

## **FACT SHEET FOR PEOPLE IN DETENTION AND THEIR ADVOCATES** **THE RIGHT TO MENTAL HEALTH DISCHARGE PLANNING**

### **People in Detention Have the Right to Discharge Planning to Protect Their Health When Released**

Everyday people in the U.S. immigration detention system experience health and human rights violations, including inadequate medical care. Detained immigrants with a serious mental illness often face even more hardship. New York Lawyers for the Public Interest (NYLPI) has won federal [civil rights cases](#) on behalf of individuals with serious mental illnesses whom Immigration and Customs Enforcement (ICE) and county officials discharged from detention and dumped on the streets, without mental health discharge planning.

NYLPI and Physicians for Human Rights (PHR) created this resource based on [reported abuses](#) in immigration detention, as well as documentation by PHR about [unsafe medical discharge practices for detained people in hospitals](#), including the practice of [medical repatriation](#) (when a hospital returns an immigrant patient to their country of origin to avoid the cost of providing care). The fact sheet provides information on the right to mental health discharge planning and contains links for further resources, information, and support.

### **What Is the Right to Mental Health Discharge Planning?**

- ICE as well as local jails that contract with ICE have a responsibility to provide medical care to individuals in their custody, which includes discharge planning prior to release.<sup>i</sup>
- The constitution requires that people in civil immigration detention with serious mental illness diagnoses receive mental health discharge planning,<sup>ii</sup> that may take into consideration the individual's particular circumstances, medical and professional associations' standards of treatment,<sup>iii</sup> and the facilities' own policies and protocols.<sup>iv</sup>

The American Psychiatric Association, the National Commission on Correctional Health Care, and many others, have found *"that discharge planning is an essential component of adequate institutional mental healthcare" for people with mental illnesses.*<sup>v</sup>

### **What Does Mental Health Discharge Planning Include?**

- According to the American Psychiatric Association, the American Academy of Psychiatry and the Law, the American Psychological Association, the American Medical Association, the National Association of Social Workers, the American Public Health Association, and others, mental health discharge planning includes:<sup>vi</sup>

## What Does Mental Health Discharge Planning Include? *Cont'd.*

- conducting a pre-discharge assessment;
  - ensuring medical records are effectively transferred to community providers;
  - discussing an approach for reconnecting the person with needed safety-net programs;
  - providing a sufficient amount of medication to allow continuous use; and
  - in some circumstances (for example, when the person is at risk of homelessness) addressing post-release housing.
- According to the ICE 2019 National Detention Standards (which are the latest revised standards released by the federal government and apply in various facilities), upon release an individual must receive the following:<sup>vii</sup>
    - up to a 30-day supply of medication;
    - referrals to community-based providers as appropriate; and
    - a detailed medical summary,<sup>viii</sup> that must include, at a minimum, instructions on how to obtain their medical record.

*Discharge planning "must be tailored to the individuals' needs and include coordination with community care providers to ensure that the [person] has access to medical and social service resources after release."<sup>ix</sup>*

## Resources

- A [guide](#) on how to protect yourself and your family members during the release process in the [pandemic](#): A Physicians for Human Rights, Women's Refugee Commission and Freedom for Immigrants' joint guide.
- For legal services, information or a medical support letter please contact NYLPI at 212-244-4664 or visit the website [get help page](#).
- For a referral for an expert declaration related to a lawsuit against ICE, request pro bono assistance [here](#).

### About NYLPI

For over 40 years, New York Lawyers for Public Interest (NYLPI) has been a leading civil rights advocate for New Yorkers fighting marginalization. We seek to build strength and capacity for individual solutions and long-term impact. NYLPI's Health Justice Program works to bring a racial justice and immigrant rights focus to health care advocacy in New York. NYLPI developed a multi-pronged program in 2015 to address healthcare in immigration detention, including a medical-legal-community partnership, individual advocacy for currently and recently detained individuals, high-impact reports, litigation and strategic systemic solutions.

**To learn more about NYLPI's work, please visit [www.nylpi.org](http://www.nylpi.org)**

### About PHR

For more than 30 years, Physicians for Human Rights (PHR) has used science and the uniquely credible voices of medical professionals to document and call attention to severe human rights violations around the world. PHR, which shared in the 1997 Nobel Peace Prize for its work to end the scourge of land mines, uses its investigations and expertise to advocate for persecuted health workers and facilities under attack, prevent torture, document mass atrocities, and hold those who violate human rights accountable. PHR's Asylum Network is a nationwide initiative of clinicians which provides pro bono forensic evaluations for asylum seekers and advocates for human rights-based immigration policies.

**To learn more about PHR's work, please visit [www.phr.org](http://www.phr.org)**

## Sources

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<sup>i</sup> *Charles v. United States*, Case No. 18 CV 883 (VB), 2019 WL 1409280 (S.D.N.Y. March 28, 2019); *Charles v. Orange Cty.*, 925 F.3d 73 (2d Cir. 2019). Mental health discharge planning is constitutionally required. The court did not reach the issue of what constitutes constitutional mental health discharge planning. *Id.* at 89.

<sup>ii</sup> See *Charles v. Orange Cty.*, 925 F.3d 73 (2d Cir. 2019); Paul S. Appelbaum, *Discharge Planning in Correctional Facilities: A Constitutional Right?*, PSYCHIATRY ONLINE (Apr. 1, 2020), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.202000084>.

<sup>iii</sup> *Charles v. Orange Cty.*, 925 F.3d 73, 84-85 (2d Cir. 2019) (“Plaintiffs point to a broad array of professional mental health and medical associations who agree that the standard of reasonable and adequate medical care for detained persons includes providing the detainee with interim medications and referrals *while they are still in custody*...These views are consistent with how we think of medical services in a non-custodial setting. . .ICE’s own Performance Based National Detention Standards require discharge planning *prior to release*.”)

<sup>iv</sup> ICE has issued several standards that are applicable to facilities holding people in ICE custody, including county jails that contract with ICE. Advocates should research the standard that applies to the facility in question, while also advocating for application of the strongest standard. For a list of ICE detention facilities and the standards used to evaluate them, please see:

<https://www.ice.gov/doclib/facilityinspections/dedicatedNonDedicatedFacilityList.xlsx>. The 2011 Performance-Based National Detention Standards (PBNDS) is the most comprehensive iteration of detention standards ICE has issued, which were revised in December 2016 in areas unrelated to mental health discharge planning. The 2019 National Detention Standards (NDS) is the most recent and weakens many protections and oversight mechanisms.

<sup>v</sup> *Supra* note 3, at 88.

<sup>vi</sup> *Id.* at 84; see also *Standards of Care for Inmates of Correctional Facilities H-430.997*, AMERICAN MED. ASS’N. POLICY FINDER (2012), <https://policysearch.ama-assn.org/policyfinder/detail/standards%20of%20care%20for%20inmates?uri=%2FAMADoc%2FHOD.xml-0-3784.xml>. See generally, AMERICAN PUB. HEALTH ASS’N, *STANDARDS FOR HEALTH SERVICES IN CORRECTIONAL INSTITUTIONS*, (Maddy deLone et al., 3d ed. 2003) <https://books.google.com> (search “Standards for Health Services in Correctional Institutions”). See also, NAT’L COMM’N ON CORR. HEALTH CARE, *STANDARDS FOR MENTAL HEALTH SERVICES IN CORRECTIONAL FACILITIES* (2016) <https://www.ncchc.org/standards>.

<sup>vii</sup> The ICE 2011 PBNDS National Detention Standards are still used in most ICE dedicated facilities, while most of the non-dedicated facilities use the updated ICE 2019 NDS. See also *Performance-Based National Detention Standards*, U.S. IMMIGRATION AND CUSTOMS ENF’T, 2011, 276-9 §§ 4.3(Z), 4.3(BB)(4)(c)(2)(a)-(k) (2011), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf> (describing the elements that must be included, at a minimum, in a discharge plan summary).

<sup>viii</sup> *National Detention Standards for Non-Dedicated Facilities*, U.S. IMMIGRATION AND CUSTOMS ENF’T, 120-21 §§ 4.3(Q)(3)(b), 4.3(Q)(4) (2019) <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>. The required detailed medical summary includes a range of information, as pertinent to mental health the summary must include: 1) patient identification, 2) tuberculosis screening results and status (if suspected or confirmed), 3) current mental health issues – highlighting any potentially unstable issues or conditions requiring follow up, 4) current medication and relevant prescribing information, 5) history of surgeries, relevant testing, 6) any pending mental health evaluations, tests, treatments for serious conditions, and 7) copies of relevant documents, referrals, instructions for obtaining records, and contact information for the transferring medical official.

<sup>ix</sup> *Charles v. Orange Cty.*, U.S. Court of Appeals Case No. 17-3506, Docket Entry # 52 at 12-16. See generally, AMERICAN PUB. HEALTH ASS’N, *STANDARDS FOR HEALTH SERVICES IN CORRECTIONAL INSTITUTIONS*, (Maddy deLone et al., 3d ed. 2003) <https://books.google.com> (search “Standards for Health Services in Correctional Institutions”); NAT’L COMM’N ON CORR. HEALTH CARE, *STANDARDS FOR MENTAL HEALTH SERVICES IN CORRECTIONAL FACILITIES* (2016) <https://www.ncchc.org/standards>; *Standards of Care for Inmates of Correctional Facilities H-430.997*, AMERICAN MED. ASS’N. POLICY FINDER (2012), <https://policysearch.ama-assn.org/policyfinder/detail/standards%20of%20care%20for%20inmates?uri=%2FAMADoc%2FHOD.xml-0-3784.xml>.