



U. S. Department of Justice

Office of the Inspector General

July 27, 2007

Scott J. Bloch  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, D.C. 20036

Re: OSC File No. DI-07-1292

Dear Mr. Bloch:

Enclosed is a copy of the Office of the Inspector General (OIG) report entitled, *OIG Report On Allegation of Overpayment for Prisoner Medical Services by United States Marshals Service Employee*. The Office of Special Counsel (OSC) referred this matter to Attorney General Alberto R. Gonzalez on May 9, 2007. In that letter, you requested that the Department of Justice investigate an allegation by the Administrative Officer for the Northern District of Indiana of the United States Marshals Service (USMS), that the USMS had paid the medical expenses of prisoners at rates in excess of those permitted by federal law. Attorney General Gonzales delegated his authority to review and sign this report to the OIG.

The enclosed report summarizes the results of our investigation, which did not substantiate the allegation.

If you have any questions about the enclosed report, please contact Martha Hirschfield, Attorney Advisor, at 202 616-0640.

Sincerely,

A handwritten signature in cursive script that reads "Glenn A. Fine".

Glenn A. Fine  
Inspector General

Enclosure

cc: Catherine McMullen, Chief  
Disclosure Unit



U. S. Department of Justice

Office of the Inspector General

---

OIG REPORT ON ALLEGATION OF OVERPAYMENT  
FOR PRISONER MEDICAL SERVICES BY UNITED  
STATES MARSHALS SERVICE EMPLOYEE

July 27, 2007

## Introduction

On May 9, 2007, the Office of the Inspector General (OIG) received a whistleblower disclosure from the United States Office of Special Counsel (OSC). The referral forwarded allegations by a United States Marshals Service (USMS) employee that she had been instructed by USMS officials to pay more than Medicare rates for medical services provided to a detainee housed in a Federal Bureau of Prisons (BOP) facility. The complainant alleges that this payment violated 18 U.S.C. § 4006, which limits the amount the USMS may pay for medical services provided to individuals in its custody to the amount that would be paid for similar services under the Medicare program. The OIG conducted a review to determine if the USMS had violated the statute in making this and similar payments.

In conducting our review, we interviewed the complainant, officials from the USMS Office of Interagency Medical Services, and representatives from the BOP and the Office of the Federal Detention Trustee (OFDT).<sup>1</sup> We also obtained and reviewed USMS documents relating to the payment of prisoner medical claims, including internal USMS policies and memoranda between the USMS and the BOP and the OFDT.

We confirmed that in this and other instances, the USMS has paid more than Medicare rates for medical services provided to detainees housed in BOP facilities. However, we concluded that these payments were consistent with USMS policy, that this policy was issued in reliance on a USMS legal opinion that such payments do not violate federal law, and that the legal opinion appears to be reasonable.

## Background

The USMS is responsible for housing and transporting individuals who are placed in federal custody until they are either acquitted or sentenced. Such individuals are generally referred to as detainees. Because the USMS does not maintain detention facilities of its own, it places detainees in state or local facilities pursuant to intergovernmental agreements, in private facilities pursuant to contract, or in BOP facilities, where individuals who have been convicted and sentenced of federal crimes are housed. The majority of USMS detainees are housed either in state or local jails or in private facilities.

The USMS is generally responsible for ensuring that detainees receive necessary medical care and for paying for such care.

---

<sup>1</sup> The OFDT was created in fiscal year 2001 to manage the Department of Justice's detention resources and coordinate its detention activities.

Medical care for detainees housed in BOP facilities is generally provided in the same manner as medical services to the wider prison population – either through in-facility medical centers or by outside providers pursuant to contracts between the providers and the BOP. According to both USMS and BOP officials, the USMS has historically relied on these BOP contracts to obtain medical care for detainees housed in BOP facilities and has paid the contractual rate for such services.

As noted above, 18 U.S.C. § 4006(b) limits the amount that the USMS may pay for medical services provided to detainees in its custody. Specifically, the statute provides that:

Payment for costs incurred for the provision of health care items and services for individuals *in the custody* of the United States Marshals Service . . . shall be the amount billed, not to exceed the amount that would be paid for the provision of similar health care items and services under the Medicare program. . . .

(emphasis added).<sup>2</sup> The statute does not limit the amount that may be paid for medical services provided to individuals in BOP custody. According to USMS officials, Section 4006(b) was enacted in 1999 at the behest of the USMS.

The complainant alleged that the USMS violated Section 4006(b) by paying more than the Medicare rate for medical services provided to a detainee housed at the BOP's Metropolitan Correctional Center (MCC) in Chicago, Illinois. BOP has a contract with Medical Development International (MDI) to provide comprehensive medical services to MCC Chicago prisoners, and the medical services at issue were provided pursuant to this contract. MDI billed the USMS \$28,374 for the medical services it provided. Although this rate was consistent with the contract rate, the Medicare rate for such services was \$13,576.

The complainant also submitted copies of invoices that had been submitted to the USMS between March 2006 and March 2007 for medical services provided to other MCC Chicago detainees. In each of these instances the amount billed was consistent with the BOP contract rate but exceeded the Medicare rate for similar services.

---

<sup>2</sup> The original statute provided that the USMS should pay no more than the lesser of the Medicare or the Medicaid rate. The statute was amended in 2006 to refer only to the Medicare rate. Pub. Law 109-102, 119 Stat. 3114 (2006).

In 2001, the USMS requested from its OGC an opinion as to whether Section 4006(b) prohibits the USMS from making payments to BOP contractors in excess of Medicare rates for health care items and services provided to detainees housed in BOP facilities. In an opinion issued on October 25, 2001, the USMS OGC opined that the statute does not apply in such circumstances. First, the OGC reasoned that the statute is inapplicable because detainees housed in BOP facilities are in the primary custody of BOP for purposes of receiving medical care. Second, the OGC concluded, that even if such detainees are considered to be in USMS custody, the statute would still not apply because the services at issue are not "similar" to Medicare services. Specifically, the BOP contractors provide such additional services as scheduling hospital and doctor appointments, consolidation of bills, the establishment of a comprehensive network of health care providers, and security procedures that are simply not covered by Medicare rates.

Based on this opinion, the Director of the USMS reported to the Director of the BOP in December 2001 that the USMS was authorized to pay contract rates for medical services provided to detainees housed in BOP facilities. With regard to medical bills for detainees housed in BOP facilities, current USMS procedures instruct employees to pay such bills once they verify that the charges apply to a USMS detainee and that the rate is consistent with the contract rate. In contrast, employees are instructed to pay no more than the Medicare rate for services provided to detainees held in state or local jails or in private facilities.

### Analysis

We reviewed the invoices provided by the complainant related to the payment of medical bills for care provided to detainees housed at MCC Chicago. We confirmed that in each instance the billed rate was consistent with the rates provided for in the BOP contract, but in excess of the Medicare rate.

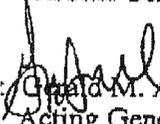
We also reviewed the USMS policy regarding the payment of such medical costs and concluded that it authorized the payment of the BOP contract rates. We further determined that this policy is based on a legal opinion issued by the USMS OGC in October 2001, which concludes that Section 4006(b) does not limit payments for medical services provided to USMS detainees housed in BOP facilities because such detainees are in BOP custody and because the services provided under the contracts are not similar to covered Medicare services. The USMS OGC's opinion appears to us to have a reasonable basis. Accordingly, we concluded that the evidence did not show that the questioned payments were made in violation of law, rule, or regulation.



600 Army Navy Drive  
Arlington, VA 22202-4210

OCT 25 2001

MEMORANDUM TO: Lydia K. Blakey  
Acting Assistant Director  
Prisoner Services Division

FROM:   
Gerald M. Auerbach  
Acting General Counsel

SUBJECT: Applicability of the U.S. Marshals Service (USMS) Medicare Rate  
Statute to USMS Prisoners Housed in Bureau of Prison Facilities

You have asked our opinion as to whether 18 U.S.C. § 4006(b) prohibits the U.S. Marshals Service (USMS) from making payments to the Bureau of Prison (BOP) or to BOP contractors for health care items and services provided by the BOP through outside providers for USMS prisoners housed in BOP facilities where those payments exceed the Medicare or Medicaid rates for similar services.

As you know, under 18 U.S.C. § 4006(b), Congress requires the USMS, the Federal Bureau of Investigation (FBI), and the Immigration and Naturalization Service (INS) to pay no more than the "amounts that would be paid for the provision of similar health care items and services" under the Medicare or Medicaid programs for medical items and services for prisoners in its custody. The statute does not apply to prisoners in the custody of BOP. Thus, in determining whether this statute applies, one must determine whether the prisoner is in the "custody" of one of the named agencies, and whether there are "similar health care items and services" covered under Medicare or Medicaid.

#### I. Custody

The majority of USMS prisoners (those who are pre-trial or sentenced awaiting designation and transportation to a BOP facility to serve sentence) are housed in either state or local jails, or private jail facilities. 18 U.S.C. § 4013(a)(2) authorizes the USMS to pay for the medical services of such prisoners in these non-Federal institutions. Thus, there is no doubt that USMS prisoners housed in state or local jails, or private jail facilities are in the "custody" of the

USMS for purposes of 18 U.S.C. § 4006(b).

However, USMS prisoners (pre-trial inmates, sentenced awaiting designation and transportation, or held on a writ) who are housed by the USMS in BOP facilities are, in our opinion, in the primary custody of BOP for purposes of care, including all in-house medical care and outside medical care. That is, 18 U.S.C. § 4042(a)(2) provides that the BOP "shall provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise." (emphasis added). BOP is also charged by regulation to house persons awaiting trial. 28 C.F.R. § 551.100. BOP staff may supervise a pre-trial inmate as if held in "custody". 28 C.F.R. § 551.105. BOP staff shall provide the pre-trial inmate with the same level of basic medical care provided convicted inmates. 28 C.F.R. § 551.114.

Pursuant to the 1993 Memorandum of Understanding (MOU) between the BOP and the USMS, the BOP is responsible generally for the care of pre-trial inmates and sentenced prisoners awaiting designation held in BOP facilities. While the USMS is financially responsible for payment for all outside medical care for pre-trial prisoners or prisoners awaiting designation under the MOU, the BOP is responsible for arranging all in-house and outside medical care and for assuring that all necessary medical care is provided. Moreover, BOP will transport the pre-trial prisoner or sentenced prisoner awaiting designation to a medical appointment/visit outside the BOP facility when necessary, although the USMS will arrange for necessary guard services.<sup>1</sup>

Thus, while the USMS is financially responsible under its appropriations for outside medical expenses for USMS prisoners held in BOP facilities, we believe that for all practical purposes, while those prisoners are held at BOP facilities, they should be considered in the "custody" of BOP for purposes of outside medical care. The BOP arranges for the outside medical care, and its own doctors maintain liaison with the outside providers in assuring continuity of treatment once the prisoner is returned to the BOP facility. BOP remains responsible for the medical treatment of these prisoners at all times.

18 U.S.C. § 4006(b) does not limit payment for medical items and services for prisoners in the custody of BOP (or for that matter in the joint custody of BOP and USMS). Congress allows BOP to pay more than Medicare or Medicaid rates for medical care of prisoners in BOP custody under BOP care. Had Congress intended to limit BOP to Medicare or Medicaid rates, it could have either listed BOP in the statute (as it did for the USMS, FBI, and INS), or applied the

---

<sup>1</sup> This arrangement was modified, on a pilot basis, to delegate to BOP all of the financial and operational responsibility for pre-trial prisoners or sentenced prisoners awaiting designation who are housed in BOP facilities in Miami, New York City, and Oklahoma and the BOP Medical Referral Centers in Butner, North Carolina, Carswell, Texas, Devens, Massachusetts, Forth Worth, Texas, Lexington, Kentucky, Rochester, Minnesota, and Springfield, Missouri. Thus, in these BOP facilities, BOP is now responsible for transporting and paying for the outside medical items and services and guard services for these prisoners. BOP and USMS are currently negotiating to extend this arrangement to all BOP facilities.

States  
of  
this

statute to any prisoner in the custody of the Attorney General. See 18 U.S.C. § 751 (escape statute). Thus, since BOP is ultimately responsible for the medical care of all prisoners in BOP facilities and for arranging outside medical care, we believe that the payment arrangements of BOP are applicable to USMS prisoners housed in BOP facilities not the 18 U.S.C. § 4006(b) rules applicable to the USMS prisoners housed in state, local, or private jails. We believe this to be so even if the USMS is providing incidental guard support at the outside medical provider since this fact alone is indeterminate, e.g., when the doctor visit or hospitalization is brief the USMS may not provide guards, and ultimately the outside medical guards for these prisoners will be provided entirely by the BOP.

By regulation, BOP is charged with providing the same level of medical services to these prisoners that it provides its convicted inmate population. BOP has negotiated requirements type hospital and health care provider contracts for all of its prisoners, those convicted and serving sentences and those who are pre-trial or awaiting to be transported to a facility. While some of these contracts offer rates at or below Medicare rates, some contracts are 15 to 45 per cent above Medicare rates. BOP is not required by 18 U.S.C. § 4006(b) or any other law to limit payments for prisoners in its facilities to the lesser of Medicare or Medicaid rates and this prohibition can not be the governing law for these contracts or any prisoners cared for under these contracts.

#### II. Similar Health Care Items and Services

Even if these prisoners under these circumstances, were deemed to be in the "custody" of the USMS for purposes of 18 U.S.C. § 4006(b), this statute does not limit payment for "health care items and services" that Medicare or Medicaid would simply not cover. The BOP hospital and health care provider contract bills include services that are not covered by the Medicare or Medicaid programs. The BOP contract vendors provide the additional services of scheduling hospital and doctor appointments for prisoners, consolidation of bills so that the agency will receive one consolidated bill for each prisoner, bill repricing services that evaluate and reprice each bill at the Medicare rate, the establishment of a comprehensive network of health care providers for these prisoners, and the provision of additional internal security procedures in addition to the BOP or USMS guards at the hospital. These are not "similar" services that are normally paid for under Medicare or Medicaid.

The BOP contract vendors' bills, however, do not itemize Medicare covered and non-Medicare covered items and services. For the BOP vendor contracts where total contract payments are below Medicare rates, the BOP is obtaining Medicare items and services well below Medicare rates. However, for those BOP vendor contracts where contract payments exceed Medicare rates, it is likely that the payments above Medicare are attributable to non-Medicare covered items and services provided to these prisoners. Therefore, at the very least, the identifiable portions of each bill that represent these non-covered health care items and services are not limited to Medicare or Medicaid rate.

### Conclusion

For the reasons stated above, we believe that 18 U.S.C. § 4006(b), which applies to the USMS, FBI, and INS, does not apply to payments made to BOP or under BOP hospital or health care provider contracts for pre-trial prisoners or sentenced prisoners awaiting designation (or held on a writ) who are housed in BOP facilities. These prisoners are in the primary custody of BOP. The health care of those prisoners is the primary responsibility of BOP and is provided under contractual arrangements entered by the BOP. These BOP contracts are entered under competitive procedures and price is determined to be reasonable, although that price is not required to be the lesser of amounts that would be paid for similar items and services under the Medicare or Medicaid programs. Therefore, the medical care payment law applicable to BOP should govern and the USMS may either reimburse BOP or pay the BOP contractor directly for these payments. Moreover, even if 18 U.S.C. § 4006(b) applies to these prisoners, the services provided under the BOP hospital and health care provider contracts that are not "similar" items and services that are covered under the Medicare and Medicaid programs are not limited to Medicare and Medicaid rates.

If you have any questions, please call me or Gerald L. Elston, Senior Associate General Counsel on 202-307-9054.