



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

November 27, 2007

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-07-1292

Dear Mr. President:

I received a disclosure from Mrs. Robbi Minden, Administrative Officer, United States Department of Justice, United States Marshals Service (USMS), Northern District of Indiana, South Bend, Indiana. Mrs. Minden, who consented to the release of her name, alleged that the USMS has paid the medical expenses of prisoners within its custody at rates in excess of those permitted by federal law. As a result, Mrs. Minden contended that the USMS needlessly spent thousands of dollars in excess of the amount it should have paid. This conduct, she maintained, constituted a violation of 18 U.S.C. § 4006, which states that the payment for health care costs for detainees in USMS custody generally may not exceed the cost for similar services under the Medicare program.

I required the Attorney General to conduct an investigation into this disclosure pursuant to 5 U.S.C. § 1213(c) and (d). Former Attorney General Alberto Gonzales tasked the Office of the Inspector General (OIG) with conducting the investigation and writing the report.

The agency's July 27, 2007, report confirmed that the health care costs for Northern District of Indiana detainees housed at the Metropolitan Correctional Center Chicago were billed to and paid by the USMS at rates above those under the Medicare program. The rates used in these invoices were consistent with those set forth in Bureau of Prisons (BOP) contracts with the providers. The report also stated that the USMS has paid rates above the Medicare rates in other instances. However, the report concluded that the use of these rates was consistent with USMS policy and did not violate federal law. The basis for this conclusion was an October 25, 2001, memorandum written by USMS Acting General Counsel Gerald Auerbach, which was not included with the report.¹ The memorandum stated that payment of higher rates was proper for two reasons, the detainees were in the primary custody of BOP and the services provided were not similar to Medicare services. The agency acted in accordance with this advice from its

¹ On August 9, 2007, OSC requested a copy of the October 25, 2001, memorandum from the OIG. We received the memorandum on August 13, 2007, and a copy of it is enclosed.

The President

Page 2

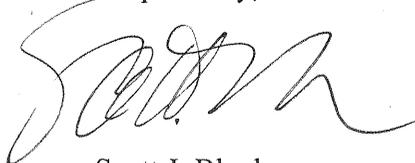
General Counsel, and as such, the evidence did not support a finding of a violation of law, rule, or regulation.

Mrs. Minden provided comments on both the agency's report and the October 25, 2001, memorandum. She questions why the USMS is paying BOP rates for medical expenses when 18 U.S.C. § 4006(b) was specifically enacted to hold down costs. She believes the selective application of § 4006(b) to all medical vendors treating USMS detainees except for those housed in BOP facilities is inequitable, because the USMS must house detainees there by necessity. Regarding the October 25, 2001, memorandum, Mrs. Minden questions its claim that the medical services provided to the USMS detainees differ from those provided to private citizens. She disagrees with the claim that the cost of security is included in the billing rates, because USMS is responsible for the guard service costs. She also questions the accuracy of the claim in the memorandum that some BOP contracts are 15 to 45 percent above Medicare rates, citing some instances where they are 150 percent over Medicare rates. Mrs. Minden concludes her comments by suggesting that Congress should reexamine 18 U.S.C. § 4006(b) or at the very least have the USMS reexamine the October 25, 2001, memorandum.

I have reviewed the original disclosure, the report, and Mrs. Minden's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute and that the findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the report, the October 25, 2001, memorandum, and the whistleblower's comments to the Chairmen of the House and Senate Committees on the Judiciary. I have also filed copies of the agency report and the whistleblower's comments in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'S. Bloch', written in a cursive style.

Scott J. Bloch

Enclosures