

110TH CONGRESS
2D SESSION

S. 3005

To require the Secretary of Homeland Security to establish procedures for the timely and effective delivery of medical and mental health care to all immigration detainees in custody, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2008

Mr. MENENDEZ (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. AKAKA, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Secretary of Homeland Security to establish procedures for the timely and effective delivery of medical and mental health care to all immigration detainees in custody, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Detainee Basic Medical
5 Care Act of 2008”.

1 **SEC. 2. MEDICAL CARE STANDARDS FOR IMMIGRATION DE-**
2 **TAINÉES OF THE DEPARTMENT OF HOME-**
3 **LAND SECURITY.**

4 (a) IN GENERAL.—The Secretary shall establish pro-
5 cedures for the timely and effective delivery of medical and
6 mental health care to all immigration detainees in the cus-
7 tody of the Department of Homeland Security. Such pro-
8 cedures shall address all immigration detainee health
9 needs, including primary care, emergency care, chronic
10 care, prenatal care, dental care, eye care, mental health
11 care, medical dietary needs, and other medically necessary
12 specialized care.

13 (b) MEDICAL SCREENINGS AND EXAMINATIONS.—
14 The procedures required by subsection (a) shall be de-
15 signed to ensure continuity of medical and mental health
16 care services for each immigration detainee upon arrival
17 at a detention facility. At a minimum, such procedures
18 shall be designed to ensure that—

19 (1) each immigration detainee receives a com-
20 prehensive medical and mental health intake screen-
21 ing by a qualified health care professional upon ar-
22 rival at the facility;

23 (2) each immigration detainee receives a com-
24 prehensive medical and mental health examination
25 and assessment by a qualified health care profes-
26 sional not later than 14 days after arrival;

1 (3) each immigration detainee taking prescribed
2 medications prior to detention is allowed to continue
3 taking such medications, on schedule and without
4 interruption, until and unless a qualified health care
5 professional examines the immigration detainee and
6 decides upon an alternative course of treatment; and

7 (4) subject to the immigration laws, each immi-
8 gration detainee with a serious medical or mental
9 health care condition is given priority consideration
10 for release on parole, on bond, or into an alternative
11 to detention program, with periodic reevaluations for
12 such immigration detainees not initially released.

13 (c) CONTINUITY OF CARE.—The procedures required
14 by subsection (a) shall be designed to ensure continuity
15 of medical and mental health care services for each immi-
16 gration detainee throughout detention. At a minimum,
17 such procedures shall be designed to ensure that—

18 (1) immigration detainees are informed of avail-
19 able medical and mental health care services and
20 how to request such services;

21 (2) a prompt response is provided to any re-
22 quest for medical or mental health care;

23 (3) treatment decisions are based solely on pro-
24 fessional clinical judgments;

1 (4) prescribed medications and medically nec-
2 essary treatment are provided to immigration detain-
3 ees on schedule and without interruption; and

4 (5) the medical and mental health of an immi-
5 gration detainee is considered prior to any decision
6 to transfer the immigration detainee to another de-
7 tention facility, and such immigration detainee suf-
8 fers no interruption in the provision of medical
9 treatment, including the delivery of prescribed medi-
10 cations, during and after such transfer.

11 (d) **MEDICAL RECORDS.**—The procedures required
12 by subsection (a) shall be designed to ensure the avail-
13 ability of medical records to appropriate personnel. At a
14 minimum, such procedures shall be designed to ensure
15 that—

16 (1) immediately upon an immigration detainee’s
17 transfer from one detention facility to another, the
18 immigration detainee’s complete medical records, in-
19 cluding any transfer summary, are provided to the
20 receiving facility;

21 (2) within 72 hours of receiving a written re-
22 quest, an immigration detainee’s complete medical
23 records are provided to the immigration detainee or
24 any person designated by the immigration detainee;
25 and

1 (3) an immigration detainee shall be provided
2 the appropriate forms where necessary to comply
3 with this subsection and relevant privacy laws.

4 (e) ADMINISTRATIVE APPEALS PROCESS.—The pro-
5 cedures required by subsection (a) shall include an admin-
6 istrative appeals process for denials of medical or mental
7 health care. At a minimum, such procedures shall be de-
8 signed to ensure that—

9 (1) the Secretary responds promptly to any re-
10 quest by an on-site medical provider for authoriza-
11 tion to provide medical or mental health care to an
12 immigration detainee;

13 (2) in each case in which the Secretary denies
14 or fails to grant such a request, a written expla-
15 nation of the reasons for the decision shall be con-
16 veyed without delay to the on-site medical provider
17 and the immigration detainee;

18 (3) the on-site medical provider and immigra-
19 tion detainee (or legally appointed advocate) are pro-
20 vided an opportunity to appeal the denial of or fail-
21 ure to grant the requested health care service; and

22 (4) such appeal is resolved in writing within 30
23 days by an impartial board, which shall include
24 health care professionals in the fields relevant to the
25 request for medical or mental health care, and the

1 written decision is conveyed without delay to the on-
2 site medical provider and the immigration detainee.

3 (f) DISCHARGE PLANNING.—The procedures re-
4 quired by subsection (a) shall include discharge planning
5 to ensure continuity of care, for a reasonable period of
6 time, upon removal or release for persons with serious
7 medical or mental health conditions.

8 (g) REPORTING REQUIREMENTS.—

9 (1) REPORT ON DEATH OF A DETAINEE.—Not
10 later than 48 hours after the death of an immigra-
11 tion detainee in custody of the Secretary, the Sec-
12 retary shall submit to the Inspector General of the
13 Department of Homeland Security and the Inspector
14 General of the Department of Justice a report con-
15 taining information regarding such immigration de-
16 tainee's death.

17 (2) ANNUAL REPORT.—

18 (A) REQUIREMENT.—Not later than 60
19 days after the end of each fiscal year, the Sec-
20 retary shall submit to the appropriate commit-
21 tees of Congress a report containing detailed in-
22 formation regarding the death of any immigra-
23 tion detainee in the Secretary's custody during
24 the preceding fiscal year.

1 (B) APPROPRIATE COMMITTEES OF CON-
2 GRESS DEFINED.—In this paragraph, the term
3 “appropriate committees of Congress” means—

4 (i) the Committee on the Judiciary
5 and the Committee on Homeland Security
6 and Governmental Affairs of the Senate;
7 and

8 (ii) the Committee on the Judiciary
9 and the Committee on Homeland Security
10 of the House of Representatives.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) DETENTION FACILITY.—The term “deten-
14 tion facility” means any Federal, State, or local fa-
15 cility used by the Secretary of Homeland Security to
16 hold immigration detainees for more than 72 hours,
17 regardless of whether use of such facility is subject
18 to a contract or other agreement.

19 (2) IMMIGRATION DETAINEE.—The term “im-
20 migration detainee” means any person in the cus-
21 tody of the Secretary under the immigration laws at
22 any detention facility.

23 (3) IMMIGRATION LAWS.—The term “immigra-
24 tion laws” has the meaning given that term in sec-

1 tion 101(a)(17) of the Immigration and Nationality
2 Act (8 U.S.C. 1101(a)(17)).

3 (4) SECRETARY.—The term “Secretary” means
4 the Secretary of Homeland Security.

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