corporate policies for informed consent that largely mirror the detention standards.

Regarding the implementation of ICE policies for informed consent, officials we interviewed at three IHSC-staffed and three non-IHSC-staffed detention facilities described informed consent practices consistent with ICE policies. According to officials at all six facilities, implementation begins during the intake process and continues throughout subsequent

medical encounters, regardless of whether it is an IHSC-staffed or non-IHSC-staffed facility.

According to officials at all six selected facilities in our review, before initiating a medical intake screening, medical unit staff presents the detained noncitizen with a general consent form, as required by ICE detention standards and IHSC Directive 02-07. Officials from the three IHSC-staffed facilities stated that they use IHSC's designated medical consent form to document consent for medical evaluations, diagnostic procedures, immunizations, and other routine care. Officials from the three non-IHSC-staffed facilities described using forms specific to their facility to document consent for routine care. According to officials at one IHSC-staffed facility, detention facility medical unit staff can check an individual's vital signs without a general consent form, but would not proceed with any other treatment until the individual signs the general consent form.

Our review of selected medical files from the six facilities also demonstrated how the facilities implement requirements for obtaining informed consent for routine care. In particular, the medical files we reviewed generally contained (43 of 48) a form documenting that the noncitizen had provided consent for routine medical care.[15]

Officials at all six facilities also described obtaining consent from individuals for non-routine medical care. Specifically, detention facility officials told us they use separate forms to obtain and document informed consent for psychotropic medication, localized anesthesia, and invasive dental care, as required by ICE policies.

Detention Facilities Do Not Verify Consent for Off-Site Care, Because ICE Does Not Require Them to Do So

ICE relies on community providers who administer off-site medical care to obtain informed consent from detained noncitizens for the care they provide. However, our interviews with facility officials and review of selected medical files indicated that neither IHSC-staffed nor non-IHSC-staffed facilities verify documentation of this consent by consistently

[15]Our review of medical files focused on identifying documentation of informed consent for routine medical care. The files we reviewed may have also contained documentation of informed consent for non-routine care, such as the administration of psychotropic medication, but we did not specifically catalogue such instances.

collecting it from community providers. This is because, while ICE officials told us they expect IHSC-staffed facilities to collect this documentation, ICE does not have a similar expectation for non-IHSC-staffed facilities, nor does ICE require either type of facility to collect it.

IHSC officials at ICE headquarters told us that ICE expects community providers, as licensed medical professionals, to execute all aspects of informed consent when providing care to detained noncitizens, in accordance with their professional responsibilities. These officials further noted that obtaining informed consent is a principle of medical ethics and law, and the community provider administering the medical care is responsible for obtaining and documenting informed consent. Likewise, facility medical staff we interviewed at five of six detention facilities told us it is the responsibility of the off-site community provider to obtain and document informed consent for the treatment they provide.[16]

Although ICE defers to community providers to obtain informed consent for off-site medical care, the agency has begun taking steps to remind community providers of their responsibilities for obtaining and documenting consent. According to a July 2021 IHSC draft memo, informed consent is important so that patients can make the best choices regarding their medical care, as well as reducing risk for both the detained noncitizen and the provider. The draft memo further indicated that, although it is not ICE's responsibility to obtain consent for off-site care, it is beneficial for ICE to facilitate the process, within reason. Subsequently, ICE began implementing some steps outlined in the draft memo, although their implementation varies by facility type.[17]

For example, for both IHSC-staffed and non-IHSC-staffed detention facilities, IHSC is modifying the LOUs it uses to establish relationships

[16]Officials at a sixth facility did not comment on this topic. Our review of available guidance from medical associations and an interview with one such association similarly indicated that providers are generally expected to obtain informed consent prior to administering medical care. For example, guidance from one association states that providers must obtain informed consent from each patient or from the patient's legal guardian or decision-maker. These associations included the American Medical Association, the American Dental Association, and the American Society for Health Care Risk Management of the American Hospital Association.

[17]IHSC officials provided us with a July 2021 draft memo outlining plans to help ensure detained noncitizens are appropriately informed of the procedural details and risk associated with scheduled invasive procedures in their native language. As of June 2022, IHSC still considered this memo a draft, but officials stated they are implementing recommendations identified in the draft document.

with community providers serving these facilities. According to IHSC headquarters officials, these LOUs, which IHSC initiated in 2019, serve as an agreement between IHSC and its network of approximately 5,000 community providers.[18] IHSC officials said that, as of February 2022, they had finalized LOUs with about 10 percent of the 5,000 providers. However, in May 2022, IHSC added language to its LOU template directing community providers to include informed consent documentation in the medical files they provide to detention facilities after administering off-site care to detained noncitizens. ICE officials estimated it would take at least 2 to 3 years to obtain signed LOUs from the 5,000 providers.

Additionally, at IHSC-staffed facilities only, ICE is training medical unit staff. Officials at IHSC headquarters told us they expect IHSC-staffed facilities to collect a noncitizen's complete medical file—including informed consent documentation—for care that occurred off-site. In June 2022, IHSC conducted training on requesting medical records from community providers for medical unit staff from 10 of 15 IHSC-staffed detention facilities. The training involved reminding the medical unit staff of the documentation they are to request from the community provider, including documentation of informed consent for invasive procedures and provider notes.

These are positive steps intended to help remind community providers about obtaining informed consent from detained noncitizens for off-site care. However, our interviews with facility officials and review of selected medical files indicated that neither medical personnel at selected IHSC-staffed nor non-IHSC-staffed facilities consistently collect documentation of informed consent for detained noncitizens' off-site medical care, because it is their understanding that ICE does not require them to do so. Specifically, although IHSC headquarters told us they expect IHSC-staffed facilities to collect informed consent documentation, their expectation does not apply to non-IHSC-staffed facilities. Additionally, ICE has not established a policy or requirement for either type of facility to collect informed consent documentation.

IHSC-staffed facilities. Detention facility medical staff from two of the three selected IHSC-staffed facilities in our review told us they do not specifically collect informed consent documentation from off-site care providers unless a noncitizen files a complaint. Instead, off-site providers

[18]According to ICE officials, LOUs serve to set expectations between ICE and the community provider and are not contracts.

transmit documentation to the facilities that describes the medical care provided off-site and that is considered necessary to continue the individual's care. At the third facility, officials told us that, at the direction of local facility leadership, they review off-site medical files for informed consent documentation after individuals return from an appointment with a community provider.

Our review of files from these facilities similarly indicated that IHSC-staffed facilities do not consistently collect informed consent documentation for off-site care. Specifically, 10 of 27 files from the three IHSC-staffed facilities contained documentation of informed consent from community providers and 17 did not. Four of these 10 files originated at the IHSC-staffed facility where officials told us medical staff consistently collect informed consent documentation from community providers.

Officials at the detention facilities who said they do not collect informed consent documentation for off-site for care are following ICE policies, which do not require them to do so. Our review confirmed that neither detention standards nor IHSC Directive 02-07 requires IHSC-staffed detention facilities to collect informed consent documentation from community providers. For example, IHSC Directive 02-07 notes that, "Invasive procedures performed by off-site providers require informed consent from detainees, documented prior to the medical procedure." However, the directive does not state that officials at IHSC-staffed facilities should collect this informed consent documentation from community providers.

Non-IHSC-staffed facilities. For the three selected non-IHSC-staffed facilities in our review, similar to what we found for IHSC-staffed facilities, we found that the detention facilities did not consistently collect documentation of informed consent for off-site medical care. According to the facility officials we interviewed, detention facility medical staff generally ensure that the facility receives information related to continuity of care, follow-up appointments, and payment. Additionally, our review of medical files found that eight of 21 medical files from the three selected non-IHSC-staffed facilities contained informed consent documentation from community providers, and 13 did not.

In contrast to IHSC-staffed facilities, ICE does not expect non-IHSC detention facilities to collect documentation of informed consent for off-site medical care, according to IHSC headquarters officials. As previously discussed, non-IHSC-staffed facilities must adhere to informed consent requirements in detention standards specified in their contract or

agreement with ICE, but are not subject to policies in IHSC directives outlining procedures for adhering to detention standards. Accordingly, IHSC officials said requiring non-IHSC-staffed facilities to collect and review medical files for informed consent documentation would require steps beyond those required for IHSC-staffed facilities, such as contract modifications and updates to the detention standards.

Standards for Internal Control in the Federal Government call for organizations to document internal responsibilities in policies and conduct periodic reviews of their policies and procedures to ensure effectiveness in achieving the organization's objectives.[19] Further, the standards state that organizations should internally communicate the necessary quality information to achieve the entity's objectives.

According to IHSC, its agency vision is to be the best health care delivery system in detention and correctional care, and its mission is to provide the safe delivery of high-quality health care to those in custody. While ICE's recent efforts to help ensure community providers obtain informed consent are positive developments, the agency could strengthen its efforts to meet these aims. In particular, ICE could better ensure detention facilities verify documentation of consent by establishing and communicating a policy requiring IHSC-staffed and non-IHSC-staffed facilities to collect informed consent documentation from community providers.

Facilities consistently collecting this documentation would help provide assurance that community providers obtained informed consent from detained noncitizens and, in doing so, provided them with the information they need to make informed choices about their medical care. At IHSC-staffed facilities, such a policy would also help ensure that the documentation that IHSC trained its medical staff to verify is included in medical records. At non-IHSC-staffed facilities, establishing a similar requirement may require additional steps, but would better position ICE to help ensure that informed consent for offsite care was obtained from noncitizens at those facilities and would be consistent with ICE efforts to ensure such for noncitizens at IHSC-staffed facilities.

[19]See GAO-14-704G.

ICE Established Language Services Policies for On-Site Medical Care and Relies on Community Providers to Offer Services Off-Site

ICE Has Policies for the Provision of Language Services during Medical Care Provided On-Site at Detention Facilities

ICE has established policies for providing language services to detained noncitizens for medical care provided onsite at detention facilities through detention standards and internal directives. The language services that the policies require facilities to provide encompass both written and oral communication through translation and interpretation.[20]

Detention standards. ICE has established policies requiring both IHSC-staffed and non-IHSC-staffed detention facilities to provide language services for detained noncitizens with limited English proficiency through the four primary sets of detention standards.[21] These ICE detention standards outline two categories of language services standards intended to adhere to federal requirements: (1) general requirements for providing language services; and (2) requirements specific to providing language services during medical care, including the informed consent process.[22]

- General language services requirements: All four primary sets of detention standards require detention facilities to provide non-English speaking and limited English proficient detained noncitizens

[20]According to ICE policy, interpretation involves oral communication, and translation involves written communication. Interpretation involves the immediate communication of meaning from one language into another. An interpreter conveys meaning orally; as a result, interpretation requires skills different from those needed for translation.

[21]Detained noncitizens with limited English proficiency are individuals who do not speak English as their primary language and who have limited ability to read, speak, write, or understand English.

[22]The requirements in the detention standards stem from Title VI of the Civil Rights Act of 1964 and an August 2000 executive order, which collectively require facilities to identify individuals with limited English proficiency and provide them with meaningful access to their programs and activities through language interpretation and translation services. See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI"); and *Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency* (Aug. 11, 2000).

meaningful access to their programs and activities through language interpretation and translation services. For example, the 2019 National Detention Standards note that the facilities' obligation to provide meaningful access to detained noncitizens with limited English proficiency extends to all aspects of detention, including but not limited to intake, placement in segregation, and medical care that includes mental health. Furthermore, facilities must translate all written materials provided to individuals into Spanish and other frequently encountered languages. Oral interpretation or assistance must also be provided to noncitizens who speak another language in which written material has not been translated or who are unable to read or write.

- Language services requirements during medical care: ICE detention standards require facilities to provide appropriate interpretation and other language services for noncitizens with limited English proficiency during medical and mental health care, including when obtaining informed consent. For example, the 2011 Performance-Based National Detention Standards (2016 revision) require facilities to post signs in medical intake areas in English, Spanish, and languages spoken by other significant segments of the facility's population. The signs list what language assistance is available during any medical or mental health treatment, diagnostic test, or evaluation. Generally, when appropriate staff interpretation is not available, facilities are required to use professional interpretation services. Other noncitizens are only allowed to provide interpretation and translation services in an emergency medical situation.[23]

Internal directives. IHSC-staffed facilities must also follow internal agency directives that outline procedures for adhering to the detention standards, including requirements for language services. Specifically, the IHSC directive that focuses on informed consent outlines related procedures for providing language services, such as providing written information about the consent and refusal process in a language the individual understands. Additionally, the directive requires IHSC-staffed facilities to document the provision of language services in the medical record. Table 5 provides information on the language services requirements outlined in IHSC Directive 02-07.

[23]The 2000 National Detention Standards allow detained noncitizens to provide translation assistance during medical care within certain parameters, but the standards do not limit their involvement to emergency medical situations.

Table 5: Language Services Requirements Outlined in ICE's Health Service Corps (IHSC) Directive 02-07

Language services requirements for IHSC-staffed facilities	
General language services requirements	• Provide communication assistance to detained noncitizens with disabilities and individuals who are limited in their English proficiency. • Provide individuals who are limited in their English proficiency with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.
Language services requirements specific to medical care	• Provide written information about the consent and refusal process in a language the detained noncitizen understands. • Use a professional interpreter for oral communication or a translation service for written documents, as necessary, and document the use in the medical record. • Utilize professional interpretation services to discuss the consent process and document the interpreter's identification information on the consent form, if a consent form is not available in a language the individual understands.

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) documentation. I GAO-23-105196

Regarding the implementation of the language services requirements, officials we interviewed at the six selected detention facilities described processes for providing language services during the informed consent process. For example, medical staff at some IHSC-staffed and non-IHSC-staffed facilities told us they implement language services requirements each time an individual has an on-site medical encounter, including during the medical intake screening. According to the officials at both the IHSC and non-IHSC staffed facilities, when a noncitizen enters the medical unit during intake, the first step taken by the medical staff is to identify the individual's native language.

Officials also told us that medical staff verify someone's native language at the beginning of every on-site medical encounter by asking the individual their native or preferred language, reviewing documentation from previous medical encounters, or asking them to select their language from posters containing different languages that are placed throughout detention facilities, for example. (See fig. 2.) Once the medical staff determines whether the individual speaks English or another language, they offer language services, if needed. According to officials at all six facilities, language lines are the primary method for providing these services.[24]

[24]ICE uses telephonic language lines for assistance with translation and dialect interpretation, when needed. According to facility officials, ICE contracts with private companies to provide these professional services for detention facilities. In addition, some facility officials said their facility has a contract with a separate language services vendor.

Figure 2: Department of Homeland Security Language Identification Guide Poster

Source: Department of Homeland Security Office for Civil Rights and Civil Liberties. | GAO-23-105196

The medical files we reviewed also demonstrate that the six selected detention facilities adhere to ICE policies for language services, particularly with respect to documenting their use during the informed

consent process and translating written informed consent materials into frequently encountered languages. Our review found the facilities used informed consent forms and other forms to document the use of language services.

For example, the general consent form used during intake at the three IHSC-staffed facilities contains a section for documenting the use of language services, as required by IHSC Directive 02-07. Specifically, the form provides a section for documenting the individual's native language, the use of an interpreter, and the interpreter's identification number. The form is available in multiple languages, including English and Spanish.[25]

Non-IHSC-staffed facilities do not use the same consent form during intake, and their consent forms do not include a space to record language services. However, these facilities document when language services are used on other forms. For example, the medical intake questionnaire used by the three non-IHSC-staffed facilities included a section designated for language services-related information. Staff from these facilities also recorded language services-related information in other locations in medical records, such as in medical notes sections. In addition, officials from non-IHSC-staffed facilities told us they translated the forms into other languages, such as Spanish.

Our review of selected medical records also found documentation of the use of language services at both the IHSC-staffed and non-IHSC-staffed facilities. In particular, of the 48 medical files we reviewed, 21 indicated that the individual did not speak English and received language services.[26] Fourteen of the 21 detained noncitizens who required language services were housed at IHSC-staffed facilities, which are required to document the use of language services in the medical record. For all 14 noncitizens, the use of language services or access to a fluent provider was documented in the medical record. For the seven noncitizens housed in non-IHSC-staffed facilities, the use of language services or access to a fluent provider was also documented in the medical record.

[25]IHSC officials provided copies of other consent forms (e.g., consent for psychotropic medication) in multiple languages, including Chinese and Punjabi.

[26]Documentation for two additional detained noncitizens indicated that they spoke English and another language. For both, an interpreter or a fluent provider shared information in the other language.

ICE Relies on Community Providers to Offer Language Services and Is Taking Steps to Reinforce Its Expectations for These Services

ICE relies on community providers who administer medical care off-site to offer language services to detained noncitizens they treat, and is taking steps to reinforce its expectations that community providers offer these services. Specifically, IHSC headquarters officials told us they expect community providers, as licensed professionals, to offer language services when treating noncitizens with limited English proficiency, including during the informed consent process.

Likewise, according to a national medical association, community providers must offer language services to patients for whom English is not their native language so they understand all aspects of a treatment before providing consent, given that language is a common barrier to understanding.[27] Representatives from this organization stated that providers should use language services in any instance where there is reasonable belief that the patient does not understand the informed consent information in English. These representatives further noted that there is no specific requirement for community providers to document the use of language services, although it may be a best practice.

ICE is taking steps to reinforce its expectations that community providers communicate information in a language noncitizens understand. For example, as part of its May 2022 LOU template, IHSC included a clause requesting that community providers document the use of language services in the individual's medical record. Further, the LOU reminds community providers that federal law requires any health care provider accepting federal funds to provide language services.[28] IHSC also added a reminder about language services to the system used to approve off-site medical care, with the intention of reinforcing its expectation that community providers convey information in noncitizens' preferred language.

[27]See 45 C.F.R. pt. 80; see also National Health Law Program, Summary of State Law Requirements Addressing Language Needs in Health Care (April 2019), last accessed on August 12, 2022, https://healthlaw.org/resource/sumary-of-state-law-requirements-addressing-language-needs-in-health-care-2/.

[28]Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI"); Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (Aug. 11, 2000).

ICE Oversees Compliance with Informed Consent Requirements, but Not All Oversight Mechanisms Review Off-Site Consent Documentation

ICE Uses Several Mechanisms to Oversee Compliance with Informed Consent Requirements and Has Developed Corrective Action Plans to Address Deficiencies

ICE conducts oversight of detention facilities through various inspections and other means to help ensure detained noncitizens receive medical care in compliance with ICE detention standards and clinical standards of medical care.[29] Oversight officials are to determine the extent to which detention facilities are adhering to detention standards.[30]

In reviewing compliance with the medical care requirements, officials are responsible for examining whether facility medical staff have obtained appropriate informed consent documentation, such as consent forms for routine medical care upon an individual's admission to the facility. Our review identified that all oversight mechanisms review on-site informed consent documentation, and one oversight mechanism includes a review of off-site informed consent, as discussed below. Two different offices within ICE—the Custody Management Division and ODO—conduct and oversee inspections of detention facilities' compliance with applicable detention standards, including those requirements related to medical care and informed consent. IHSC field medical coordinators, who are responsible for coordinating medical care for detained noncitizens, are also responsible for conducting site visits to non-IHSC detention facilities to assess compliance with the medical care requirements in the detention

[29]In addition to the oversight mechanisms that assess facilities against the detention standards and clinical standards of medical care, facilities may undergo additional inspections against medical care standards. For example, the IHSC medical quality management unit conducts audits at IHSC-staffed-facilities to ensure IHSC is in compliance with internal standards and to assess the quality of care provided by IHSC, according to IHSC officials. These audits also include a medical file review to prepare the facility for external audits, such as ODO inspections, according to staff at one of our selected facilities. Facility staff also said they conduct additional audits, such as daily medical chart reviews.

[30]As noted earlier, the four primary sets of the detention standards have similar requirements for informed consent.

standards. Detention services managers are located at certain detention facilities and are responsible for conducting ongoing compliance reviews at facilities to monitor compliance with detention standards.[31]

In addition to assessing compliance with detention standards, during the Custody Management inspections and the IHSC site visits, registered nurses assigned to the Custody Management inspection team and field medical coordinators, respectively, are responsible for reviewing a sample of medical files to assess facilities' compliance with clinical standards for medical care.[32] These reviews include assessment against 20 medical care practices including a review of informed consent documentation and treatment for chronic diseases, such as hypertension or diabetes. (See table 6.)

[31]Detention services managers are not located at every detention facility. As of July 2022, detention services managers maintained a presence at 55 facilities.

[32]More specifically, these oversight officials review detention facilities during Quality of Medical Care reviews to assess medical care provided to detained noncitizens against nationally accepted guidelines and industry best practices.

Table 6: ICE Oversight Mechanisms that include Informed Consent Review at Over-72-Hour Adult-Only Detention Facilities

Oversight mechanism	Frequency of oversight	Purpose of oversight	Number of medical files reviewed
Oversight against ICE detention standards[a]			
Custody Management inspections (performed by a contractor)	Annual, or biennial for facilities with a daily average population of greater than 10, but less than 50, and that have passed two most recent consecutive annual inspections	To ensure compliance with checklist inspection that follows the detention standards	No standard; number of files determined by individual inspectors
Office of Detention Oversight (ODO) inspections	Biannually, with a full inspection and follow-up inspection	Full inspection: to ensure line-by-line compliance with all applicable core standards Follow-up inspection: to follow-up on previously identified deficiencies and, generally, to ensure line-by-line compliance with selected core standards, including medical care[b]	Between 25 and 40 files selected randomly[c]
ICE Health Service Corps field medical coordinator site visits	Annual unless otherwise directed[d]	To ensure compliance with some requirements within the detention standards related to medical care	No minimum standard
Ongoing compliance reviews (performed by ICE detention services managers)	Ongoing monitoring (daily, monthly, and quarterly)	Ongoing monitoring to ensure quality assurance and ensure corrective actions from inspections are implemented and maintained	At least 10 files weekly
Operational review self-assessments	Annual self-assessment for facilities with a daily average population of less than 10 and that have passed the most recent assessments	For facilities to indicate their compliance with detention standards	No standard
Oversight against the clinical standards of medical care[e]			
Quality of Medical Care reviews during Custody Management inspections	Annual, or biennial for facilities with a daily average population of greater than 10, but less than 50, and that have passed two most recent consecutive assessments	To ensure compliance with nationally accepted medical care guidelines and industry best practices	10 files reviewed for informed consent
Quality of Medical Care reviews during ICE Health Service Corps field medical coordinator site visits	Annual unless otherwise directed[d]	To ensure compliance with nationally accepted medical care guidelines and industry best practices	10 files reviewed for informed consent

Source: GAO analysis, interviews with U.S. Immigration and Customs Enforcement (ICE) officials, and ICE documentation. | GAO-23-105196

Note: All oversight mechanisms review on-site informed consent documentation, and the ODO inspections include a review of off-site informed consent.

[a]Detention facilities are inspected against the detention standards they are required to follow, which outline requirements for detention facility operations such as medical care. ICE detention standards for facilities that house adults include the 2000 National Detention Standards, 2008 Performance Based National Detention Standards, 2011 Performance Based National Detention Standards (2016 revision), and 2019 National Detention Standards.

[b]ODO may conduct a second full inspection in place of the follow-up inspection at a facility depending on the total number of deficiencies identified during the first full inspection, among other criteria.

[c]In contrast with routine inspection procedures where ODO inspections were conducted at the facility, ODO conducted remote inspections during the COVID-19 pandemic. Prior to the remote inspection, inspectors were to request a minimum of 12 random medical files to review.

[d]Field medical coordinators may conduct site visits more frequently if a detained noncitizen registers a complaint related to medical care, among other reasons.

[e]The clinical standards of medical care reviews assess 20 medical practices against nationally accepted guidelines and industry best practices for chronic disease management, such as hypertension or diabetes, as well as informed consent documentation.

Each oversight mechanism relies on officials reviewing and assessing a selection of medical files for evidence of required documentation, such as informed consent. These medical file reviews include, for example, verifying that there is informed consent documentation for medical care provided at the detention facility, such as for routine medical care and for psychotropic medication, when used. During these reviews, oversight officials may identify deficiencies in medical documentation, which facilities are expected to address through corrective actions.

ICE Inspections Identified Deficiencies with Informed Consent

Our review of facility documentation shows that from fiscal years 2019 through 2021, ICE inspections identified deficiencies with certain facilities' compliance with requirements for informed consent contained in detention standards. Facilities receive deficiencies when inspectors identify non-compliance with ICE detention standards. Facilities can receive a deficiency for missing or incomplete documentation within medical files, such as informed consent forms. Inspectors may also note multiple instances of non-compliance within a single deficiency. For example, within a single deficiency an inspector may note that multiple medical files were missing the same type of informed consent documentation.

Results from the annual Custody Management and biannual ODO inspections are available in an electronic database or summarized in an annual report, respectively.[33] The Custody Management inspection data includes information such as the facility inspected, deficiency identified, and corrective action taken in response. ODO collects key summary information on the number of deficiencies identified across all facilities it

[33]For other oversight mechanisms, such as the field medical coordinator site visits, IHSC officials told us that results are currently tracked manually and the reports are kept on file by the officials who oversee the field medical coordinators rather than in a centralized database. ICE is establishing additional centralized tracking for some inspections. For example, IHSC officials told us they were developing a centralized system for the field medical coordinator site visits that would allow tracking by individual facility.

inspects, and shares this information in an annual report that includes the number of deficiencies within each detention standard and the number of repeat deficiencies.[34]

We found that both the Custody Management and ODO inspections identified some deficiencies in medical files related to informed consent documentation, based on our review of inspection results from fiscal years 2019 through 2021, the most recent years for which data was available at the time we conducted our work, and information from officials.[35]

In some instances, the deficiencies in documentation of informed consent identified during the Custody Management and ODO inspections related to on-site medical care, such as missing informed consent documentation for routine medical care or missing informed consent documentation relating to the administration of certain medications. In other instances, it was unclear if the informed consent documentation deficiencies related to on-site or off-site medical care.[36]

Specifically, the contractors who conduct the annual Custody Management inspections identified deficiencies in documentation of informed consent in

[34]While ODO currently maintains some information on the deficiencies it identifies in a narrative format, ODO has begun taking steps to develop a data system to record results of inspections to allow for analysis. For additional information see GAO, *Immigration Detention: ICE Should Enhance Its Use of Facility Oversight Data and Management of Detainee Complaints,* GAO-20-596 (Washington, D.C.: Aug. 19, 2020).

[35]In our August 2020 report, we reported that ICE does not routinely conduct comprehensive analyses of facility inspection data and recommended that ICE conduct regular analyses of this data over time, and within and across facilities to identify and address trends. ICE concurred, and as of June 2022, had begun taking steps to implement this recommendation by developing a draft monthly report summarizing inspection findings. For additional information, see GAO-20-596.

[36]To review inspection data, we counted the number of facilities that had informed consent deficiencies. In some cases, facilities had multiple types of informed consent deficiencies, such as missing consent for routine medical care and missing consent for psychotropic medicine. In addition, in some cases, inspectors identified multiple medical files with the same type of informed consent deficiency. For example, in fiscal year 2020, inspectors identified a deficiency in one facility where multiple medical files were missing the informed consent form for routine medical care, and identified a separate deficiency related to psychotropic informed consent with multiple medical files missing this documentation. Finally, our analysis included a review of informed consent deficiencies related to medical care that was provided, but did not include a review of deficiencies related to refusals for medical care.

- one facility from a total of 133 facilities inspected in fiscal year 2019;
- zero facilities from a total of 100 facilities inspected in fiscal year 2020; and
- five facilities from a total of 118 facilities inspected in fiscal year 2021.[37]

In addition, oversight officials for the ODO inspections identified deficiencies in documentation of informed consent in

- six facilities from a total of 48 facilities inspected in fiscal year 2019;
- 26 facilities from a total of 120 facilities inspected in fiscal year 2020; and
- 25 facilities from a total of 128 facilities inspected in fiscal year 2021.[38]

In addition, ODO inspectors may identify findings regarding documentation of language services at detention facilities.[39] For example, in fiscal year 2021, ODO inspectors noted one facility's inconsistent documentation of the use of language services during informed consent in the medical file for individuals who speak Spanish.

[37]We present data in this report by fiscal year. Custody Management conducts inspections by calendar year, according to ICE officials.

[38]Congress mandated that ODO start conducting inspections at detention facilities twice per year not later than the end of fiscal year 2019. See H.R. Rep. No. 116-9, at 485, accompanying Pub. L. No. 116-6, 133 Stat. 13 (2019). According to ODO guidance, as of fiscal year 2021, ODO generally conducts a full inspection and a follow-up inspection at detention facilities, although facilities may receive a second full inspection depending on the total number of deficiencies identified during the first inspection, among other criteria. For example, ODO conducted 211 inspections in 128 detention facilities in fiscal year 2021, according to ODO documentation. ODO officials attribute the increase in informed consent deficiencies starting in fiscal year 2020 to the higher number of inspections conducted.

[39]ODO documentation notes that inspectors may categorize issues that are insufficiently defined in the detention standards as "Areas of Concern." Facilities are not required to resolve these areas of concern to comply with the detention standards, according to the documentation. For example, the 2019 National Detention Standards require the provision of language services during medical care, but do not have a requirement to document when language services are used during informed consent. Nonetheless, ODO inspectors may still note when language services during informed consent is not documented during their inspections.

Facilities Completed Corrective Actions for Informed Consent Deficiencies

Our review of facility documentation found that facilities complete corrective actions in response to deficiencies identified with informed consent documentation for fiscal years 2019 through 2021. More specifically, for some oversight mechanisms, ICE requires facilities to complete corrective action plans to address identified deficiencies. Designated ICE offices are responsible for reviewing the corrective action plans and, subsequently, confirming that the facility addressed the deficiency.[40] For some of the oversight mechanisms that review facilities against the detention standards—including the annual Custody Management inspections, ODO inspections, and operational review self-assessments—facilities submit the corrective action plans to the ICE field office for review. Corrective action plans addressing medical care deficiencies are to be sent to IHSC to help ensure that the action plan sufficiently addresses the issue. For example, for the IHSC field medical coordinator site visits, the facility submits its corrective action plans to IHSC to verify items were completed according to guidance.

We reviewed facilities' corrective actions related to informed consent, which ranged from a brief description of the action taken to detailed plans for training staff. See table 7 for examples of deficiencies related to informed consent documentation and the related corrective actions facilities developed in response.

[40]Facilities are not required to address some deficiencies in a corrective action plan under certain circumstances. For example, Custody Management officials and an official representing the contractor told us that facilities that immediately address deficiencies identified during the inspection may not have a corrective action for that deficiency. In addition, facilities may receive informal, on-the-spot guidance for corrections of minor deficiencies identified during the ongoing compliance reviews conducted by detention services managers. However, facilities are not required or directed to address deficiencies identified by detention services managers.

Table 7: Examples of Informed Consent Deficiencies Identified during ICE Inspections and Related Corrective Actions

Inspection	Fiscal year	Type of informed consent	Deficiency identified	Corrective action
Custody Management	2019	Admission to facility	Consent forms for routine care not signed and dated by detained noncitizens.	Started collecting the consent forms.
Custody Management	2021	Psychotropic medications	No separate consent forms for psychotropic medications.	Prior to the completion of the inspection, created new consent form for psychotropic medication prescriptions.
Office of Detention Oversight (ODO)	2019	Psychotropic medications	Psychotropic consent forms not signed by detained noncitizens.	Established quarterly spot checks for compliance for the upcoming year.
ODO	2020	Admission to facility	Consent forms for routine care not signed by detained noncitizens.	Training for medical staff on required documentation and procedures during admission.
ODO	2021	Psychotropic medications	Medical files missing psychotropic consent documentation.	Refresher training for medical staff on required psychotropic medication consent documentation, creation of checklist of required documentation, and additional review of all medical files for correct psychotropic medication.

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) documentation. | GAO-23-105196

Only One ICE Oversight Mechanism Reviews Documentation of Informed Consent for Off-Site Medical Care

In contrast to all of ICE's oversight mechanisms reviewing on-site informed consent documentation, only one includes a review of medical files for documentation of informed consent obtained by community providers for off-site medical care. Specifically, only ODO officials said their oversight intentionally included such a review. Although ICE policies have similar requirements to document informed consent for care provided at detention facilities, oversight officials have differing interpretations of whether the requirements to document informed consent apply to off-site medical care. As a result, ODO is the only oversight mechanism that reviews medical files for informed consent documentation for off-site medical care. For example:

- ODO officials told us they interpret the detention standards to be inclusive of informed consent documentation for on-site and off-site medical care. Therefore, ODO inspectors review medical files for off-site informed consent documentation during inspections. However,

detention facilities are inconsistent in their collection of informed consent documentation for off-site medical care, with officials from five of the six selected facilities reporting they are not responsible for collecting off-site informed consent documentation.

- Custody Management officials and an official representing the contractor that conducts the annual inspections told us their inspections do not include a review of informed consent documentation for off-site medical care, because the detention standards do not require facilities to collect this information. However, these officials also said inspectors could easily review for this documentation if ICE required it.
- IHSC field medical coordinators told us they do not review medical files for off-site informed consent documentation during their site visits, because they believe it is the responsibility of the off-site medical care provider to obtain informed consent for any care they provide.
- Detention services managers' leadership told us that detention services managers will make note of off-site informed consent documentation when it is included in the medical file, but this information is not always available.

Without agreement about whether the informed consent document requirements apply to off-site medical care, oversight officials are not consistently inspecting detention facilities against ICE's detention standards. *Standards for Internal Control in the Federal Government* state that agencies should obtain reasonable assurance of the effectiveness of current monitoring activities and modify requirements to address any identified issues.[41]

Once ICE establishes new requirements for all detention facilities to collect informed consent documentation for off-site care, it could then require that oversight mechanisms include a review of this information. These actions could help better ensure that informed consent is consistently obtained from detained noncitizens, that facilities are adhering to the new requirements, and oversight officials are consistently assessing compliance.

[41]See GAO-14-704G.

Conclusions

While being detained in immigration detention facilities, noncitizens held by ICE will undergo physical examinations and in some cases invasive procedures, such as surgeries. According to ICE, obtaining informed consent before providing care to detained noncitizens is important so that they can make the best choices regarding their medical care. The agency's vision statement notes that it endeavors to be the best health care delivery system in detention and correctional care, and to provide the safe delivery of high-quality health care to those in custody.

ICE has established policies that define how facilities should operate to provide safe, secure, and humane confinement, including providing medical care to thousands of detained noncitizens each year and obtaining their informed consent for on-site care. ICE's recognition of the importance of individuals giving informed consent for their medical care, and the steps it is taking to help ensure community providers obtain—and detention facilities have a record of—informed consent for off-site care, are positive developments. However, ICE can strengthen these efforts. In particular, establishing and communicating a policy requiring IHSC-staffed facilities to collect informed consent documentation from community providers would help provide assurance that community providers obtain informed consent from detained noncitizens, and provide them with the information they need to make informed choices for their medical care. Further, establishing a similar requirement for non-IHSC-staffed facilities through means, such as contract modifications or updates to the detention standards, would be consistent with ICE efforts to ensure informed consent is obtained from noncitizens at IHSC-staffed facilities.

Once ICE establishes and implements a requirement for all detention facility staff to collect off-site informed consent documentation, requiring oversight mechanisms to include a review of the documentation could help ensure facilities adhere to the new requirement to collect it and that oversight officials are consistently assessing compliance with informed consent requirements. Additionally, ICE will be better able to ensure that informed consent for medical care is being consistently obtained from detained noncitizens, such that they have the information needed to make informed health care decisions.

Recommendations for Executive Action

We are making the following three recommendations to ICE:

The Director of ICE should establish and communicate a policy requiring IHSC-staffed detention facilities to collect informed consent documentation for medical care from community providers. (Recommendation 1)

The Director of ICE should require non-IHSC-staffed detention facilities to collect informed consent documentation for medical care from community providers. (Recommendation 2)

Once ICE establishes and communicates policies and requirements for all detention facilities to collect informed consent documentation for medical care from community providers, the Director of ICE should require that oversight mechanisms include a review of this documentation as part of the agency's oversight of detention facilities. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. DHS provided comments, which are reproduced in full in appendix II. DHS also provided technical comments, which we incorporated as appropriate. DHS concurred with all three of our recommendations and described actions planned that, if implemented fully, should address the intent of two of the recommendations.

For the final recommendation—that ICE require oversight mechanisms to review informed consent documentation for medical care from community providers—DHS needs to take actions beyond those it described to more fully meet its intent.

Specifically, DHS stated that, once ICE updates IHSC Directive 02-07 to require IHSC-staffed detention facilities to collect informed consent documentation for medical care, it will add compliance with the new requirement in the directive to the Quality Review Program audit tool used by IHSC during all detention facility site visits. However, IHSC Directive 02-07 only applies to IHSC-staffed facilities. To fully meet the intent of our recommendation, DHS should ensure that oversight mechanisms also oversee compliance with the requirements ICE established for non-IHSC

facilities to collect off-site informed consent documentation. Doing so will allow ICE to oversee off-site informed consent documentation at both IHSC and non-IHSC facilities.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Homeland Security. In addition, this report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have questions about this report, please contact us at (202) 512-7114 or yocomc@gao.gov, or (202) 512-8777 or gamblerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

Carolyn L. Yocom
Director, Health Care

Rebecca Gambler
Director, Homeland Security and Justice

List of Requesters

The Honorable Anna Eshoo
Chair
Subcommittee on Health
Committee on Energy and Commerce
House of Representatives

The Honorable J. Luis Correa
Chairman
Subcommittee on Oversight, Management, and Accountability
Committee on Homeland Security
House of Representatives

The Honorable Gerald E. Connolly
Chairman
Subcommittee on Government Operations
Committee on Oversight and Reform
House of Representatives

The Honorable Joaquin Castro
House of Representatives

The Honorable Ruben Gallego
House of Representatives

The Honorable Raúl Grijalva
House of Representatives

The Honorable Ann Kirkpatrick
House of Representatives

The Honorable Stephanie Murphy
House of Representatives

The Honorable Tom O'Halleran
House of Representatives

The Honorable Kathleen Rice
House of Representatives

The Honorable Greg Stanton

House of Representatives

Appendix I: Objectives, Scope, and Methodology

The objectives of this report are to examine the extent to which U.S. Immigration and Customs Enforcement (ICE) (1) has established policies for obtaining informed consent for medical care from detained noncitizens, and how selected facilities have implemented the policies; (2) has established policies for conveying information in a language detained noncitizens understand during the informed consent process, and how selected facilities have implemented the policies; and (3) oversees implementation of policies related to informed consent to help ensure compliance.

To do this work, we selected six detention facilities that housed adult detained noncitizens for longer than 72 hours at a time—referred to as over-72-hour facilities—and which were among those facilities that housed noncitizens as of September 2021 that had a relatively large number of approved off-site surgical events during fiscal year 2021, and also reflected other criteria.[1] We used data from ICE's Medical Payment Authorization Request system and the Enforcement Integrated Database to select these facilities.[2] We reviewed ICE Medical Payment Authorization Request system data to identify facilities with a relatively large number of approved medical events—medical care performed by off-site medical providers—during fiscal year 2021, the most recent year of information available at the time of our review.[3]

Specifically, we identified facilities with relatively large numbers of approved events in surgery specialties, such as cardiac or oral surgery,

[1]ICE also houses noncitizens for fewer than 72 hours at short-term facilities.

[2]The Enforcement Integrated Database is a Department of Homeland Security shared common database repository that stores and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations, and operations conducted by ICE and other Department of Homeland Security components.

[3]IHSC uses an electronic system, the Medical Payment Authorization Request system, to approve or deny off-site medical care requests for detained noncitizens; such requests could include dental visits or surgical needs. At non-IHSC-staffed facilities, the IHSC field medical coordinator for the facility reviews the requests submitted in the Medical Payment Authorization Request system.

and obstetrics and gynecology specialties. Within the obstetrics and gynecology specialties, we focused on surgery events, because surgeries are invasive medical procedures that involve benefits, risks, and alternatives, and require informed consent. Additionally, our non-generalizable sample included facilities with a mixture of characteristics identified using information from the Enforcement Integrated Database, including ICE Health Service Corps (IHSC) on-site medical providers or non-IHSC medical staff; facility types (e.g., those that operate under contracts with private companies or agreements with state and local governments); and detention standards. (See table 8.)

Table 8: Selected ICE Over-72-Hour Detention Facilities

Facility name	On-site medical provider	Facility type	Applicable detention standard
Adelanto ICE Processing Center (CA)	Non-ICE Health Service Corps (IHSC) staff	Contract detention facility[a]	2011 Performance-Based National Detention Standards (2016 revision)
Buffalo Service Processing Center (NY)	IHSC staff	Service Processing Center[b]	2011 Performance-Based National Detention Standards (2016 revision)
Glades County Detention Center (FL)	Non-IHSC staff	Non-dedicated intergovernmental service agreement[c]	2019 National Detention Standards
Lasalle ICE Processing Center (LA)	IHSC staff	Dedicated intergovernmental service agreement[d]	2011 Performance-Based National Detention Standards (2016 revision)
South Louisiana Detention Center (LA)	Non-IHSC staff	Dedicated intergovernmental service agreement[d]	2011 Performance-Based National Detention Standards
South Texas ICE Processing Center (TX)	IHSC staff	Contract detention facility[a]	2011 Performance-Based National Detention Standards (2016 revision)

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) information. | GAO-23-105196

[a]Contract Detention Facility: A facility owned and operated by private company under direct ICE contract; exclusively houses detained noncitizens.

[b]Service Processing Center: A facility owned and primarily operated by ICE; exclusively houses detained noncitizens.

[c]Non-dedicated intergovernmental service: A facility owned by state or local government or private entity, facility operated under an agreement with ICE; houses detained noncitizens and other confined populations, either together or separately.

[d]Dedicated intergovernmental service: A facility owned by state or local government or private entity, facility operated under an agreement with ICE; exclusively houses detained noncitizens.

For each of the facilities, we conducted semi-structured interviews with IHSC and other medical staff responsible for providing on-site medical care about the policies for obtaining informed consent for medical care and the use of language services during the consent process. While these interviews are not generalizable and may not be indicative of the process for obtaining informed consent for medical care provided at all

detention facilities or the use of language services during this process, they provided us with perspectives on these topics.

We also reviewed a non-generalizable sample of 48 detained noncitizen medical files from these facilities to examine how facilities implemented policies for informed consent and the use of language services. For each facility, we reviewed three to 10 files depending on the number of surgical procedures for detained noncitizens housed at each facility during fiscal year 2021. Specifically, we reviewed each medical file for consent documentation obtained for routine medical care provided at the detention facility, and for a surgical procedure performed by an off-site community provider. We also reviewed the medical file to determine if the noncitizen spoke English or whether they needed language services in order to understand the informed consent information shared with them. We reviewed the medical files for any documentation of language services provided to individuals who did not speak English during their medical care at the facility.

To examine the extent to which ICE established policies for obtaining informed consent for medical care from detained noncitizens and how selected facilities implemented the policies, we reviewed and analyzed documentation, such as ICE detention standards and IHSC directives, that address informed consent. We also reviewed letters of understanding between IHSC and community providers that IHSC used to communicate expectations of these medical care providers who offer medical care outside detention facilities (i.e., off-site), including the expectation that they obtain informed consent; and a July 2021 IHSC draft memo addressing issues around obtaining informed consent from off-site community providers. In addition, we reviewed 48 selected medical files from the six selected facilities to determine if the files indicated whether informed consent was obtained for on-site and off-site medical encounters.

We interviewed IHSC officials at ICE headquarters about policies medical care providers should follow to obtain informed consent from noncitizens. We also interviewed medical staff at the six detention facilities about the policies they follow to obtain informed consent, as well as how these policies were communicated to staff at detention facilities. We also reviewed documentation from three national medical associations and

interviewed representatives from one of these associations about their guidance to medical care providers related to informed consent.[4]

Further, we contacted four associations—the American Bar Association Commission on Immigration, the American Immigration Lawyers Association, the American Civil Liberties Union, and the National Commission on Correctional Health Care—to obtain information on detained noncitizens' experiences related to informed consent for medical care. We selected these associations to include national associations with relevant work or publications on immigration, immigration detention, and standards for health care in detention settings.

To examine the extent to which ICE established policies for conveying information in a language detained noncitizens understand during the informed consent process and how selected facilities implemented the policies, we reviewed and analyzed the same documentation as the first objective, as well as ICE language access plans and the executive order related to improving access to services for persons with limited English proficiency.[5] In addition, we reviewed materials used to facilitate communication, such as posters used to identify an individual's language and consent forms translated into other languages. We also reviewed letters of understanding between IHSC and community providers and selected medical files from each of the six facilities to determine if the files indicated that information was conveyed in a language the noncitizen understood.

Further, we interviewed IHSC officials and members of the ICE Language Access Working Group at ICE headquarters about policies medical care providers should follow when conveying information in a language noncitizens understand, such as the use of interpreters or forms in languages other than English, to obtain informed consent. We also interviewed medical staff at the six selected detention facilities about the policies they follow for using language services during the informed

[4]We reviewed documentation from three national medical associations: the American Dental Association, the American Medical Association, and the American Society for Health Care Risk Management of the American Hospital Association. We selected these organizations because they represent the types of medical providers who provided care to detained noncitizens off-site, and the facilities where procedures may occur.

[5]See Executive Order 13166, *Improving Access to Services for Persons With Limited English Proficiency* (Aug. 16, 2000). Per the order, each federal agency shall work to ensure that recipients of federal financial assistance provide meaningful access to their limited English proficiency applicants and beneficiaries.

consent process, as well as how these policies were communicated to staff at detention facilities. We also reviewed documentation from the three national medical associations and interviewed representatives from one of these associations about their guidance to medical care providers about informed consent and the use of language services, such as interpreters, during the consent process.

For the first two objectives, we determined that the control and communication activities components of *Standards for Internal Control in the Federal Government* were significant, along with the underlying principles that management should implement control activities through policies and management should internally communicate the necessary quality information to achieve the entity's objectives.[6] We assessed ICE's information about informed consent and providing information in a language noncitizens understand and the communication process for sharing this information to determine whether the agency established control activities through policies and communicated this information in a way that achieved the agency's objectives.

To examine the extent to which ICE oversees implementation of policies related to informed consent to help ensure compliance, we reviewed ICE oversight guidance, such as inspection procedures, worksheets, and results. We also reviewed the inspection information various ICE inspectors had collected on informed consent and language services during the consent process for fiscal years 2019 through 2021, the most recent years for which information were available at the time we conducted our work.

Specifically, we reviewed inspection results and corrective action plans for inspections conducted by the Custody Management Division and the Office of Detention Oversight, where informed consent deficiencies and language services concerns during the consent process were identified during these years. For various reasons, not all facilities have corrective action plans. For the Office of Detention Oversight inspections, we reviewed inspection reports for facilities with deficiencies related to the consent process and corrective action plans where available. For the Custody Management inspection results, which are tracked in the Facility Performance Management System database, we reviewed deficiencies recorded as medical care deficiencies to identify deficiencies relevant to

[6]See GAO-14-704G.

informed consent and the use of language services during the consent process.

To assess the reliability of Facility Performance Management System data on medical care deficiencies, we (1) performed electronic testing for obvious errors in accuracy and completeness; (2) reviewed related documentation; and (3) interviewed agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purpose of describing the number of facility inspections where informed consent deficiencies were identified.

We interviewed ICE officials—including officials from Custody Management Division, Office of Detention Oversight, and IHSC, along with field medical coordinators, detention services managers, and the contractors responsible for these oversight mechanisms—about their procedures, results of these oversight mechanisms, and corrective actions. We determined that the monitoring components of *Standards for Internal Control in the Federal Government* were significant to this objective, along with the underlying principle that management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.[7] We assessed ICE's oversight mechanisms to determine whether the agency established and operated monitoring activities for informed consent for medical care and conveying information in a language noncitizens understand and evaluated the results.

We conducted this performance audit from April 2021 through October 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[7]See GAO-14-704G.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 27, 2022

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Carolyn Yocom
Director, Health Care
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-23-105196, "IMMIGRATION DETENTION: ICE Needs to Strengthen Oversight of Informed Consent for Medical Care"

Dear Mses. Gambler and Yocom:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

Department leadership is pleased to note GAO's recognition that the U.S. Immigration and Customs Enforcement's (ICE) established policies for obtaining and documenting informed consent for medical care provided at detention facilities, as well as the fact that ICE has taken steps to remind community providers of their responsibilities for obtaining informed consent. ICE strives to ensure detained noncitizens are housed in a safe, secure, and humane manner, and have access to medical care through a variety of mechanisms, including medical care provided directly by ICE, through its contracted-service providers, or by local community providers.

This includes continuously working on improving the efficiency and effectiveness of ICE operations and ensuring the delivery of effective services, including medical care. For example, the ICE Health Services Corps (IHSC) is in the process of obtaining signed

letters of understanding with community providers that addresses including informed consent documentation in the medical files provided to detention facilities after administering off-site care to detained noncitizens. ICE recognizes that obtaining informed consent is critical to making certain noncitizens' understanding of medical procedures they will be undergoing, especially with its diverse detained population, who frequently do not speak English.

The draft report contained three recommendations with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER

Digitally signed by JIM H CRUMPACKER
Date: 2022.09.27 12:53:31 -04'00'

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Enclosure

2

Enclosure: Management Response to Recommendations Contained in GAO-23-105196

GAO recommended that the Director of ICE:

Recommendation 1: Establish and communicate a policy requiring IHSC-staffed detention facilities to collect informed consent documentation for medical care from community providers.

Response: Concur. IHSC will revise Directive 02-07, "Treatment Consent and Refusal," dated March 17, 2021, to include a requirement for IHSC-staff facilities to obtain copies of informed consent forms completed by community providers for medical care. This information is reviewed by clinicians and will be uploaded to the detainee's electronic health record for record keeping. This requirement will be limited to all surgically invasive procedures, because not every encounter with an off-site medical provider requires written informed consent. Once the update to the Directive is finalized and approved, the Directive will be disseminated to IHSC-staff facilities and posted to an internal website. Estimated Completion Date (ECD): May 31, 2023.

Recommendation 2: Require non-IHSC-staffed detention facilities to collect informed consent documentation for medical care from community providers.

Response: Concur. The ICE Enforcement and Removal Operations (ERO) will (1) review its detention standards, policies, procedures, and processes concerning informed consent for medical care from community providers for non-IHSC staffed facilities to assess the impact to its operations, and (2) identify a solution to ensure the collection of this information and provide assurance that noncitizens in ICE custody continue to receive the necessary medical care from community providers, as appropriate. ECD: September 29, 2023.

Recommendation 3: Once ICE establishes and communicates policies and requirements for all detention facilities to collect informed consent documentation for medical care from community providers, require that oversight mechanisms include a review of this documentation as part of the agency's oversight of detention facilities.

Response: Concur. Once the update to Directive 02-07 is complete, IHSC will incorporate the requirement to review informed consent documentation in the Quality Review Program (QRP) audit tool that will be used by IHSC during all detention facility site visits. The QRP will review this documentation as part of its oversight mechanism to ensure compliance with the updated IHSC Directive 02-07. ECD: September 29, 2023.

3

Agency Comment Letter

Text of Appendix II: Comments from the Department of Homeland Security

September 27, 2022

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Carolyn Yocom
Director, Health Care
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-23-105196, “IMMIGRATION DETENTION: ICE Needs to Strengthen Oversight of Informed Consent for Medical Care”

Dear Mses. Gambler and Yocom:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government

Accountability Office’s (GAO) work in planning and conducting its review and issuing this report.

Department leadership is pleased to note GAO’s recognition that the U.S. Immigration and Customs Enforcement’s (ICE) established policies for obtaining and documenting informed consent for medical care provided at detention facilities, as well as the fact that ICE has taken steps to remind community providers of their responsibilities for obtaining informed consent. ICE strives to ensure detained noncitizens are housed in a safe, secure, and humane manner, and have access to medical care through a variety of mechanisms, including medical care provided directly by ICE, through its contracted-service providers, or by local community providers.

This includes continuously working on improving the efficiency and effectiveness of ICE operations and ensuring the delivery of effective services, including medical care. For example, the ICE Health Services Corps (IHSC) is in the process of obtaining signed letters of understanding with community providers that addresses including informed consent documentation in the medical files provided to detention facilities after administering off-site care to detained noncitizens. ICE recognizes that obtaining informed consent is critical to making certain noncitizens' understanding of medical procedures they will be undergoing, especially with its diverse detained population, who frequently do not speak English.

The draft report contained three recommendations with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Enclosure

Enclosure: Management Response to Recommendations Contained in GAO-23-105196

GAO recommended that the Director of ICE:

Recommendation 1: Establish and communicate a policy requiring IHSC-staffed detention facilities to collect informed consent documentation for medical care from community providers.

Response: Concur. IHSC will revise Directive 02-07, "Treatment Consent and Refusal," dated March 17, 2021, to include a requirement for IHSC-staff facilities to obtain copies of informed consent forms completed by community providers for medical care. This information is reviewed by clinicians and will be uploaded to the detainee's electronic health record for record keeping. This requirement will be limited to all surgically invasive procedures, because not every encounter with an off-site medical provider requires written informed consent. Once the update to the

Directive is finalized and approved, the Directive will be disseminated to IHSC- staff facilities and posted to an internal website. Estimated Completion Date (ECD): May 31, 2023.

Recommendation 2: Require non-IHSC-staffed detention facilities to collect informed consent documentation for medical care from community providers.

Response: Concur. The ICE Enforcement and Removal Operations (ERO) will (1) review its detention standards, policies, procedures, and processes concerning informed consent for medical care from community providers for non-IHSC staffed facilities to assess the impact to its operations, and (2) identify a solution to ensure the collection of this information and provide assurance that noncitizens in ICE custody continue to receive the necessary medical care from community providers, as appropriate. ECD: September 29, 2023.

Recommendation 3: Once ICE establishes and communicates policies and requirements for all detention facilities to collect informed consent documentation for medical care from community providers, require that oversight mechanisms include a review of this documentation as part of the agency's oversight of detention facilities.

Response: Concur. Once the update to Directive 02-07 is complete, IHSC will incorporate the requirement to review informed consent documentation in the Quality Review Program (QRP) audit tool that will be used by IHSC during all detention facility site visits. The QRP will review this documentation as part of its oversight mechanism to ensure compliance with the updated IHSC Directive 02-07. ECD: September 29, 2023.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contacts:

Carolyn L. Yocom, Director, Health Care, (202) 512-7114 or yocomc@gao.gov

Rebecca Gambler, Director, Homeland Security and Justice, (202) 512-8777 or gamblerr@gao.gov

Staff Acknowledgments:

In addition to the contact above, Karen Doran (Assistant Director), Taylor Matheson (Assistant Director), Natalie Herzog (Analyst-in-Charge), Andrea Bivens, Sonia Chakrabarty, Michele Fejfar, Naomi Joswiak, Drew Long, Diona Martyn, Jeanne Murphy-Stone, and Heidi Nielson made key contributions to this report.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. You can also subscribe to GAO's email updates to receive notification of newly posted products.

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube.
Subscribe to our RSS Feeds or Email Updates. Listen to our Podcasts.
Visit GAO on the web at https://www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: https://www.gao.gov/about/what-gao-does/fraudnet

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

A. Nicole Clowers, Managing Director, ClowersA@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548