



9.4 PRISONER HEALTH CARE MANAGEMENT

PROPONENT: Prisoner Operations Division (POD)

PURPOSE: This policy directive establishes policy and procedures for the provision and management of health care services to prisoners in the custody of the United States Marshals Service (USMS).

AUTHORITY: The Director derives authority for the care and custody of prisoners from 28 C.F.R. § 0.111 (j), (k) and 18 U.S.C. § 4086. The Director’s authority to manage standards for prisoner health care derives from 18 U.S.C. §§ 4006, 4013, 4241- 4247, and S.142 - Hyde Amendment Codification Act.

CANCELLATION: This policy directive cancels the following: USMS Policy Directives 9.4, *Prisoner Health Care*; 9.27, *Mental Health Services for Prisoners*; 9.28, *Serious or Terminal Illness of a Federal Prisoner*; 9.29, *Medicare Legislation for Prisoner Medical Program*; and 9.30, *Federal prisoner Healthcare Co-Payment Act of 2000*; Publication 100, *Prisoner Health Care Standards*, dated November 2007; and USMS Memoranda *Additional Guidance for Outside Medical Service Procurement*, dated June 18, 2013; *National Managed Care Contract (NMCC)*, dated October 25, 2007; *NMCC Updated*, dated August 14, 2009; *Pilot Project for Prisoner Medical Denials*, dated November 26, 2008; *Prisoner Medical Denials Program*, dated September 14, 2009; *Prisoner Medical Updated*, dated June 14, 2010; *Prisoner Medical Updated*, dated April 6, 2011; *Resumption of Service to the USMS Medical Claims Repricing Function*, dated May 3, 2007; and *USMS District Use of Holdover Detention Facilities and USMS Prisoners with Serious or Chronic Medical Conditions*, dated September 26, 2005.

ADMINISTRATION AND LOGISTICS:

1. Records Management: This operational policy directive document is maintained in accordance with the approved Specific Records Schedule, DAA-0527-2013-0018-0001.
2. This USMS program shall be implemented in accordance with this directive and guidance outlined in USMS Publication 9, *Prisoner Health Care Guidance to Districts*.

APPROVED BY:

 /s/
Donald W. Washington
Director
U.S. Marshals Service

 01/13/2020
Effective Date

Updated Date: 10/18/2021

A. Policy Statements:

1. **Medically Necessary Health Care:**
 - a. All prisoners will receive medically necessary health care services.
 - b. Emergency health care will be provided immediately to prisoners (no pre-authorization is required).
 - c. Federal funds will not be expended for medically unnecessary or unauthorized health care services.
2. **Denial or Deferral of Care:** Only POD/Office of Medical Operations (OMO) authorized health care personnel can deny or defer prisoner medical submissions.
3. (b) (7)(E) will be used to submit prisoner medical submissions and required notifications to POD/OMO.
4. **Preauthorization** must be obtained from POD/OMO for the following:
 - a. Health care services not listed in USMS Publication 9; and
 - b. Prescription medication costs exceeding the monetary threshold outlined in USMS Publication 9.
5. **Mental Health:**
 - a. Court ordered mental health examinations, treatment, and hospitalizations will be conducted per federal statute and any corresponding court order.
 - b. Involuntary administration of psychiatric medication is unauthorized, except when court ordered or in the case of a psychiatric emergency.
 - c. Except in emergencies, detention facilities that provide mental health services to prisoners (inside or outside the facility), including psychiatric and/or psychological evaluation, treatment, and medication, must notify the district prior to delivering any of these services to a USMS prisoner.
 - d. All inside mental health services must be provided to prisoners in accordance with established state or local detention facility policy and procedures, as well as applicable provisions of the Intergovernmental Agreement (IGA).
6. **Informed Consent:** The USMS will not act on behalf of the prisoner in giving informed consent for medical treatment.
7. **Health Care Providers:**
 - a. The USMS retains ultimate control over the selection of health care providers as well as the time and place of any medical and mental health care provided.
 - b. Districts are not required to enter into health care contracts if medical providers are covered by the National Managed Care Contract (NMCC) or in cases where the detention facility arranges USMS prisoner medical care. Districts are required to enter into contracts for prisoner medical care if neither of the above circumstances apply.
8. **Payment of Medical Care:**

- a. **Medicare Rates:** The rates that the USMS pays for prisoner medical services may not exceed the Medicare rate for the services in accordance with the provisions of 18 U.S.C. § 4006.
 - b. **Personal Funds:**
 - 1) Prisoners may not use personal funds or personal health insurance to purchase health care services not authorized by POD/OMO. However, for health care services approved by POD/OMO, the USMS may use a prisoner's personal health insurance to pay for approved health services after consulting with POD/OMO.
 - 2) **Abortion Exception:** Prisoners may use their own personal funds for abortion procedures where federal funding is not authorized.
 - c. **Co-payments:**
 - 1) The USMS will not be responsible for medical co-payments that a state or local government may assess against a USMS prisoner.
 - 2) A summary of the *Federal Prisoner Health Care Co-payment Act of 2000* and co-payment criteria can be found on the POD/OMO Intranet site.
 - d. **Termination of Financial Responsibility:** USMS financial responsibility for USMS prisoner medical care terminates when the prisoner is no longer in USMS custody.
9. **Chronic and Acute Medical Care:**
- a. Prior to transferring prisoners with chronic or acute medical conditions, the district will verify that receiving or holdover facilities can provide appropriate medical care.
 - b. Examples of chronic or acute medical conditions the district should consider before transferring a prisoner to a holdover detention facility can be found on the POD/OMO Intranet site.
10. **Medical Transfers:** Prisoners must be medically cleared prior to movement or transfer.
11. **Exceptions to Policy:** All requests for exceptions to this policy will be sent in memorandum format with the U.S. Marshal's signature to the Assistant Director, POD.

B. Roles and Responsibilities:

- 1. **POD:**
 - a. Establishes and maintains the USMS prisoner health care program;
 - b. Preauthorizes USMS prisoner health care not listed in USMS Publication 9.
 - c. Provides guidance to districts on prisoner medical matters;
 - d. Assists districts in identifying detention facilities that can accommodate USMS prisoners with special medical needs;
 - e. Assists districts in responding to court orders and motions for medical care;

- f. Uses (b) (7)(E) to document all prisoner medical submissions, required notifications, and other relevant prisoner medical information;
- g. Provides support to the Office of General Counsel (OGC) in prisoner medico-legal matters;
- h. Collects and analyzes all prisoner medical request data; and
- i. Develops and maintains procedures, forms, publications, and tools as appropriate to assist the districts in administering policies pertaining to prisoner health care.

2. Districts:

- a. Preauthorize only those health care services listed in USMS Publication 9.
- b. Obtain POD/OMO preauthorization for all health care services not listed in USMS Publication 9 using (b) (7)(E)
- c. Obtain POD/OMO preauthorization before paying for prisoner health care services that exceed Medicare rates;
- d. Report relevant court orders and motions for prisoner health care to POD/OMO for review;
- e. (b) (7)(E)
- f. Use (b) (7)(E) to communicate prisoner medical notifications and PMR information to POD/OMO;
- g. Encourage detention facilities to use medical providers listed in the Preferred Provider Network at the following link: <http://www.hhscustomerservice.com/>;
- h. Inform providers that, in accordance with Federal Law, the USMS pays no more than Medicare rates for prisoner medical services;
- i. Verify, process, and forward medical claims to the USMS NMCC Contractor for re-pricing and payment of claims;
- j. Provide health care facilities and attending physicians immediate written notice terminating USMS financial responsibility when a prisoner is released from USMS custody; and
- k. Ensure that the detention facility completes Form (b) (7)(E) prior to transferring a prisoner.

C. Procedures:

- 1. **Required Notifications:** The district will promptly notify POD/OMO concerning the following medical events using (b) (7)(E) and upload supporting medical documentation to (b) (7)(E) as needed.
 - a. **Motions or Court Orders for Medical Care:**
 - 1) The district will notify POD/OMO of all prisoner medical care related court orders or motions by (b) (7)(E) and attaching the court order or motion to the prisoner medical submission.

- 2) POD/OMO may assist the district in contesting the court order or motion if the medical treatment requested or ordered is not medically necessary or violates USMS prisoner health care policies.
- 3) After these notifications, unless directed otherwise, the district should proceed with fulfilling requirements of the court order or motion.

b. Hospitalization:

- 1) The district will notify POD/OMO of all hospitalizations by checking the (b) (7)(E) [REDACTED]
- 2) The district will update (b) (7)(E) [REDACTED] with the hospital discharge date when it becomes known.

c. Refusal of Care:

- 1) The district will notify POD/OMO if a prisoner refuses care and if that refusal will have a significant impact on the prisoner's health, as determined by the medical provider.
- 2) The district will indicate (b) (7)(E) [REDACTED] what care is being refused.
- 3) The district will ensure the prisoner signs a refusal statement generated by the detention facility or the medical facility as applicable. If the prisoner refuses to sign the refusal statement, the district will ensure the refusal statement has two witness signatures.
- 4) The district will obtain a copy of the signed refusal statement and upload it (b) (7)(E) [REDACTED]

d. Infectious Disease (reportable only):

- 1) The district will notify POD/OMO of reportable cases of infectious disease (e.g., tuberculosis, mumps, measles, chickenpox) as defined by the Centers for Disease Control (CDC) National Notifiable Diseases Surveillance System (NNDSS).
- 2) After notifying POD/OMO, the district will follow the procedures in USMS Policy Directive 9.6, *Infectious Disease Response*.

e. Serious Illness and Terminal Disease:

- 1) The district will notify POD/OMO when a prisoner has a serious illness or terminal disease.
 - a. This notification will indicate the prisoner's diagnosis and symptoms.
 - b. If the illness or disease is terminal then the notification should include the prisoner's estimated life expectancy.
- 2) When POD/OMO has verified that a prisoner has a serious or terminal illness, the district should notify the U.S. Attorney's office, the court, defense counsel, and the next of kin (NOK) of the prisoner's medical condition so a release on bond or self-recognition may be considered.

- a. The NOK or person legally designated by the prisoner will be the person responsible for giving informed consent for the prisoner regarding the provision or withdrawal of medical care.
 - b. In cases where no NOK or legal guardian can be located, the United States Marshal (USM) will request the U.S. Attorney to petition the court to designate someone to act on behalf of the prisoner.
 - c. In no case will the USM act on behalf of the prisoner in giving informed consent.
- 3) For *Do Not Resuscitate* (DNR) decisions, the district will:
- a. Consult the prisoner's NOK or guardian and document their end-of-life or DNR decisions;
 - b. Determine whether the NOK is permitted to visit the prisoner in the hospital; and
 - c. Defer to procedures established by the hospital or other medical providers for handling DNR decisions in the event the NOK cannot be located.

Note: In cases where no NOK or legal guardian can be located, the hospital or other medical care provider is the DNR decision maker, not the district.

f. **Hunger Strike:**

- 1) The district will notify POD/OMO when a prisoner is on a hunger strike as defined by the detention facility.
- 2) The district will update (b) (7)(E) notification with the date the hunger strike ends.

g. **Pregnant Prisoner:**

- 1) The district will notify POD/OMO of a prisoner's pregnancy.
- 2) After notifying POD/OMO, the district will follow the procedures in USMS Policy Directive 9.5, *Pregnant Prisoner Care*.

h. **Abortion Request:**

- 1) The district will notify POD/OMO when a prisoner requests an abortion.
- 2) After notifying POD/OMO, the district will follow the procedures in USMS Policy Directive 9.5.

i. **Serious Mental Health Conditions Requiring Medical Treatment:**

- 1) The district will notify POD/OMO when they become aware a prisoner has a serious mental health condition requiring medical treatment.
- 2) **Court ordered mental health examinations** and associated treatment and hospitalizations will be conducted in accordance with federal statute.

2. **Prisoner Medical Submission Notifications:**

- a. The detention facility will submit USMS prisoner medical submissions to the district.

Note: The district may provide detention facilities with Form (b) (7)(E) to assist with collection of the required prisoner medical submission information ((b) (7)(E) mirrors the prisoner medical submission for ease of data input).

- b. Upon receipt of a prisoner medical submission, the district will:
- 1) Ensure the detention facility's health care provider initiated the prisoner medical submission;
 - 2) Verify the following:
 - a. Prisoner custodianship (USMS);
 - b. Prisoner number; and
 - c. Prisoner judicial status.
 - 3) Review facility contracts or IGAs to determine if the requested medical care should be provided by the detention facility within the cost of the per diem rate; and
 - 4) Ensure the detention facility provided the supporting medical documentation needed for a decision on the prisoner medical submission.

3. **Prisoner Medical Submission Pre-Authorizations:**

- a. If the medical care requested in the prisoner medical submission is listed in USMS Publication 9, the district can pre-authorize the prisoner medical submission without review by POD/OMO and notify the detention facility of the authorization.

- 1) The district will not deny or defer prisoner medical submissions. Only authorized medical personnel in POD/OMO can deny or defer prisoner medical submissions.
- 2) The district is encouraged to upload pre-authorized cases into (b) (7)(E) for tracking purposes.
- 3) The district may request POD/OMO to adjudicate any prisoner medical submission.

- b. The district will obtain POD/OMO pre-approval prior to authorizing prisoner medical care for the following:

- 1) Health care services not listed in USMS Publication 9; and
- 2) Prescription medication costs exceeding a monetary threshold as determined in USMS Publication 9.

4. **Medical and Mental Health Service:**

- a. The detention facility is responsible to ensure that the health care requested is provided once POD/OMO or the district approves the prisoner medical submission.
 - b. Approval of a prisoner medical submission is considered valid until the care cited in the request is provided or until the prisoner is no longer in the custody of the USMS.
 - c. For medical care outside the detention facility, the district will control the time, date, location, and provider.
 - d. The detention facility must seek preauthorization by the USMS for any outside mental health service provided to USMS prisoners other than emergency services.
 - e. The district will notify the U.S. Attorney's office, the court, and defense counsel of the following regarding USMS prisoners:
 1. The need for psychiatric services;
 2. The provision of any psychiatric services without a court order; and
 3. The delivery of emergency mental health services.
 - f. The district will utilize Form (b) (7)(E) to terminate USMS financial responsibility when a prisoner is released from USMS custody.
 - g. The district will ensure the detention facility completes Form (b) (7)(E) prior to transferring a prisoner.
5. Additional information on prisoner health care management can be found on the POD/OMO Intranet.

D. Definitions:

1. **Acute Care:** Medical care used to treat sudden, often unexpected, urgent or emergent episodes of injury and illness that can lead to death or disability without rapid intervention.
2. (b) (7)(E)
3. **Emergency Health Care Services:** Services required for care of health conditions that are urgent or life threatening; and which without prompt care, would cause undue suffering, severe pain, significant or irreversible loss of function, or death. Such conditions may include acute infection, injury, heart attack, stroke, pregnancy complication, suicidal concern, and sudden loss of vision.
4. **Health Care Services:** Services including medical, dental and mental health services, as well as medical supplies and equipment, pharmaceuticals, or medical procedures.
5. **Hospitalization Admission:** The admittance of a prisoner to a hospital for any duration. Note: Emergency Room visit is not considered a hospitalization.

6. **Infectious Disease:** An illness caused by a specific infectious agent or its toxic product that results from transmission of that agent or its products from an infected person to a susceptible host, directly or indirectly through an intermediate host, vector or inanimate environment (e.g., tuberculosis (TB), chicken pox (varicella), Methicillin-Resistant Staphylococcus Aureus (MRSA), Hepatitis C, and Human Immunodeficiency Virus (HIV)).
7. **Informed Consent:** Voluntary agreement given by a person or a patients' responsible proxy (e.g., a parent) for participation in a study, immunization program, treatment regimen, invasive procedure, etc., after being informed of the purpose, methods, procedures, benefits, and risks.
8. **Inside Health Care:** All health care provided to prisoners inside the detention facility.
9. **Medically Necessary Health Care:** Health care services provided by a hospital or licensed health care provider that the USMS determines meet the following criteria:
 - a. Necessary to diagnose or treat a medical condition, which, if left untreated, would likely lead to a significant loss of function, deterioration of health, uncontrolled suffering, or death;
 - b. Consistent with established standards of medical practice in the United States;
 - c. Not primarily for the personal comfort or convenience of the prisoner, family, or provider; and
 - d. Approved by the United States Food and Drug Administration.
10. **Preauthorization:** Authorization obtained for a health care service prior to the provision of the service.
11. **Prisoner Medical Submission:** The submission a jail sends to the district requesting medical services or products from an outside provider not covered by the detention facility housing the USMS prisoner.
12. **Psychiatric Emergency:** A psychiatric condition creating an immediate threat of bodily harm to self or others, serious destruction of property, or extreme deterioration of functioning.
13. **Reportable Infectious Disease Case:** Diseases of great public health risk that local, state, and national agencies require medical professionals to report.

E. References:

1. 28 C.F.R. § 0.111, [General Functions](#)
2. 18 U.S.C. § 4006, [Subsistence for Prisoners](#)
3. 18 U.S.C. § 4013, [Support of United States Prisoners in Non-Federal Institutions](#)
4. 18 U.S.C. § 4086, [Temporary Safe-Keeping of Federal Offenders by Marshals](#)
5. 18 U.S.C. § 4241, [Determination of Mental Competency to Stand Trial to Undergo Post Release Proceedings](#)
6. 18 U.S.C. § 4242, [Determination of the Existence of Insanity at the Time of the Offense](#)
7. 18 U.S.C. § 4243, [Hospitalization of a Person Found Not Guilty Only by Reason of Insanity](#)

8. 18 U.S.C. § 4244, [Hospitalization of a Convicted Person Suffering from Mental Disease or Defect](#)
9. 18 U.S.C. § 4245, [Hospitalization of an Imprisoned Person Suffering from Mental Disease or Defect](#)
10. 18 U.S.C. § 4246, [Hospitalization of a Person Due for Release but Suffering from Mental Disease or Defect](#)
11. 18 U.S.C. § 4247, [General Provisions for Chapter](#)
12. [Hyde Amendment Codification Act](#), dated January 24, 2013
13. [Federal Prisoner Health Care Copayment Act of 2000](#)
14. [Centers for Disease Control \(CDC\) National Notifiable Diseases Surveillance System \(NNDSS\)](#)
15. [Federal Prisoner Health Care Co-payment Act of 2000](#)
16. [POD/OMO Intranet site](#)
17. USMS Policy Directive 9.5, [Pregnant Prisoner Care](#)
18. USMS Policy Directive 9.6, [Infectious Disease Response](#)
19. USMS Publication 9, [Prisoner Health Care Guidance to Districts](#)
20. (b) (7)(E) 
- 21.
- 22.