



# Department of Homeland Security Office of Inspector General

## Management of Mental Health Cases in Immigration Detention





**Homeland  
Security**

March 28, 2011

### Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses Immigration and Customs Enforcement's management of mental health cases in immigration detention. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Carlton I. Mann".

Carlton I. Mann

Assistant Inspector General

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## Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office of Immigration Review
ICE	Immigration and Customs Enforcement
IHSC	ICE Health Service Corps
ODPP	Office of Detention Policy and Planning
OIG	Office of Inspector General
OPLA	Office of Principal Legal Advisor
PHS	Public Health Service

# OIG

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*Department of Homeland Security  
Office of Inspector General*

## **Executive Summary**

Immigration and Customs Enforcement apprehends, detains, and removes illegal aliens from the United States. Aliens in custody must be provided with appropriate medical treatment and care. The Health Service Corps serves as the medical authority for Immigration and Customs Enforcement, and provides direct care or arranges for outside health care services to detained aliens in custody.

The Immigration and Customs Enforcement's Health Service Corps staffs only 18 of the nearly 250 detention centers nationwide and has limited oversight and monitoring for mental health cases across immigration detention centers. As a result, Immigration and Customs Enforcement is not fully aware of all detainees with mental health conditions, or the level of care being provided.

The Health Service Corps has experienced persistent vacancies in mental health positions which have raised concerns about the effectiveness of provider care. As of August 2010, vacancy rates at 11 of the 18 facilities staffed with Health Service Corps employees were 50% or more. In addition, facilities were not always well-equipped to support the needs of detainees with mental illness or located in areas with access to community mental health care facilities.

Immigration and Customs Enforcement needs to (1) establish a staffing plan that aligns staffing with the facilities' mental health caseload, (2) make appropriate space available to provide needed treatment, (3) develop a classification system for facilities to determine the level of care that can be provided, (4) make timely requests for mental health information, (5) clarify decision-making authorities for detainee transfer decisions, (6) establish protocols for handling mental health information, (7) release guidance on custodians, and (8) develop field guidance for using specialty facilities.

We are making 20 recommendations to improve the management of mental health cases.

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## Background

United States Immigration and Customs Enforcement (ICE) apprehends, detains, and removes individuals who are in the United States unlawfully. ICE places non-U.S. citizens who are apprehended and determined to need custodial supervision in detention facilities maintained by its Office of Enforcement and Removal Operations. The Supreme Court has held that, consistent with the Eighth Amendment and common law principles, the government is obligated to provide medical care to those whom it is incarcerating.<sup>1</sup> Pursuant to ICE detention standards, Enforcement and Removal Operations is responsible for providing detainees with medical care.

### **Mental Health Care in Immigration Detention**

Within Enforcement and Removal Operations, the ICE Health Service Corps (IHSC) serves as ICE's medical authority, and oversees, provides, and arranges for detained aliens' medical care, including mental health care. IHSC has diagnosed and treated detained aliens for a range of mental health conditions including schizophrenia, substance abuse, adjustment disorder, and post-traumatic stress disorder. Some detainees are seriously impaired by mental illness and may be unable to coexist with others in detention or participate in immigration proceedings. In addition, detainees may present a risk of harm to others or themselves, including suicide.<sup>2</sup>

To address mental health cases, IHSC staff includes psychiatrists, psychologists, and social workers at the following types of ICE detention facilities:

- Service Processing Centers - owned by DHS ICE and staffed with federal and contract employees,
- Contract Detention Facilities - owned and operated by private companies under contract with ICE, and
- Intergovernmental Service Agreement - State and local jails operating under an agreement with ICE.

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<sup>1</sup> *Estelle v. Gamble*, 429 U.S. 97, 103-104 (U.S. 1976) (holding that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," proscribed by the Eighth Amendment) (citing *Gregg v. Georgia*, 428 U.S. 153, 173 (U.S. 1976)).

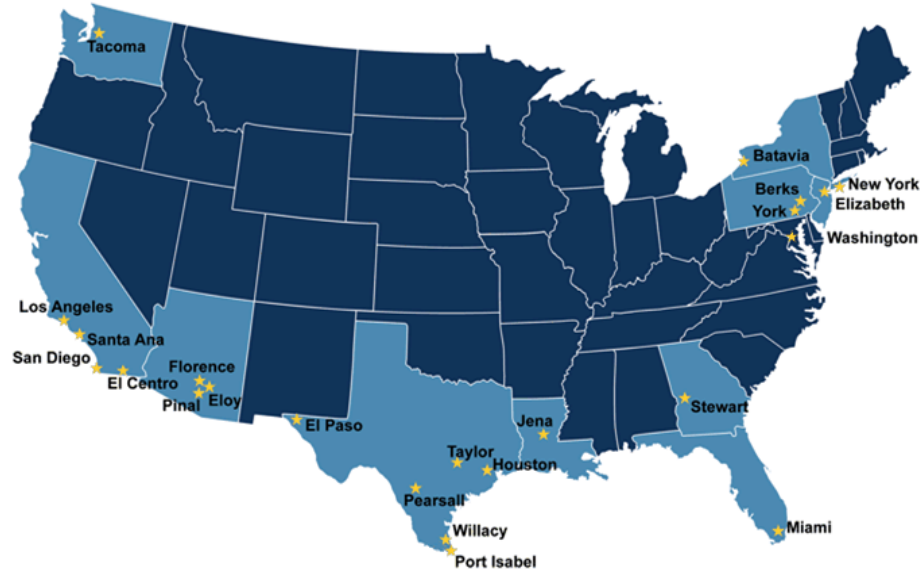
<sup>2</sup> Since 2004, 17 detainees in ICE custody have committed suicide. There has not been a detainee suicide in IHSC care for the past 2 years.

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IHSC provides medical and mental health care at 18 of the approximately 250 ICE detention facilities nationwide, including all six service processing centers, and 12 of the contract detention facilities and facilities operating under an intergovernmental service agreement.

Of the 821 IHSC employees, 266 are United States Public Health Service (PHS) officers, with the remaining 555 personnel being civilian or contracted employees.<sup>3</sup> Figure 1 shows 18 facilities where IHSC has a clinical presence, 4 facilities where IHSC only screens detainees, and IHSC's headquarters location in Washington, D.C.

**Figure 1: IHSC Headquarters and Field Locations**



Source: IHSC, <http://www.icehealth.org/Facilities/LocationsMap.shtm>

The contract detention facilities and facilities operating under an intergovernmental service agreement functioning without IHSC personnel employ their own staff or contract with local practitioners to provide medical services, including mental health care. ICE also uses local hospitals and other facilities to treat detainees whose mental health needs exceed a detention facility's capability. As of August 2010, contract detention facilities, service processing centers, and facilities operating under an intergovernmental service agreement were using the services of 52 off-site mental health facilities.

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<sup>3</sup> A 2007 Memorandum of Understanding provides for detailed PHS officers to serve within DHS.

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Mental health services from an outside provider require IHSC approval. Field personnel submit treatment authorization requests to ensure that outside visits are approved and cleared for payment. While field-based clinical directors may approve most treatment authorization requests, those for mental health treatment require headquarters' review and approval. In emergency situations, treatment authorization requests may be submitted after treatment has been provided. IHSC has developed a new referral processing and approval system called the Medical Payment and Authorization Request System to replace the treatment authorization request process. This system is intended to decentralize processing and approval of treatment requests submitted by providers when treatment is deemed medically necessary.

### **Mental Health Care and Immigration Detention Reform**

In October 2009, ICE's Office of Detention Policy and Planning (ODPP) completed a report on immigration detention that included recommendations to guide reform efforts as follows:

- Develop a single, integrated medical system across the national network of detention facilities,
- Classify detainees based on medical need and assign them to appropriately staffed and equipped facilities, and
- Discontinue the use of segregation cells for medical isolation or observation.

Since October 2009, ICE has implemented the following reforms:

- Hired and placed detention service managers in field positions,
- Piloted a medical classification system for detained aliens,
- Revised detention standards, known as Performance Based National Detention Standards 2010, and
- Established a medical advisory group.

In June 2010, ICE's Office of Professional Responsibility also completed a congressionally mandated review of the detention healthcare system. The review issued additional recommendations to improve detainee healthcare throughout ICE as follows:



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- Station medical personnel in detention facilities to help provide additional oversight,
  - Establish and disseminate guidance about medical personnel staffing models for various types of facilities housing ICE detainees,
  - Enforce the requirement to name a clinical or administrative authority at every facility, and
  - Develop a standardized medical transfer form and include a medical standard that specifies what information should be included in the medical transfer form.

## Results of Review

### **IHSC's Oversight as ICE's Medical Authority Needs to Extend to All Facilities Providing Health Care for ICE Detainees**

IHSC is designated as the medical authority for ICE. In this role, IHSC provides primary health care for detainees housed in IHSC-staffed detention centers and oversees the financial authorization and payment for off-site specialty and emergency care for detainees in ICE custody. However, we observed inconsistencies in the way IHSC oversight was exercised between IHSC-staffed facilities and those facilities without an IHSC presence on site. Specifically, oversight exercised by IHSC at non-IHSC staffed facilities does not provide ICE with a means for (1) maintaining statistics on the overall population of detainees with mental health conditions, (2) updating the mental health status of detainees and related treatments, and (3) maintaining an awareness of the level of care that each facility can provide.

In the absence of such information, ICE's ability to monitor the overall status of ICE detainees with mental illnesses is hindered. Maintaining a broad-based knowledge of information regarding detainees' mental health status would assist ICE in making well-informed decisions regarding (1) the allocation of health care resources needed for an appropriate level of care, and (2) the ability of each facility to provide specific care.

IHSC has clinical staff at 18 of the approximately 250 immigration detention centers nationwide, though an October 2009 ICE report, entitled *Immigration Detention Overview and Recommendations*, showed that IHSC-staffed facilities detain approximately half of the ICE detainees.<sup>4</sup>

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<sup>4</sup> <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>

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IHSC is able to monitor and track the condition and treatment provided to detainees with mental disabilities at IHSC-staffed detention facilities. In August 2010, ICE reported 1,496 mental health patients in IHSC-staffed detention centers. However, ICE was unable to provide comparable information for mentally ill detainees in non-IHSC staffed facilities since such data is not tracked or maintained.

IHSC headquarters has limited tools for monitoring mental health care in facilities that are not staffed with IHSC personnel. These include:

- Treatment authorization requests - IHSC headquarters reviews and approves requests for mental health care; however, these only alert the division to cases requiring treatment outside of a detention facility and are largely used to approve and ensure payment.
- ICE's Health Benefits Package - Revised in FY 2010, ICE's benefits package outlines what the agency will pay for outside care as required and provides direction to all outside facilities that must provide mental health care to detainees.
- Significant Illness Reports - Reports filed with ICE through IHSC summarize critical cases of mental illness that tend to be acute or require hospitalization. These depend, however, on the ability of field personnel to recognize a problem and bring it to headquarters' attention for discussion and monitoring.

These sources provide IHSC with information on cases of mental illness which tend to be acute and require hospitalization. However, IHSC does not receive any information regarding detainee cases that may not require intensive treatment. Therefore, the mental health conditions and care of ICE's detainee population, as a whole, cannot be fully monitored by IHSC. These types of information could be used by ICE as part of efforts to ensure an appropriate level of oversight for mentally ill detainees.

In FY 2010, ICE's Office of Professional Responsibility's report on medical care in detention recommended that ICE station medical personnel in detention facilities to help provide additional oversight. To ensure an appropriate level of oversight, ICE needs to define the specific responsibilities that will allow IHSC to increase oversight of mental health cases.

## **Recommendation**

We recommend that Immigration and Customs Enforcement:

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**Recommendation #1:** Establish and implement IHSC's role in monitoring and providing oversight to all ICE detention facilities. At a minimum, this should include IHSC's responsibility for monitoring and tracking the mental health condition of ICE's detained population.

## **Management Comments and OIG Analysis**

We evaluated ICE's written comments and have made changes to the report where we deem appropriate. A summary of ICE's written responses to our recommendations and our analysis of the responses follow each recommendation. A copy of ICE's response, in its entirety, appears in Appendix B.

**ICE Response:** ICE concurred with Recommendation #1.

Division of Immigration Health Services, now called ICE Health Service Corps (IHSC), has already established new Field Case Manager positions to provide medically-related consultation to each of the 24 Enforcement and Removal Operations Field Office Directors and monitor care provided to detainees in non-IHSC staffed facilities, with particular emphasis on mental health issues. As of December 1, 2010, IHSC has assigned Field Case Managers to 12 Enforcement and Removal Operations Field Offices to provide critical support and is recruiting to fill the remaining 12 Field Offices in FY 2011.

**OIG Analysis:** This recommendation is **resolved** and **open** pending our receipt of documentation showing the specific duties and responsibilities of the newly established Field Case Manager positions, and ICE's completion of the recruitment and assignment of the 24 Field Case Managers.

## **Reducing Staffing Shortages Can Improve the Mental Health Care Environment**

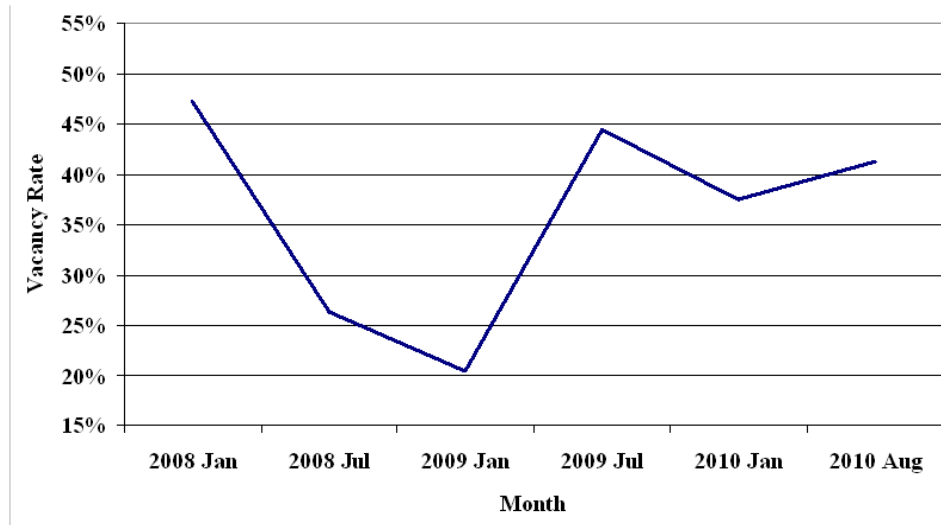
IHSC employs psychiatrists, psychologists, and social workers who work together to diagnose mental illnesses, prescribe medications, provide counseling, and evaluate mental health patients' progress. However, because of ICE's inability to attract and retain clinicians, there is less assurance that ICE has sufficient staff to provide an appropriate level of mental health care.

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## **Vacancies in Mental Health Positions**

Since 2008, vacancies for mental health positions across IHSC-staffed facilities have ranged from 21% to 47%. In January 2008, IHSC had 36 mental health positions, of which 17, or 47%, were vacant. IHSC has added mental health positions over the past two years, for a total of 63 positions in August 2010, of which 26 positions, or 41%, were vacant.

**Figure 2: IHSC Mental Health Position Vacancy Rates**



Source: IHSC Staffing Rosters

IHSC officials from headquarters and field locations cited staffing shortages as a critical challenge. In addition, health service administrators and clinical directors throughout IHSC expressed the need for more mental health providers.

As of August 2010, vacancy rates at 11 of the 18 facilities staffed with IHSC employees were 50% or higher. For specific positions across IHSC, vacancy rates were 46% for psychiatrists, with 6 of 13 positions unfilled; 37% for psychologists, with 7 of 19 positions unfilled; and 42% of social workers, with 13 of 31 positions unfilled.

IHSC administrators and clinicians expressed concern about the effectiveness of provider care with the extent of existing vacancies. Vacant positions burden not only existing mental health staff, but also non-mental health staff who assume duties that may extend beyond their areas of expertise. For example, IHSC officials said that facilities without a psychiatrist must rely on other medical professionals qualified to prescribe any medications, even though they may not be knowledgeable of specific psychiatric

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medications. According to some IHSC staff, insufficient mental health staff increases their reliance on community providers who can offer limited time to accommodate mental health patients.

Vacant IHSC clinical director positions also result in clinical oversight and administrative duties being performed by existing staff, or a clinical director located at another facility. As a medical doctor, the clinical director supervises clinical operations and staff, including mental health providers, and prescribes medications. As of August 2010, nine of 18 clinical director positions were vacant. Three health service administrators noted that the clinical director position at each of their facilities has been vacant for several years.

### Barriers to Minimizing Staffing Shortages

IHSC officials cited several contributing factors for staffing challenges, including a competitive job market for mental health providers, remote location of facilities, administrative processing delays, and low employee morale.

- Competition for mental health providers - High demand in public and private sectors for mental health professionals affects IHSC's ability to recruit and retain providers.
- Non-competitive salaries - IHSC's inability to offer competitive salaries, especially for psychiatrist positions, was cited as a reason for hiring difficulties.
- Undesirable locations - Some detention facilities are located in rural and remote locations where candidates do not want to relocate.
- Administrative delays - An often lengthy security clearance process at ICE discourages candidates from waiting for an offer, especially when applicants receive other offers. Several PHS officers said that required credit checks eliminate qualified candidates, which mostly impacts facilities in remote, rural locations, with fewer medical professionals.

Also, the recently-enacted *Patient Protection and Affordable Care Act* eliminated the limit on commissioned corps officers,<sup>5</sup> and deemed all PHS Reserve Corps officers on active duty to be commissioned officers of the Regular Corps, which expanded the

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<sup>5</sup> Section 5209, *Patient Protection and Affordable Care Act*, Public Law 111-148, March 23, 2010. Section 5209 is codified at 42 U.S.C. § 238f note.

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ranks of active duty PHS officers.<sup>6</sup> Officers of the Regular Corps must be appointed to their positions by the President with the advice and consent of the U.S. Senate.<sup>7</sup> However, these appointments have not occurred to date; therefore, new PHS officers cannot be hired.

- Low morale - Staff expressed dedication to the IHSC mission, but cited low morale when asked about staffing problems. Some officers said that IHSC's reputation has suffered due to constantly changing or absent leadership, and a lack of direction. Since 2007, IHSC had nine acting or permanent directors.

Because of staffing shortages and persistent vacancies, IHSC has continued to recruit and hire to address staffing concerns. IHSC has also temporarily transferred mental health staff to facilities needing mental health providers, and named a new acting director. IHSC had also used the Assignment Incentive Pay Program, which paid a premium to certain types of providers accepting positions, including mental health providers, at specific IHSC locations that have difficulties attracting staff. While the plan was successful for those who applied and qualified, only \$236,000 of the allotted \$1,053,000 was spent, and the program has been discontinued.

## **Recommendation**

We recommend that Immigration and Customs Enforcement:

**Recommendation #2:** Prioritize hiring a permanent director and mental health staff. This should include maximizing the use of available hiring incentives, and minimizing processing delays to the extent practicable.

## **Management Comments and OIG Analysis**

**ICE Response:** ICE concurred with Recommendation #2.

Interviews for a permanent Senior Executive Service Director have been completed and final selection is pending. However, remote geographic locations impact IHSC's ability to recruit or retain qualified staff at certain facilities, particularly psychiatrists. To

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<sup>6</sup> Section 5210, *Patient Protection and Affordable Care Act*. This particular provision is codified at 42 U.S.C. § 203(b).

<sup>7</sup> 42 U.S.C. 203(a)(3).

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mitigate this problem, IHSC is exploring the use of Title 38 authority and partnering with the Veteran's Administration to help fill vacancies.

**OIG Analysis:** This recommendation is **resolved** and **open** pending (1) the selection and hiring of a permanent director, and (2) the outcome of IHSC's use of available hiring tools including efforts to determine whether Title 38 and partnering with the Veterans Administration can be used to fill mental health staffing vacancies.

## **ICE Needs to Establish Staffing Models for Managing Mental Health Care Needs**

In our 2008 report, entitled *ICE Policies Related to Detainee Deaths and the Oversight of Immigration Detention Facilities*, we stressed the importance of aligning clinical staffing with ICE strategic planning for detention management.<sup>8</sup> However, ICE has not established an allocation plan that aligns staffing with the detention facilities' mental health case load. Without such staffing allocation plan, ICE cannot be assured of each facility's ability to provide detainees with an acceptable level of health care.

Mental health staff at facilities also commented that the standard for staffing plans should be aligned with the workload of each facility, the number of patients requiring medical services, and available bed space at each facility. While ICE does not have a standard definition for a mental health team, one clinical director identified a psychiatrist, psychologist, and social worker as key members of such team.

Of the 18 IHSC-staffed facilities, 11 facilities were allocated positions for a minimum of one psychiatrist, psychologist, and social worker. However, the remaining seven facilities were not allocated at least one position for each of these disciplines. Three of the seven facilities were allocated one social worker position, even though two of these facilities housed 76 and 59 mentally ill detainees, respectively.

However, there are facilities that receive ICE detainees with chronic mental illnesses who may require hospitalization or forced medication. For these facilities, we identified variances in mental

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<sup>8</sup> [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_08-52\\_Jun08.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_08-52_Jun08.pdf) .

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health providers to mentally ill detainees that ranged from a ratio of 1:8 to a ratio of 1:53.

Demands of mental health patients can vary significantly and staffing ratios cannot solely determine an optimum staffing level. IHSC administrators and clinicians said that even a small number of detainees with mental illnesses can demand significant time and attention for treatment based on the type of mental illness. This emphasizes the need for a staffing allocation plan aligned with mental health caseloads, and a baseline number of providers to determine the necessary mental health care for detainees.

## **Recommendation**

We recommend that Immigration and Customs Enforcement:

**Recommendation #3:** Establish and implement a system that aligns staffing levels at each facility with their respective mental health caseload.

## **Management Comments and OIG Analysis**

**ICE Response:** ICE concurred with Recommendation #3.

ICE has already begun to analyze appropriate staffing internally, and implemented a system to align staffing levels through submission and action of the priority staffing plan. Once analysis and approval of the staffing plan are complete, IHSC will fully implement realignment based on each facilities mental health caseload. Full implementation of the priority staffing plan is currently subject to available funding.

**OIG Analysis:** This recommendation is **resolved** and **open** pending completion of the analysis, approval, and implementation of the staffing plan.

## **Space Limitations and Remote Locations May Reduce the Effectiveness of Mental Health Care**

Detainees with acute mental illness or suicidal tendencies may require treatment that includes on-going clinical attention, separation from other detainees, and either periodic or constant observation. To assist with these needs, short stay units provide an environment for continuous health care, as well as medical



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isolation for mentally ill detainees who are at risk for violent or suicidal behavior.

Psychiatric hospitals and private practitioners can provide services for detainees requiring specialized care and treatment for mental illnesses. However, in certain locations, the access and availability of these services is limited. Without appropriate treatment areas, mental health care providers have limited options for providing care to detainees with mental illnesses.

### **Structure of Detention Facilities Needs to Facilitate Mental Health Care Treatment**

ICE detention facilities should include appropriate areas for treating detainees with specific mental health needs. Of the eight ICE detention facilities we visited, four facilities did not have short stay units, but were treating between 46 and 226 detainees with mental health diagnoses, including those who needed to be separated from the other detainees.

The short stay units that we observed contained two to four beds. One facility had ten beds in four short stay units for mentally ill detainees. However, this situation does not accommodate a detainee whose condition requires isolation from other detainees.

Three facilities that we visited had short stay units with single cell rooms, although in most cases, isolation rooms were primarily used for tuberculosis patients. One of these facilities had isolation rooms not dedicated to tuberculosis cases, and one facility had a padded room.

At facilities with short stay units, IHSC staff expressed concern regarding the volume of mental health cases in comparison to the capacity of the medical units, and a shortage of short stay units and padded rooms. One health service administrator said the medical unit had a short stay unit, but only one of three medical cells was available since two were used for storage and a medical laboratory. In addition, four facilities that we visited did not have single cell rooms or padded cells that could be used for mental health observations or suicide watches.

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***Use of Transitional Pods: One facility that did not have a short stay unit used smaller pods housing several detainees for some mental health patients. The pods helped mentally ill detainees needing supervision transition from isolation to general population.***

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Based on telephone interviews with officials at 11 IHSC-staffed facilities, three of the facilities did not have short stay units even though they housed several detainees with mental health conditions that required separation, isolation, or in some cases periodic hospitalization. Four of the eleven facilities did not have single cells, and six did not have padded rooms to accommodate mental health care needs.

IHSC providers expressed concern that the absence of a therapeutic, non-punitive environment interferes with mental health care, and limits their ability to stabilize detainees with serious mental illnesses. Without areas to care for detainees requiring suicide watch rooms or other special needs, clinicians must provide treatment in environments that may not foster improvements in mental health conditions. Treatments under such conditions have resulted in cases where symptoms have been exacerbated.

### **Segregation Cells Used for Mentally Ill and Suicide Watch**

In some facilities that do not have short stay units or sufficient medical isolation rooms, special management units were used to house detainees with serious mental illnesses.

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***Special Management Units, commonly known as segregation, are typically used as a disciplinary measure, or for administrative purposes such as protective custody. They are called special housing units in some facilities.***

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ICE's Performance Based National Detention Standards allow placement in administrative segregation for detainees who require separation for medical reasons. However, an October 2009 ODPP report noted that segregation is "not conducive to recovery" and recommended that ICE stop using segregation cells for medical isolation or observation.

Four of the eight ICE detention facilities we visited did not have short stay units and used special management units for housing mentally ill detainees, and conducting suicide watch and mental health observations. One additional facility that had a short stay unit also housed detainees on suicide watch in special management units. Those with limited or no short stay unit space used the special management units for housing mentally ill detainees needing separation or for overflow once short stay units were full.

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Advocacy groups and researchers have related concerns that segregation can exacerbate mental illnesses. In addition, mental health care providers at ICE facilities we visited provided the following comments regarding special management units:

- Segregation is never an appropriate setting for long-term placement of mentally ill detainees.
- Segregation often exacerbates mental illness and is counterproductive to the goal of stabilizing a detainee.
- Segregation is not a good environment for those with mental health concerns because detainees reported increased levels of depression and anxiety when held in a short stay unit.
- It is not possible to make segregation into a therapeutic setting in which a mentally ill detainee's condition would improve.
- Special management units should only be used at the detainee's request, or for short periods when these units are the only option.
- A detainee's placement in special management units for more than 24 hours warrants an immediate evaluation by the facility's psychiatric consultant, who should consider hospitalizing the detainee.

In addition to potential negative effects on a detainees' mental health, special management units may pose several additional challenges.

- They are often separate from the facility's medical unit and are not immediately accessible to medical staff.
- Some do not have a continuous medical presence, though medical providers told us that they visit the segregation units at least daily to check the status of mentally ill detainees.
- They are often controlled by correctional staff rather than medical personnel, which creates additional layers of security required for disciplinary cases, but not needed for mental health cases. In one facility, for example, a health service administrator said procedures for opening cells of a

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special management unit can delay care to a detainee needing treatment.

### **Detention Facility Locations Limit Access to Community Mental Health Care**

ICE's Performance Based National Detention Standards require facilities to identify and make available mental health crisis intervention services for detainees experiencing acute mental health episodes. Facilities must directly or contractually provide detainees with necessary hospitalization in the local community. While ICE can easily access community mental health care in some locations, other facilities with significant mental health cases do not have access to community mental health providers.

Off-site consultants provide mental health services to detainees whose needs cannot be addressed by mental health providers at detention facilities. In addition, hospitalization may be required when mentally ill detainees' symptoms require in-patient care.

Among the eight facilities that we visited, community hospitals for ICE detainees were readily available to four facilities, with one facility having access to four nearby hospitals. However, the remaining four facilities that did not have short stay units relied on segregation areas for serious mental health cases. Detainees at these facilities also had limited access to off-site consultants and mental health hospitals. Three of the facilities were located 40 to 60 miles from the nearest hospital, where sending detainees to the emergency room was the only option available.

Access to community mental health providers is generally more available in urban areas. Alternatively, as an Enforcement and Removal Operations manager acknowledged, detention facilities with limited access to community providers tend to be located in remote areas with minimal local infrastructure.

IHSC staff from ICE facilities with access to mental health resources attributed some of their success for stabilizing seriously ill mental health patients to their proximity to community resources. An IHSC clinician at one of these facilities said that access to four community hospitals enables the facility to provide care to patients requiring more specialized treatment. Another IHSC clinician said that each detention facility should have a process for accessing a psychiatric hospital, adding that if there is no ability to move psychotic patients to a hospital setting, it is not feasible to give them proper treatment options.

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### **Relationships with Community Providers Can be Strengthened**

Several detention facilities' access to community providers was limited by local hospitals' reluctance to accept immigration detainees. At one facility, an official said that a local hospital had responded by saying that hospitals are mostly for county inmates, not ICE detainees. Several officials said that hospitals were not willing to take ICE detainees, one of them adding that the hospital voiced concerns about detainees appearing in the waiting area in shackles and prison uniforms and scaring or intimidating other patients. The official added that when IHSC sends mental health patients to local hospitals, the hospitals send them right back.

Late payments for services may risk relationships with community providers. IHSC staff and community providers noted that payments for medical services by ICE are sometimes late. Staff that we spoke with at one facility anticipated that ICE payments would be late. Two IHSC officials expressed concern that late payments will result in future services being refused.

An IHSC manager told us that ICE's contracts with local providers have expired and were not renewed. ICE may not require contracts with every mental health service provider, and facilities have cultivated good relationships in some areas. However, contracts can help to ensure continued service over extended periods of time, and establish mutually agreeable terms under which ICE patients will be admitted to hospitals.

### **Conclusion**

The availability of treatment areas within detention facilities, along with accessible community providers, is significant in the well-being of detainees with mental health conditions. ICE needs to minimize the risk of reversing any improvements in detainees' mental health capacity, which could result in prolonged detention.

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## Recommendations

We recommend that Immigration and Customs Enforcement:

**Recommendation #4:** Place detainees with mental illnesses in facilities that have necessary space and resources available to provide needed services. At a minimum, such facilities should maintain appropriate areas for specialized treatment, and be accessible to community providers.

**Recommendation #5:** Establish time limits for holding mentally ill detainees in segregation outside of medical units, and identify recourses for detention facilities when segregated detainees are approaching set time limits.

**Recommendation #6:** Establish procedures for timely evaluating and transferring detainees requiring separation or isolation for mental health conditions, but who are in facilities that cannot accommodate such needs.

**Recommendation #7:** Identify detention facility sites with minimal or no community resources, and develop IHSC mental health resources as needed to ensure the availability of proper care.

## Management Comments and OIG Analysis

**ICE Response:** ICE concurred with Recommendation #4.

IHSC and Enforcement and Removal Operations Field Offices have conducted an initial analysis of IHSC and non-IHSC staffed facilities to identify detainees with active acute or sub-acute diagnosis. Once this analysis has been finalized, IHSC and Enforcement and Removal Operations Headquarters Field Operations will provide recommendations regarding appropriate placement based on availability of care. Prospectively, IHSC and Enforcement and Removal Operations Headquarters Field Operations are currently developing a process to identify and report detainees with acute or sub-acute diagnosis. This report and tracking system will focus on identifying the patient's mental health needs and placing them in a facility consistent with providing the best possible care based on their mental health diagnosis and clinical needs. IHSC has taken steps to increase access to available mental health resources and facilities throughout the country.

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**OIG Analysis:** This recommendation is **resolved** and **open** pending completion of (1) the analysis of all facilities to identify detainees with active acute or sub-acute diagnosis, and (2) the implementation of a process to identify, track, and appropriately place detainees with a mental health diagnosis.

**ICE Response:** ICE concurred with Recommendation #5.

Detainees with mental health issues housed in segregation units outside of medical units are reassessed by appropriate health care personnel on a daily basis. Any modifications in treatment and conditions of confinement are made at that time, if appropriate. IHSC is completing the Medical Classification System, which will also address this recommendation regarding identifying and placing detainees based on medical and mental health need and diagnosis. The Medical Classification System is comprised of two components: identification of detainee health care needs and identification of health care resources available in detention facilities, to include immediate outside health care surrounding the facility. Detainee placement will be contingent upon detainee needs and resources available at or near the facility. ICE will review industry standards and consult health care authorities to establish time limits for holding mentally ill detainees in segregation.

**OIG Analysis:** This recommendation is **resolved** and **open** pending (1) IHSC's implementation of the Medical Classification System, and (2) the establishment of time limits for holding mentally ill detainees in segregation outside of medical units.

**ICE Response:** ICE concurred with Recommendation #6.

IHSC will establish procedures to identify detainees with mental health conditions requiring transfer to appropriate ICE facilities or to contracted care facilities. Enforcement and Removal Operations will consider IHSC's recommendation and, coupled with conditions of confinement, make a decision on the best location to house the detainee to provide appropriate care. ICE will incorporate this requirement in the new Medical Classification System, which will identify the type of services available at each of ICE's facilities.

**OIG Analysis:** This recommendation is **resolved** and **open** pending implementation of the Medical Classification System that includes this requirement.

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**ICE Response:** ICE concurred with Recommendation #7.

Development and implementation of the aforementioned Medical Classification System will address this recommendation.

**OIG Analysis:** This recommendation is **resolved** and **open** pending ICE's implementation of the Medical Classification System.

## **Facility Designations Should Be a Factor in Resource Allocation and Planning**

Developing a classification system for immigration detention centers based on mental health care capabilities can provide a more effective means of allocating resources and placing detainees in facilities that can offer an appropriate level of mental health care. At the time of our fieldwork, ICE had introduced a pilot classification system for detainees' health status, but not for detention facilities.

Formally designating the capability of IHSC-staffed facilities to treat detainees with mental illnesses allows management to prioritize staffing and mental health resources. However, a process to ensure that detainees are placed in facilities with resources commensurate with their assessed needs has not been established.

An example provided by IHSC officials to convey the need for facility designations was that more challenging mental health cases were being transferred to two specific facilities. However, these facilities were not officially designated as mental health care facilities.

Some Enforcement and Removal Operations staff at these facilities recognized increases in mental health case transfers, but were uncertain as to why their facility had been designated to receive these types of cases. Detention and removal officers and medical personnel expressed a desire for a clearer understanding of how facilities were viewed with respect to handling mentally ill detainees, especially those requiring more focused attention.

Facility designations would allow ICE to align the capability of each facility with the detainees' health care needs, and provide required levels of care. As a result, ICE would benefit from a well-managed health care system for detainees requiring various levels of mental health care treatment.



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## Recommendation

We recommend that Immigration and Customs Enforcement:

**Recommendation #8:** Establish a classification system for detention facilities that takes into consideration the facilities' ability to handle detainees with varying mental health needs.

## Management Comments and OIG Analysis

**ICE Response:** ICE concurred with Recommendation #8.

Current procedures match the capabilities of IHSC-staffed facilities with patient needs. The Medical Classification System, as explained in response to recommendation 5, is in the final stages of development, and when implemented, will further expand this capability to include available intergovernmental services agreement resources.

**OIG Analysis:** This recommendation is **resolved** and **open** pending implementation of the Medical Classification System.

## Additional Information Can Provide Assistance in Determining Detainees' Mental Health Care Needs

Mentally ill aliens enter ICE custody through either direct apprehension by ICE or Customs and Border Protection (CBP), or ICE programs that identify those already held in local, state, and federal jails and prisons. Enforcement and Removal Operations determines whether and where to detain an individual and transfers detainees among its detention facilities. Medical personnel use intake screenings to identify incoming detainees' mental health concerns and make referrals to mental health providers. However, information that could provide assistance with the intake and transfers of mentally ill detainees is not always obtained.

### **Intake Process Should Expand Data Collection Requirements**

ICE policy advises field officers to use discretion when apprehending aliens with a severe medical or psychiatric condition that would make detention problematic and removal highly unlikely. As aliens enter ICE custody, the agency identifies or documents any mental health concerns as follows:

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- An apprehending officer or agent documents information regarding an alien's mental state, usually on Form I-213, *Record of Deportable Alien/Inadmissible Alien*, used to record an encounter with an alien.
  - Mental health records from a non-ICE detention center or institution may be considered, if available, and
  - Intake screenings are conducted by medical staff at the ICE detention center.

Officers' notes on Form I-213 can identify a detainee's potential mental health condition and medication. However, this is an informal method for identifying detainees with mental health concerns because mentally ill individuals can be difficult or impossible to identify, and apprehending officers may not be trained to recognize signs of mental illness. Only 10 of 85 A-files we reviewed for detainees with mental illnesses had apprehending officers' notes related to their mental health observations.

Mental health records from a non-ICE detention center or institution are more reliable than Form I-213. However, medical staff in ICE detention facilities cannot always obtain these records for several reasons:

- **Records are not requested.** In some cases, ICE does not obtain the detainee's medical records before he or she arrives because ICE officers do not ask for health information. One medical administrator said that apprehension officers could be better trained and do not always understand how the apprehension of mentally ill detainees affects the agency.
- **Requests for records are refused.** After detainees arrive, clinical staff at an ICE facility request medical records. However, local jails or prisons transferring individuals into ICE custody refuse to release medical information due to privacy concerns.

ICE cannot demand mental health records from non-ICE facilities. However, ICE staff noted that efforts by some health service administrators and clinical directors to develop relationships with local facilities have helped encourage them to submit medical information for incoming detainees.

The absence of a detainees' prior mental health information can result in an impediment to continuity of care. In addition, mental

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health providers must be more dependent on a detainee's willingness and ability to accurately report on their health condition and related medications for use in making health care decisions.

### **Additional Data Collection Could Facilitate Mental Health Diagnosis and Treatment**

ICE's October 2009 ODPF report stated that ICE screening methods did not lend themselves to early identification and intervention for detainees with mental health concerns. The types of information collected during mental health screening varied between non-IHSC facilities and IHSC-staffed facilities. The following represents examples of information obtained to facilitate mental health care treatment.

- **Personal Information:** Intake screening at one detention facility we visited considers detainees' answers to questions about their personal circumstances and family history in the context of mental health. This approach was preferred by the facility's medical staff over IHSC's form and medical staff re-screened detainees already screened by IHSC.
- **Criminal History:** Several clinicians mentioned the value of knowing a mentally ill detainee's criminal history, which is not included on IHSC's screening form. A questionnaire at a contract detention facility inquired about a detainee's history of violence and criminal history. We were told that the questions pertaining to criminal history are included to maintain American Correctional Association accreditation. According to health care providers, including questions about a detainee's criminal history and violent behavior can help in some cases to tend to identify mental illness and inform providers' diagnosis. While ICE gathers detainees' criminal charges, it is not included in their medical files.

### **Conclusion**

As ICE apprehends more aliens from local and state jails and prisons, its ability to obtain mental health information from non-ICE facilities becomes increasingly important. Ensuring that apprehending officers make appropriate and timely requests for mental health records from local and state institutions can increase the likelihood that facilities will comply. Also, by routinely collecting data from a broader spectrum of alternate sources,

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clinicians could prepare a more complete assessment of detainees' mental health conditions.

## **Recommendations**

We recommend that Immigration and Customs Enforcement:

**Recommendation #9:** Direct field offices to request mental health information for incarcerated aliens before they arrive in detention, and establish a requirement for sending the information to medical personnel before detainees arrive in ICE detention.

**Recommendation #10:** Identify additional data that could be collected as part of the mental health screening process that would assist in determining the health history and treatment needed for incoming detainees with mental illnesses.

## **Management Comments and OIG Analysis**

**ICE Response:** ICE concurred with Recommendation #9 to the extent operationally viable.

ICE believes that a few issues must be considered prior to implementing this recommendation. As noted in the Draft Report, some jails and prisons will not release medical or mental health information prior to transfer of aliens into ICE custody. ICE lacks the authority to demand such information from non ICE-owned facilities. However, IHSC liaison may bridge this gap. Also, there are large numbers of aliens transferred into ICE custody where there is insufficient time to access the mental health information prior to the alien entering ICE custody.

ICE will create a policy requiring ICE officers to request medical/mental information before they arrive in ICE detention. This policy will contain the following protocols:

- In cases where medical reports indicate significant mental health issues, Field Office Directors will be required to notify Headquarters IHSC prior to accepting the alien into ICE custody.
- Within 24 hours of receiving requests, IHSC Field Case Managers will provide the Field Office Director with (1) assessments of whether ICE has the resources to properly

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house aliens, and (2) the facility aliens should be detained based on clinical need.

- The Field Office Directors will be reminded to exercise prosecutorial discretion and cancel immigration detainers or elevate cases to Enforcement and Removal Operations Headquarters when necessary, and as appropriate.

**OIG Analysis:** This recommendation is **resolved** and **open** pending the establishment and implementation of new policy protocols for field offices to request mental health information for incarcerated detainee, and send to medical personnel before detainees arrive in detention.

**ICE Response:** ICE concurred with Recommendation #10.

IHSC is in the process of revising IHSC Form 795A, Intake Screening Form, to include additional information that would assist in determining the health history and treatment needed for incoming detainees with mental illnesses. The form is currently being routed through the approval process, and should be fully implemented soon.

**OIG Analysis:** This recommendation is **resolved** and **open** pending implementation of the new intake form.

## **ICE Needs to Designate Decision-making Responsibility for Transferring Mentally Ill Detainees**

ICE field offices maintain responsibility for coordinating detainee transfers. Coordination and interaction among medical personnel, detention facility staff, attorneys, and ICE headquarters affects the detention facilities' ability to transfer a detainee for mental health reasons. Clarification regarding the responsibility for approving mental health transfers and identifying facilities to send detainees is needed among ICE and IHSC personnel at headquarters and in the field.

Specific responsibility for making the final decision regarding transfers and placement has not been assigned. As a result, significant delays have occurred in transfers for mentally ill detainees, as decisions are being made in the absence of a process or a designated decision-making official.

At many facilities operating under an intergovernmental services agreement, ICE officers do not have local IHSC staff to help evaluate mental health cases, and make expedient decisions regarding their

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placement. In one intergovernmental services agreement facility that we visited, IHSC staff assigned to the facility could not assist ICE with case management because that IHSC team was only responsible for screening, and could not advise ICE on transfers.

The Performance Based National Detention Standards instruct field offices to coordinate transfers, and only involve headquarters as a last resort. Without any form of oversight or intermediary, an Enforcement and Removal Operations field office can deny any request from another Enforcement and Removal Operations field office to transfer a mentally ill detainee. ICE staff reported that Enforcement and Removal Operations field offices were not always willing to receive mental health transfers since the detention, removal, or release of mentally ill detainees can be very complicated and difficult to manage.

IHSC officials explained that transfers for medical or mental health reasons can take weeks or months to coordinate with medical and ICE staff to find available space. In more serious cases, IHSC administrators and clinicians said that ICE risks detainees deteriorating when the detainees are not transferred to facilities that are able to provide needed medical services. Also, when the time frame for arranging the transfer is extensive, detainees who are cleared and ready for transfer may decompensate, and require treatment at a local emergency room.

To facilitate the timely transfer of detainees, ICE should designate a central authority with primary responsibility for detainee transfer decisions. Such actions would encourage a more cohesive relationship among field offices regarding the transfer of detainees. In addition, it would also minimize delays in the transfer process that could otherwise result in diminished mental health care for detainees.

In FY 2010, ICE's Office of Professional Responsibility recommended that ICE station medical personnel in detention facilities to help provide additional oversight. Such a move would support IHSC's position as ICE's medical authority and help it acquire greater oversight for individual mental health cases. Also, an ICE official suggested centralizing authority for making decisions regarding detainee transfers, to limit field offices ability to refuse to accept a detainee based on the facility requesting the transfer.

#### Information Sharing for Internal Transfers Can Improve

Effective information sharing among ICE facilities helps ensure continuity of care. ICE's Performance Based National Detention Standards prescribe notification and coordination procedures among facilities transferring and accepting ICE detainees. The

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transferring facility is responsible for preparing the detainee and required documents, which include a medical transfer summary and records. ICE must notify the receiving facility sufficiently in advance, which should include the medical staff. Since the medical staff must determine and provide for any associated medical needs, notification is integral to allow the medical staff to research the illness to ensure proper treatment.

The detention standards require providing advanced notice of a mentally ill detainee's arrival and ensuring his or her mental health records are sent.

- **Advanced Notice** - ICE Detention Standards require medical providers to be notified in advance of incoming detainees with health conditions to ensure the facility has the appropriate resources available. One IHSC official said that before moving a detainee, IHSC headquarters has teleconferences with health service administrators, field office directors, and physicians. However, ICE personnel at seven sites told us that they receive minimal advanced notice on detainee transfers. Three other HSAs stated that they were usually notified.

Mental health providers said that advanced notice would be helpful in developing a continuity of care plan, coordinating local providers, and preparing the detainee for travel by maintaining medication levels.

- **Medical Records** - ICE Detention Standards require medical summaries and official health records during transfers. In addition to receiving verbal notification regarding a detainee transfer, ICE policy recognizes the importance of having medical records or transfer summaries. Detainees transferred between IHSC-staffed facilities must have medical records and a completed transfer summary, which includes information about the detainee's current mental status and medication instructions. However, detainees transferring from facilities operating under an intergovernmental service agreement are only required to have a transfer summary.

An IHSC official said receiving medical records would be cost-effective because the receiving facility could avoid duplicate testing.

IHSC personnel said that a major challenge is maintaining continuity of care for detainees entering a facility without information. An IHSC official acknowledged problems which

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occur when a detainee changes facilities, and the division was working on improving the process.

### **Conclusion**

ICE needs to ensure that its medical authority has involvement in field decisions throughout all phases of the detention process. This will strengthen IHSC medical authority, and facilitate case management and information exchange.

### **Recommendations**

We recommend that Immigration and Customs Enforcement:

**Recommendation #11:** Designate a central authority for directing transfers for mentally ill detainees.

**Recommendation #12:** Assign IHSC case managers in field positions to provide direct oversight and advice to ICE field and sub-offices, and expedite transfers of mentally ill detainees.

### **Management Comments and OIG Analysis**

**ICE Response:** ICE concurred with Recommendation #11.

ICE indicates that Enforcement and Removal Operations is the central authority for directing the transfer of all detainees in ICE custody, and IHSC Social Services Branch provides recommendations for the transfer of mentally ill detainees.

**OIG Analysis:** This recommendation is **resolved** and **open** pending our receipt of documentation designating Enforcement and Removal Operations as the central authority for directing the transfer of all detainees in ICE custody.

**ICE Response:** ICE concurred with Recommendation #12.

ICE has partially implemented this recommendation through the assignment of Field Case Managers to 12 of the 24 Enforcement and Removal Operations Field Offices. It is anticipated that full staffing of Enforcement and Removal Operations Field Offices will be completed during FY 2011.

**OIG Analysis:** This recommendation is **resolved** and **open** pending our receipt of documentation showing the specific duties



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and responsibilities of the newly established Field Case Manager positions, and ICE's completion of the recruitment and assignment of the 24 Field Case Managers.

## **Mental Health Conditions Can Hamper Legal Proceedings**

The Executive Office of Immigration Review (EOIR), within the Department of Justice, administers the U.S. immigration court system. EOIR adjudicates civil immigration cases through proceedings to determine immigrants' removability from the country. As appropriate, some immigrants in detention are placed in removal proceedings in immigration court where ICE attorneys will prosecute them if they are unlawfully present. Certain detainees may be released during immigration proceedings as appropriate by law. However, with some exceptions, ICE must release or remove detainees once proceedings have ended.

A detainee's mental illnesses can hinder the government's ability to resolve an immigration case when the detainee cannot participate in proceedings because of his or her condition.

### ICE Needs Protocols For Relaying Mental Health Information via Alien Files

ICE attorneys cited an ethical duty to acknowledge to the court any suspected or identified mental health condition that would affect mental competency. However, a process does not exist for formally identifying such cases. ICE attorneys said that a respondent's mental health problems are usually discovered either through their behavior in court or in information received from Enforcement and Removal Operations in documents, in the Alien registration files, or in conversation with an Enforcement and Removal Operations officer.

Documentation of a mental illness offers a reliable and descriptive source; however, such information is not always available in a mentally ill respondent's Alien registration file. In the 85 Alien registration files that we reviewed, 44 contained evidence of a detainee's mental health condition. Types of documentation included records of the alien's statements to apprehending officers, medical records from previous jails or prisons, and records of hospitalization. Some files included no information even though the respondent had been diagnosed with a mental health condition while in ICE detention. There was no consistency in the information included in the Alien registration files. In addition, psychiatric alerts, specifically IHSC Form 834, were used rarely.

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ICE needs to ensure that mental health information that attorneys should be privy to is included in the Alien registration files, and that attorneys are notified accordingly. Protocols that consider privacy concerns should be taken into account when developing information sharing procedures for detainees' mental health information.

### ICE Needs to Provide Guidance on Custodians for Incompetent Respondents

Regulations allow qualified individuals to appear in immigration court on behalf of respondents when the respondent is unable to be present due to mental incompetency.<sup>9</sup> Regulations also permit the respondent's custodian to appear when another qualified individual cannot be found or fails or refuses to attend.<sup>10</sup> When Enforcement and Removal Operations and immigration judges cannot find family, friends, or *pro bono* attorneys to appear with the respondent, a custodian is asked to appear in court with the respondent. In these cases, however, there is no guidance or finalized direction from ICE to its attorneys or officers on how to use custodians. ICE's Office of Principal Legal Advisor (OPLA) is currently working to provide such guidance.

Attorneys we interviewed in five of the seven regions we visited reported that they have used custodians for mentally incompetent respondents. Among the regions that have used custodians, the role has been assumed by ICE field office directors, assistant field office directors, or an Enforcement and Removal Operations officer, or less commonly a warden or a correctional officer representing the warden. However, attorneys across all seven regions expressed misgivings about the practice, and cited a potential conflict of interest in having Enforcement and Removal Operations personnel participate in removal proceedings.

Regulations restrict judges from accepting an admission of removability from officers at a respondent's detention facility.<sup>11</sup> According to ICE attorneys, when officers act as custodians for mentally incompetent respondents, the officers are instructed to deny charges on behalf of the respondent. In these cases, ICE attorneys must establish alienage to the judge's satisfaction based on documentary evidence.

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<sup>9</sup> 8 CFR § 1240.4. These include an attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear.

<sup>10</sup> 8 CFR § 1240.4.

<sup>11</sup> 8 CFR § 1240.10(c).

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ICE attorneys and staff need clarification regarding how to handle custodial issues. Officers serving as custodians should be guided by a formal policy and structure for handling these cases.

## **Recommendations**

We recommend that Immigration and Customs Enforcement:

**Recommendation #13:** Establish protocols for retaining and sharing mental health information in Alien registration files. At a minimum, protocols should include: requirements for documenting detainees' mental health status to be used by Enforcement and Removal Operations officers and ICE attorneys; and, guidance for ensuring detainees' privacy rights.

**Recommendation #14:** Publish guidance on eligible custodians.

**Recommendation #15:** Publish internal procedures for handling cases where custodians must be used for mentally incompetent detainees.

## **Management Comments and OIG Analysis**

**ICE Response:** ICE concurred with Recommendation #13.

ICE will determine what medical and mental health information can be placed in Alien registration files that do not violate Health Insurance Portability and Accountability Act guidelines.

ICE notes that generally, privacy considerations limit, and in some cases, prohibit, the retention of medical information in Alien registration files. Medical information may, however, be introduced into the immigration court record. More specifically, either the alien or their counsel may introduce this information into the court record for a variety of reasons. ICE counsel may also introduce medical information into the record to enable the immigration judge to make a legal finding as to the alien's competency to participate in immigration proceedings. Of note, however, the alien's medical information is not required for an immigration judge to make such a determination. Only after that medical information has been introduced into the court's record, may that same information be retained in the Alien registration file.

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ICE acknowledged that our report has not drawn a clear distinction between legal and medical determinations, which is an important consideration when discussing matters involving aliens with mental health issues. A person who has a mental illness or disability is not necessarily legally incompetent to participate in immigration proceedings. Regardless of the circumstances leading to a finding that an alien is mentally incompetent, the legal determination is made by an Immigration Judge based on an assessment of the facts and circumstances of each case; it is not a medical determination. Consequently, in the absence of other credible relevant information, if an unrepresented alien has a mental health illness, but nevertheless appears to understand and respond to questions asked by the immigration judge, the judge can find the alien to be mentally competent for the purpose of removal proceedings.

**OIG Analysis:** This recommendation will remain **unresolved** and **open** pending ICE's decision on whether to establish protocols for retaining and sharing mental health information in Alien registration files.

**ICE Response:** ICE concurred with Recommendation #14.

ICE's OPLA is considering whether to issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented and in removal proceedings. Such guidance may include a discussion of eligibility and how a government attorney should handle custodial appearances before the immigration court.

**OIG Analysis:** This recommendation will remain **unresolved** and **open** pending OPLA's decision on whether to issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented, and in removal proceedings.

**ICE Response:** ICE concurred with Recommendation #15.

OPLA is considering whether to issue guidance addressing aliens who are or may be mentally incompetent, unrepresented and in removal proceedings. Such guidance may include a discussion of how a government attorney should handle custodial appearances before the immigration court.

**OIG Analysis:** This recommendation will remain **unresolved** and **open** pending OPLA's decision to issue guidance addressing aliens who are or may be mentally incompetent, unrepresented, and in removal proceedings.

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## **Private Facilities Can Fill Critical Roles in Providing Mental Health Care for Detainees with Mental Illness**

ICE faces major challenges in managing detainees with mental health concerns who are unable to be released to the community while continuing through immigration proceedings, removed to their country of origin, or released into the community when ICE cannot effect removal.

These cases place ICE in a difficult position since ICE cannot hold detainees indefinitely.<sup>12</sup> However, their release might not be practicable while options for alternatives to detention are limited. ICE has encountered difficulties in accommodating acute mental health patients, in part, because no dedicated mental health facility exists within its detention network. Most of ICE's detention facilities are not equipped to handle detainees with persistent and acute mental illnesses.

To address cases that require attention beyond those services available through ICE or local providers, ICE has relied on a privately-owned detention healthcare facility. The facility is a valuable resource for ICE since it is the only nationally available site that is capable of treating long-term mentally ill and acutely psychotic detainees.

IHSC decides which detainees to transfer to this facility. However, guidelines which outline the criteria for detainees that should be sent to this facility and a process for transferring detainees have not been established. According to ICE officials, it can take from several weeks to a few months to arrange a detainee's transfer to the facility, and how detainees are approved or denied placement is unclear.

IHSC officials said that ICE only uses this specialty facility for exceptionally difficult mental health and chronically ill medical detainees due to cost considerations. Some IHSC administrators commented that a detainee with a chronic mental health condition, who is unable to be among other detainees and cannot be deported or released to the community, is a candidate for such a transfer. According to other ICE and IHSC employees, when IHSC receives a request for transfer and information on detainees' mental health diagnoses, it tries to place them at a less costly facility before considering the specialty facility.

Transfers out of this facility can also be problematic. Since this specialty facility has a reputation for treating detainees with the most serious cases of mental illness, it is difficult to return the detainee to their former ICE

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<sup>12</sup> See, for example, *Zadvydas v. Davis*, 533 U.S. 678, 690, 699, 701 (2001) (holding that once removal is no longer reasonably foreseeable, continued detention is not authorized by the post-removal period detention statute; the U.S. may hold aliens only for a period "reasonably necessary" to secure removal; and a statute permitting indefinite detention of an alien would raise a "serious constitutional problem").

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facility when they have undergone treatment and received medical clearance.

Enforcement and Removal Operations personnel commented that some ICE facilities do not accept returning detainees because of facilities' inability to sustain mental health treatment. ICE officers also said that Enforcement and Removal Operations field offices may be reluctant to put a challenging mental health case back on its docket. These cases are demanding since a majority of detainees who are sent to this specialty facility are under a post final order of removal and are difficult to deport.

### **Conclusion**

Since ICE field offices often face limited options for community placement or state-run mental health facilities, mentally ill detainees can potentially remain longer in detention. More proactive use of private facilities could help alleviate the prolonged detention because of more effective mental health care.

### **Recommendation**

We recommend that Immigration and Customs Enforcement:

**Recommendation #16:** Develop and implement guidance that outlines the process and criteria for using specialty facilities.

### **Management Comments and OIG Analysis**

**ICE Response:** ICE concurred with Recommendation #16.

ICE will develop and implement guidance that outlines the process and criteria for using specialty facilities.

**OIG Analysis:** This recommendation is **resolved** and **open** pending implementation of guidance that outlines the process and criteria for using specialty facilities.

### **Evolving Clinical Practices May Offer Greater Flexibility to Support Mental Health Care Needs**

IHSC managers and field personnel have implemented several approaches to supplement mental health care as follows:

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**Mental Health Nurses:** IHSC designated a psychiatric mental health nurse position at one of its 18 detention facilities. A psychiatric mental health nurse administers psychiatric medication; communicates with mentally ill patients about their medication and participation in recreation activities; and helps to manage acutely psychotic or aggressive detainees. However, at three facilities we visited, nurses who were not trained in psychiatric mental health were assigned to perform these duties. A clinical director said that the needs of mental health patients require non-psychiatric nurses to extend beyond their capabilities. Staff at several IHSC facilities said psychiatric mental health nurses are needed as their specialized education and experience in mental health care adds much value.

**Tele-psychiatry:** IHSC is using tele-psychiatry, which allows off-site psychiatrists to diagnose mental illnesses and prescribe medication after an interview via a tele-video connection. While IHSC staff preferred on-site psychiatrists, tele-psychiatry can be useful in locations without easy access to a psychiatrist.

Some facilities have a tele-psychiatry connection and a psychiatrist. One facility had a psychiatrist on staff, and paid for tele-psychiatry connections that were not used. Other facilities have acquired tele-psychiatry equipment without connectivity.

IHSC officials believe that current staffing shortages make tele-psychiatry a viable alternative for diagnosing and treating mental illness. However, IHSC must establish and implement a process to ensure the efficient and economic use of tele-psychiatry.

## **Recommendations**

We recommend that Immigration and Customs Enforcement:

**Recommendation #17:** Include the use of psychiatric-mental health nurses in formal staffing plans.

**Recommendation #18:** Expand the use of tele-psychiatry to those facilities located in areas with limited access to psychiatrists.

**Recommendation #19:** Establish procedures to ensure that tele-psychiatry is used efficiently. At a minimum, this should include a review of current tele-psychiatry connections, equipment, and any overlaps with existing mental health services.

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## Management Comments and OIG Analysis

**ICE Response:** ICE concurred with Recommendation #17.

To enhance the effectiveness of the Mental Health Program within IHSC-staffed medical facilities, senior management and psychiatric subject matter experts are developing an organization-wide training program to prepare registered nurses with the training and skills to address the specific mental health needs of the detainees. Development of the training program and coordination with external programs will be completed by the end of calendar year 2011.

ICE requests that OIG consider this recommendation resolved and open pending implementation of the staffing and training plan.

**OIG Analysis:** This recommendation is **resolved and open** pending the development and implementation of a nurse's training program to address specific mental health needs of the detained population.

**ICE Response:** ICE concurred with Recommendation #18.

IHSC has established a position, and hired a Tele-Medicine Branch Chief, who is currently evaluating and expanding this capability.

ICE requests that OIG consider this recommendation resolved and open pending completion of the evaluation and expansion plan by the Tele-Medicine Branch Chief.

**OIG Analysis:** This recommendation will remain **resolved and open** pending completion of the evaluation, and our review of the tele-psychiatry expansion plan to facilities located in areas with limited access to psychiatrists.

**ICE Response:** ICE concurred with Recommendation #19.

IHSC began development of the policy and procedures necessary for tele-psychiatry prior to the completion of this report.

**OIG Analysis:** This recommendation is **resolved and open** pending completion of the policy and procedures to ensure the efficient use of tele-psychiatry.



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## Electronic Medical Records Have Not Been Implemented

In our report, *ICE Policies Related to Detainee Deaths and the Oversight of Immigration Detention Facilities*, we concluded that electronic medical records would create a more efficient system for transferring and accessing medical records, which would result in a rapid assessment of medical needs and improve detainee safety.<sup>13</sup> We recommended that ICE expedite the development of electronic medical records. To date, ICE continues to develop an electronic medical records system scheduled for implementation by 2012 or 2013. Until that time, ICE relies on a record keeping system of paper and computer-based records.

Of the facilities we visited, five use paper records, while three employ some form of electronic records. Among the IHSC-staffed facilities we visited, two use electronic files while four are still using paper records. ICE's current system, CaseTrakker, is not used at all facilities. Some, however, access the "Quick Print" feature of CaseTrakker, which permits a facility to print a detainee's entire medical record.

Implementing electronic medical records would facilitate communication of medical information in detention facilities. One IHSC official said accessing the file electronically would allow the receiving facility to know about and prepare for the detainee entering their facility ahead of time. Among the providers who were still working from paper files, some noted that they were not able to locate them quickly because they were circulating throughout the clinic.

Currently, an IHSC working group is attempting to develop and implement an electronic medical records system. According to one participant, the group has been working to define the system's purpose and capabilities, and identify ways to transition to a new system. We continue to emphasize the importance of implementing an electronic medical records system, which will help ICE address challenges in transferring and accessing detainee medical records in IHSC facilities.

### Recommendation

We recommend that Immigration and Customs Enforcement:

**Recommendation #20:** Expedite efforts to develop and implement an electronic medical record system.

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<sup>13</sup> [http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_08-52\\_Jun08.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_08-52_Jun08.pdf).

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## Management Comments and OIG Analysis

**ICE Response:** ICE concurred with Recommendation #20.

IHSC has begun developing the requirements for an electronic medical record system. ICE published a Request for Information to collect information on contractors with capabilities to develop the system and have held an industry day to gather additional information and respond to comments. The Statement of Work for an electronic medical record system is in the final stages of development. However, given the amount of work that remains to be done, ICE does not believe an electronic medical record system will be deployed by the end of calendar year 2011.

**OIG Analysis:** This recommendation is **resolved** and **open** pending ICE's implementation of an electronic medical record system.

## Appendix A

### Purpose, Scope, and Methodology

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We conducted this review to determine ICE's ability to manage cases of detained aliens with mental health conditions. Our review included three objectives:

- Determine the utility of ICE's guidance and training efforts relating to the treatment of detainees with mental health conditions,
- Determine ICE's ability to identify detainees with mental health conditions and provide access to appropriate treatment and detention settings, and
- Determine what provisions exist to help assure detainees with mental health conditions are granted expedient removal or release.

We conducted fieldwork from February 2010 to July 2010 in Washington, D.C.; Columbia, South Carolina; Miami, Florida; Phoenix, Arizona; York, Pennsylvania; and Harlingen, Texas.

We conducted more than 120 interviews with personnel from ICE headquarters, field offices, and detention facilities. Our interviewees included policymakers, managers, deportation and detention officers, medical personnel, attorneys, and representatives of immigrant advocacy groups. We also held telephonic interviews with ICE personnel, including IHSC staff at 11 locations throughout the country.

We toured eight ICE detention facilities and two private facilities that care for ICE detainees with mental health conditions. The facilities visited included service processing centers, contract detention facilities, and facilities operating under an intergovernmental service agreement, as well as facilities with IHSC staff and those with other medical providers.

We analyzed documentary and numerical data on ICE policies regarding detainees with mental health conditions. We reviewed emerging data on ICE's detention reform initiative. We conducted a file review of alien and medical files of detainees with diagnosed mental illnesses. Our samples were judgmentally selected to acquire a range of mental health diagnoses at each site. Our sample is not statistically representative of the detained population.

This review was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the *Quality*

**Appendix A**  
**Purpose, Scope, and Methodology**

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*Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

**Appendix B**  
**Management Comments to the Draft Report**

*Office of the Chief Financial Officer*

**U.S. Department of Homeland Security**  
500 12th Street, SW  
Washington, D.C. 20536



**U.S. Immigration  
and Customs  
Enforcement**

January 11, 2011

MEMORANDUM FOR: Carlton I. Mann  
Assistant Inspector General for Inspections  
Office of Inspector General

FROM: Radha C. Sekar  
Chief Financial Officer  
U.S. Immigration and Customs Enforcement

SUBJECT: Comments to OIG Draft Report "Management of Mental Health Cases in Immigration Detention – For Official Use Only (FOUO)", dated November 17, 2010

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the draft report.

ICE concurs with all of the recommendations and has already begun to correct its management of mental health cases.

Should you have any questions or concerns, please contact Michael Moy, OIG Portfolio Manager at (202) 732-6263 or by e-mail at [Michael.Moy@dhs.gov](mailto:Michael.Moy@dhs.gov).

Attachment

[www.ice.gov](http://www.ice.gov)

## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

**Recommendation #1:** Establish and implement DIHS’s role in monitoring and providing oversight to all ICE detention facilities. At a minimum, this should include DIHS’s responsibility for monitoring and tracking the mental health condition of ICE’s detained population.

**ICE Response:** ICE Concur. DIHS is now called ICE Health Service Corps (IHSC). ICE’s IHSC has already established new Field Case Managers (FCMs) positions to provide medically related consultation to each of the 24 ERO Field Office Directors (FODs) and monitor care provided to detainees in non-IHSC staffed facilities, with particular emphasis on mental health issues. As of December 1, 2010, IHSC has FCMs assigned to 12 ERO Field Office locations providing critical support and is proceeding to recruit to fill the remaining 12 Field Offices in FY11.

ICE requests that OIG consider this recommendation resolved and open, pending completion of the recruitment of the 24 Field Case Managers.

**Recommendation #2:** Prioritize hiring a permanent director and mental health staff. This should include maximizing the use of available hiring incentives, and minimizing processing delays to the extent practicable.

**ICE Response:** ICE Concur. Interviews for a permanent Senior Executive Service (SES) Director position have been completed and final selection is pending. However, remote geographic locations impact IHSC’s ability to recruit or retain qualified staff at certain facilities, particularly psychiatrists. To mitigate this problem, IHSC is exploring the use of Title 38 authority and partnering with the Veteran’s Administration to help fill vacancies.

ICE requests that OIG consider this recommendation resolved and open, pending completion of the recruitment of the permanent Director.

**Recommendation #3:** Establish and implement a system that aligns staffing levels at each facility with their respective mental health caseload.

**ICE Response:** ICE Concur. ICE has already begun to analyze appropriate staffing levels internally and has implemented a system to align staffing levels through submission and action of the priority staffing plan. Once analysis and approval of the staffing plan are complete, IHSC will fully implement realignment based on each facilities mental health caseload. Full implementation of the priority staffing plan is currently subject to available funding.

ICE requests that OIG consider this recommendation resolved and open, pending approval of the staffing plan.

## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

**Recommendation #4:** Place detainees with mental illnesses in facilities that have necessary space and resources available to provide needed services. At a minimum, such facilities should maintain appropriate areas for specialized treatment, and be accessible to community providers.

**ICE Response:** ICE concurs. IHSC and ERO Field Offices have conducted an initial analysis of IHSC and non-IHSC staffed facilities to identify detainees with active acute or sub-acute diagnosis. Once this analysis has been finalized, recommendations will be provided regarding appropriate placement based on availability of care. Prospectively, IHSC and ERO HQ Field Operations are currently developing a process to identify and report detainees with acute or sub-acute diagnosis. IHSC has taken steps to increase access to available mental health resources and facilities throughout the country. This report and tracking system will be focused on identifying the patient’s mental health needs and placing them in a facility consistent with providing the best possible care based on their mental health diagnosis and clinical needs.

ICE requests that OIG consider this recommendation resolved and open, pending completion of the analysis of all facilities, and the establishment of a process to identify, track, and placement of detainees with a mental health diagnosis.

**Recommendation #5:** Establish time limits for holding mentally ill detainees in segregation outside of medical units, and identify recourses for detention facilities when segregated detainees are approaching set time limits.

**ICE Response:** ICE concurs. Those detainees with mental health issues housed in segregation units outside of medical units are reassessed by appropriate health care personnel on a daily basis. Any modifications in treatment plan and conditions of confinement are made at that time, if appropriate. IHSC is in the final process of completing the Medical Classification System, which will also address this recommendation with regard to identification and placement of detainees based on medical and mental health need and diagnosis. The Medical Classification System is comprised of two components: identification of the health care needs of the detainee and identification of the health care resources that are available in the detention facility, and the immediate outside health care community surrounding the facility. Detainee placement will be contingent on the needs of the detainee and the resources available at/near the facility. ICE will review industry standards and consult health care authorities in an effort to establish time limits for holding mentally ill detainees in segregation.

ICE requests that OIG consider this recommendation resolved and open, pending deployment of the Medical Classification System.

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## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

**Recommendation #6:** Establish procedures for timely evaluating and transferring detainees requiring separation or isolation for mental health conditions, but who are in facilities that cannot accommodate such needs.

**ICE Response:** ICE concurs. IHSC will establish procedures to identify detainees with mental health conditions requiring transfer to appropriate ICE facilities or to contracted care facilities. ERO will consider IHSC’s recommendation and, coupled with conditions of confinement, make a decision on the best location to house the detainee to provide appropriate care. ICE will incorporate this requirement in the new Medical Classification System, which will identify the type of services available at each of ICE’s facilities.

ICE requests that OIG consider this recommendation resolved and open, pending deployment of the Medical Classification System.

**Recommendation #7:** Identify detention facility sites with minimal or no community resources, and develop IHSC mental health resources as needed to ensure the availability of proper care.

**ICE Response:** ICE concurs. Development and implementation of the Medical Classification system will address this recommendation once implemented as outlined in the response to recommendation

ICE requests that OIG consider this recommendation resolved and open, pending deployment of the Medical Classification System.

**Recommendation #8:** Establish a classification system for detention facilities that takes into consideration the facilities’ ability to handle detainees with varying mental health needs.

**ICE Response:** ICE concurs. Current internal procedures match the capabilities of IHSC staffed facilities with patient needs. The Medical Classification System, as explained in Response #5, is in the final stages of development and is scheduled for implementation, and will further expand this capability include available resources in the IGSAAs.

ICE requests that OIG consider this recommendation resolved and open, pending deployment of the Medical Classification System.

**Recommendation #9:** Direct field offices to request mental health information for incarcerated aliens before they arrive in detention, and establish a requirement for sending the information to medical personnel before detainees arrive in ICE detention.

**ICE Response:** ICE concurs to the extent operationally viable. ICE believes that a few issues must be considered prior to implementation. As noted in the Draft Report some jails and prisons



## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

will not release medical or mental health information prior to the transfer of the alien into ICE custody. ICE is not in the position to demand such information from non ICE-owned facilities. However, as indicated in the report, liaison by IHSC may be able bridge this gap. Also, there are large numbers of aliens that are transferred into ICE custody within 24 hours or less from the lodging of an immigration detainer against them. In such cases, there is no time to meaningfully access the mental health information prior to the alien entering ICE custody.

ICE will work to create a policy requiring ICE officers to request medical/mental information before they arrive in ICE detention. This policy will contain the following protocols:

- In cases where medical reports indicating significant mental health issues are obtained, the FOD will be required to notify HQ IHSC prior to accepting the alien into ICE custody.
- IHSC FCMs assigned to ERO Field Offices will provide the FOD, within 24 hour of receiving the request, with an assessment of whether ICE has the resources to properly house the alien and at what facility the alien should be detained based on clinical need.
- The FODs will be reminded of their ability to exercise prosecutorial discretion and cancel immigration detainers or elevate cases to ERO HQ, when necessary and as appropriate.

ICE requests that OIG consider this recommendation resolved and open, pending implementation of the new policy protocols.

**Recommendation #10:** Identify additional data that could be collected as part of the mental health screening process that would assist in determining the health history and treatment needed for incoming detainees with mental illnesses.

**ICE Response:** ICE concurs. IHSC is in the process of revising the IHSC Form 795A, Intake Screening Form to include additional information specific to the recommendation in the report. The form is currently being routed through the approval process and should be fully implemented soon.

ICE requests that OIG consider this recommendation resolved and open, pending implementation of the new intake form.

**Recommendation #11:** Designate a central authority for directing transfers for mentally ill detainees.

## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

**ICE Response:** ICE concurs. ERO is the central authority for transfer of all detainees in ICE custody; IHSC Social Services Branch provides recommendations for transfer of mentally ill detainees to ERO based on medical necessity.

ICE requests that OIG consider this recommendation resolved and closed.

**Recommendation #12:** Assign IHSC case managers in field positions to provide direct oversight and advice to ICE field and sub-offices, and expedite transfers of mentally ill detainees.

**ICE Response:** ICE concurs. ICE has already partially implemented this recommendation through the assignment of FCMs to 12 ERO Field Offices, with 12 additional offices remaining to be staffed. It is anticipated that full staffing of ERO Field Offices will be completed during FY 2011.

ICE requests that OIG consider this recommendation resolved and open, pending completion of the recruitment of the 24 Field Case Managers.

**Recommendation #13:** Establish protocols for retaining and sharing mental health information in A-files. At a minimum, protocols should include: requirements for documenting detainees’ mental health status to be used by ERO officers and ICE attorneys; and, guidance for ensuring detainees’ privacy rights.

**ICE Response:** ICE concurs and will work with the appropriate entities to see what medical/ mental health information might be appropriate for placement in a-files that do not violate HIPAA guidelines. ICE notes that generally, privacy considerations limit, and in some cases, prohibit, the retention of medical information in an Alien registration file (A-File). Medical information may, however, be introduced into the immigration court record. More specifically, either the alien or his/her counsel may introduce this information into the court record for a variety of reasons, including but not limited to as part of a request for immigration benefits under the Immigration and Nationality Act. Likewise, aliens who have previously applied for and adjusted their immigration status to that of a lawful permanent resident before the immigration court or the Department of Homeland Security could have vaccination and physical examination records in their A-file. ICE counsel may also introduce medical information into the record to enable the immigration judge to make a legal finding as to the alien’s competency to participate in immigration proceedings. Of note, however, the alien’s medical information is not required for an immigration judge (IJ) to make such a determination. Only after that medical information has been introduced into the court’s record, though, may that same information be retained in the A-file.

## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

It should be also noted that this report has not drawn a clear distinction between legal and medical determinations, which is an important consideration when discussing matters involving aliens with mental health issues. A person who has a mental illness or disability is not necessarily legally incompetent for purposes of participating in immigration proceedings. Additionally, a person may be incompetent to appear in immigration proceedings for a variety of reasons, not just due to the presence of a mental health condition. For instance, the person may have a cognitive or developmental disability or a drug or alcohol addiction that substantially interferes with their ability to understand and respond to questions during immigration proceedings. Regardless of the circumstances leading to a finding that an alien is mentally incompetent, that legal determination must be made by an Immigration Judge, based upon their assessment of the facts and circumstances of each case; it is not a medical determination. Consequently, in the absence of other credible relevant information, if an unrepresented alien has a mental health illness, but nevertheless appears to understand and respond to questions asked by the immigration judge, an Immigration Judge can find the alien to be mentally competent for the purpose of removal proceedings.

ICE requests that OIG consider this recommendation resolved and open, pending the decision to issue or not issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented, and in removal proceedings.

**Recommendation #14:** Publish guidance on eligible custodians.

**ICE Response:** ICE concurs. ICE’s Office of the Principal Legal Advisor (OPLA) is currently considering whether or not, and in what form, to issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented and in removal proceedings. Such guidance may include a discussion of eligibility and how a government attorney should handle custodial appearances before the immigration court.

ICE requests that OIG consider this recommendation resolved and open, pending the decision to issue or not issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented, and in removal proceedings.

**Recommendation #15:** Publish internal procedures for handling cases where custodians must be used for mentally incompetent detainees.

**ICE Response:** ICE concurs. OPLA is currently considering whether or not, and in what form, to issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented and in removal proceedings. Such guidance may include a discussion of how a government attorney should handle custodial appearances before the immigration court.

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## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

#### “Management of Mental Health Cases in Immigration Detention”

Additionally, ICE notes that generally, privacy considerations limit, and in some cases, prohibit, the retention of medical information in an alien registration file (A-File). Medical information may, however, be introduced into the immigration court record. More specifically, either the alien or his/her counsel may introduce this information into the court record for a variety of reasons, including but not limited to as part of a request for immigration benefits under the Immigration and Nationality Act. Likewise, aliens who have previously applied for and adjusted their immigration status to that of a lawful permanent resident before the immigration court or the Department of Homeland Security could have vaccination and physical examination records in their A-file. ICE counsel may also introduce medical information into the record to enable the immigration judge (IJ) to make a legal finding as to the alien’s competency to participate in immigration proceedings. Of note, however, the alien’s medical information is not required for an IJ to make such a determination. Only after that medical information has been introduced into the court’s record, though, may that same information be retained in the A-file.

ICE requests that OIG consider this recommendation resolved and open, pending the decision to issue or not issue guidance addressing the issue of aliens who are or may be mentally incompetent, unrepresented, and in removal proceedings.

**Recommendation #16:** Develop and implement guidance that outlines the process and criteria for using specialty facilities.

**ICE Response:** ICE concurs. ICE will develop and implement guidance that outlines the process and criteria for using specialty facilities.

ICE requests that OIG consider this recommendation resolved and open, pending implementation of guidance that outlines the process for using specialty facilities.

**Recommendation #17:** Include the use of psychiatric-mental health nurses in formal staffing plans.

**ICE Response:** ICE concurs. In an effort to enhance the effectiveness of the Mental Health Program within IHSC staffed medical facilities, senior management and psychiatric subject matter experts are developing an organization wide training program to prepare Registered Nurses (RN) with the training and skill set to address the specific mental health needs of the detained population. Development of the training program and coordination with external programs will be completed by the end of calendar year 2011.

ICE requests that OIG consider this recommendation resolved and open, pending implementation of the staffing and training plan.

## Appendix B Management Comments to the Draft Report

### U.S. Immigration and Customs Enforcement

#### Responses to OIG Draft Report Recommendations

##### “Management of Mental Health Cases in Immigration Detention”

**Recommendation #18:** Expand the use of tele-psychiatry to those facilities located in areas with limited access to psychiatrists.

**ICE Response:** ICE concurs. IHSC has established and hired a Tele-Medicine Branch Chief, who is currently evaluating and expanding this capability.

ICE requests that OIG consider this recommendation resolved and open, pending completion of the evaluation and expansion plan by the Tele-Medicine Branch Chief

**Recommendation #19:** Establish procedures to ensure that telepsychiatry is used efficiently. At a minimum, this should include a review of current telepsychiatry connections, equipment, and any overlaps with existing mental health services.

**ICE Response:** ICE concurs. IHSC began development of the policy and procedures necessary for telepsychiatry prior to the completion of this report.

ICE requests that OIG consider this recommendation resolved and open, pending completion of the report and policy for telepsychiatry.

**Recommendation #20:** Expedite efforts to develop and implement an EMR system.

**ICE Response:** ICE concurs. IHSC has already begun the process of developing the requirements for an electronic medical record system. We have published a Request for Information to collect information on contractors with capabilities to develop the system and have held an industry day to gather additional information and respond to comments. The Statement of Work for EMR is in the final stages of development and given the amount of work that remains to be done, ICE does not believe an EMR will be deployed by the end of calendar year 2011.

ICE requests that OIG consider this recommendation resolved and open, pending implementation of its electronic medical records system.

**Appendix C**  
**Major Contributors to this Report**

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Deborah Outten-Mills, Chief Inspector  
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Tatyana Martell, Inspector  
Demetrius Moore, Inspector

**Appendix D**  
**Report Distribution**

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