OIDO

Office of the Immigration Detention Ombudsman

Ombudsman Alert

Critical Medical Understaffing on the Border

OIDO-22-003
July 12, 2022

OIDO is an independent office within the Department of Homeland Security.

OMBUDSMAN ALERT
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Critical Medical Understaffing on the Border
Case No. 22-003

Pursuant to its statutory responsibilities under 6 U.S.C. § 205, the Department of Homeland Security (DHS) Office of the Immigration Detention Ombudsman (OIDO), Detention Oversight (DO) Division conducts independent, objective, and credible inspections, investigations, and audits of U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) facilities throughout the United States. OIDO also reviews, examines, and makes recommendations to address concerns with or violations of contract terms or contractor performance regarding immigration detention facilities and services.

As noted in OIDO's Annual Reports for 2020 and 2021,[1] OIDO staff traveled extensively across the Southwest Border of the U.S. to gain a field perspective of current CBP custody operations and conditions. As a direct result of this field experience, OIDO had the opportunity to assess the provision of medical care at numerous CBP locations and the challenges posed by staffing shortages.

Summary of Issues

On September 28, 2020, CBP signed a contract with Loyal Source Government Services (LSGS) to provide medical units and medical services along the Southwest Border of the United States, covering U.S. Border Patrol Stations and Office of Field Operations (OFO) Ports of Entry in California, Arizona, New Mexico, and Texas. LSGS provides comprehensive staffing reports to CBP each week to reflect the number of medical professionals working at each CBP location. These reports reflect significant understaffing. This critical shortage of medical services at CBP facilities could jeopardize the health and safety of noncitizens in CBP custody.

Background

CBP's mission is to facilitate legitimate travel and trade while preventing the entry of individuals and contraband that would harm the United States. CBP strives to process inadmissible applicants for admission in an expeditious manner; however, when detention of an individual is appropriate, CBP is dependent on other agencies to accept the individual in a timely manner. CBP facilities are statutorily designated as short term, which is defined as 72 hours or less (see 6 U.S.C. § 211(m)).

The *National Standards on Transport, Escort, Detention, and Search* (TEDS), established in 2015, set the overarching policies related to CBP personnel's interaction with and care of individuals while they are detained in CBP short-term facilities, including medical care. CBP Directive 3340-030B, known as the "Secure Detention Directive," set the operational policy to address medical issues.[2] Additionally, CBP Directive 2210-004, known as "CBP Enhanced Medical Efforts," states that all individuals in custody will receive appropriate medical support in accordance with applicable authorities, regulations, standards, and policies.

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[1] OIDO Annual Reports 2020, Issued on January 19, 2021, https://www.dhs.gov/sites/default/files/publications/dhs_oido_2020_annual_report_updated.pdf; and OIDO Annual Report 2021, Issued on April 29, 2022, https://www.dhs.gov/sites/default/files/2022-05/OIDO_2021AnnualReport_5-10-22_508compliant.pdf.

[2] See also, U.S. Border Patrol Policy No. 08-11267, *Hold Rooms and Short-Term Custody,* January 31, 2008.

In 2015, CBP awarded LSGS a blanket purchase agreement to provide onsite medical services, initially in the Rio Grande Valley Sector. The agreement included the base year with four options to extend performance to 2020. In 2018, CBP expanded the blanket purchase agreement to have LSGS provide medical personnel to additional locations along the Southwest Border.

Contracted medical providers are responsible for conducting health interviews and medical assessments; diagnosing and treating minor conditions, such as low-grade fevers and allergic reactions; dispensing medication; and referring individuals to the local health system (for example, an urgent care clinic, hospital, or emergency room), as needed. Additionally, contracted medical providers are expected to staff the different facilities 24 hours a day. If there are no contracted medical personnel at a CBP facility, then individuals must be sent to local medical providers from the local health system if they need a medical assessment.

Following the deaths of several noncitizen children in CBP custody, Congress held multiple hearings to examine the adequacy and efficacy of contracted medical services on the border.[3] In July 2020, the Government Accountability Office (GAO) issued a report highlighting, among other issues, a need for increased oversight and review by CBP on these contracted medical services.[4] On September 3, 2020, the DHS Office of the Inspector General (OIG) issued a Management Alert calling attention to the fact that CBP had not yet released a solicitation for a new medical services contract though the existing contract was set to expire on September 29, 2020.[5] CBP ultimately met the deadline.

Since the award of this contract, the number of monthly noncitizen encounters on the Southwest Border has increased substantially. Encounters by month were as follows: 23,237 in May of 2020; 180,597 in May of 2021; and 239,413 in May of 2022.[6] As encounters increase in this fashion, the need for seamless medical care will grow.

Critical Staffing Shortages

On September 28, 2020, CBP signed a new firm-fixed-price task order with LSGS to provide medical services along the Southwest Border. On June 2, 2021, the parties signed a bilateral contract modification changing the contract type from firm-fixed-price to a hybrid time-and-materials type with fixed price elements. The total contract value was $327,609,067.66 and has a period of

[3] U.S. House of Representatives Committee on Homeland Security, *Border Security and Immigration Subcommittee hearings, Assessing the Adequacy of DHS Efforts to Prevent Child Deaths in Custody* (January 14, 2020) and *Children in CBP Custody: Examining Deaths, Medical Care Procedures, and Improper Spending* (July 15, 2020).
[4] See *CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*, p.44 (GAO-20-536). ("CBP contracting officials told us they did not conduct the required annual reviews of the agency's blanket purchase agreement for medical providers in fiscal years 2016 through 2018. CBP officials conducted an annual review for fiscal year 2019; however, the review did not include all the elements of an annual review required under FAR, … CBP officials provided various reasons for not conducting annual reviews in fiscal years 2016 through 2018 and for not conducting a complete annual review in fiscal year 2019, as required by FAR. For example, CBP officials stated that they did not conduct annual reviews prior to fiscal year 2019 due to an oversight resulting from heavy workloads. They also said they did not document whether the blanket purchase agreement's estimated quantities were exceeded in fiscal year 2019 because they modified the agreement to increase the estimated quantities of services earlier in the year. CBP officials stated that they did not request a discount because they were operating with new estimated quantities, which they had not exceeded … Further, CBP officials said they thought requesting a discount was unnecessary and would not be well received because they believed the contractor's prices were fair and they had not encountered problems with performance.").
[5] See, *CBP Needs to Award a Medical Services Contract Quickly to Ensure No Gap in Services* (OIG-20-70).
[6] Southwest Land Border Encounters | U.S. Customs and Border Protection (cbp.gov) https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

performance until September 29, 2022.[7] Option two is the final option for the contract, which will be recompeted before the end of the performance period. The CBP Procurement Directorate has actively engaged in contract administration and has issued 21 contract modifications since award. The statement of work attached to the contract states that LSGS shall provide a comprehensive staffing report that details key statistics to include: a narrative describing the status of recruitment; vetting and staffing efforts; and verification of whether the contractor is maintaining a 95 percent adherence to provider and support schedules at contracted locations.[8] The staffing report provided by the contractor includes nine sectors and four field offices.

Between the spring of 2021 and May 2022, OIDO conducted numerous site visits, observations, and inspections at CBP facilities along the Southwest Border. These observations suggested medical understaffing by LSGS. In some locations, LSGS staff worked overtime shifts for up to two weeks to account for staffing shortages. In response to these observations and in follow-up to GAO's July 2020 report noted above, OIDO initiated a contract review. OIDO started reviewing documents submitted by LSGS to identify its compliance with the required medical staffing levels noted above. OIDO reviewed a selection of comprehensive staffing reports received with reporting data between March 10, 2022 and June 9, 2022.[9]

Based on LSGS data alone, OIDO determined that the overall average staffing for the period reviewed was [redacted] percent for all 13 locations (80 clinics). The overall average staffing is the average provided by LSGS each week in their comprehensive staffing report for each sector and OFO, which identifies the average number of shifts they filled versus the shifts required by the contract.[10] There were weeks when the contractor reported as low as [redacted] percent staffing at the Tucson Field Office (See Attachment 1 page 5 for full report). These numbers reflect a critical staffing shortage.

[7] The contract contains a six-month extension clause.

[8] "Onsite staff for each site location are expected to maintain a 95% adherence to schedule (not including planned/scheduled absences.) Certain locations may tolerate a lower (for instance, 90%) adherence to schedule at the discretion of the COR and/or USBP National Medical Program Manager based upon constraints and operational priority shifts." Statement of Work for Medical Unit Facilities, 3.5.6, p. 10, September 28, 2020.

[9] Weekly reports are entitled: "Loyal Source Government Services US Customs and Border Protection (CBP) Weekly Staffing Report 70B03C20F00001383." OIDO has not yet independently validated any of the data contained in the staffing reports. This analysis is based on the compiled data self-reported by LSGS.

[10] CBP commented that "[the agency] does not routinely request shifts in LSGS staffing to different locations based on need. CBP directs LSGS to fulfill the staffing ratios as stated in the contract. There have been occasions when CBP has suggested staffing movements to fulfill acute needs based on surge activity."

#	CBP Sectors	Sector Average
1	Big Bend (BBT)	[redacted]
2	Del Rio (DRT)	
3	El Centro (ELC)	
4	El Paso (EPT)	
5	Laredo (LRT)	
6	Rio Grande Valley (RGV)	
7	San Diego (SDC)	
8	Tucson (TCA)	
9	Yuma (YUM)	
10	El Paso, Field Office (EFO)	
11	Laredo Field Office (LFO)	
12	Tucson Field Office (TFO)	
13	San Diego Field Office (SFO)	
Program % - Daily Average		

Standards for Internal Control in the Federal Government require agencies to implement control activities to help achieve objectives and ensure accountability for stewardship of government resources. Control activities include oversight actions such as regular monitoring to provide a reasonable assurance that objectives will be achieved effectively and efficiently. This includes ensuring that contractors are performing in accordance with contract requirements.

This preliminary contract review indicates LSGS has an approximately 35 percent shortfall in contracted medical services being provided to CBP at the sampled locations.

Potential Risks

Critical medical staffing shortages at CBP facilities could jeopardize the health and safety of noncitizens in CBP custody. As the COVID-19 pandemic continues, these shortfalls may also pose risks to officers, agents, and staff. Should noncitizen numbers increase, or if a change in the application of 42 USC § 265 leads to surges at the Southwest Border, medical staffing shortages may pose dire challenges.

Further, on September 30, 2022, provisions of the *Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136)* are set to expire.[11] These provisions provide for the portability of medical licensures across state lines. Should the Act fail to be extended, the availability of contract medical professionals in some locations could be greatly affected. Given current critical staffing shortages on the existing CBP medical contract, such restrictions, which are outside the control of CBP, could further cause staffing shortages, leaving inadequate resources to meet the health care needs of noncitizens, increased risk for suboptimal care, and diversion of CBP assets.

OIDO will continue its review to determine if future contractual obligations are being met as well as whether agency regulatory tools are working as intended to protect the safety, security, and wellbeing of noncitizens. Further, OIDO will continue to provide analysis and offer strategic recommendations to improve the integrity of the immigration detention system.

[11] Sec. 541 of the Consolidated Appropriations Act, 2022, Pub. L. No. 107-103, extended the "portability of licensure" provision under the CARES Act, Pub. L. No. 116-136, Division B, Title VI, § 16005 (6 U.S.C. § 320 note), without regard to the COVID-19 declared emergency, until to September 30, 2022.

ATTACHMENT 1: LSGS Comprehensive Staffing Report Data

#	CBP Sectors	3/10/2022	3/17/2022	3/24/2022	3/31/2022	4/7/2022	4/14/2022	4/21/2022	4/28/2022	5/5/2022	5/12/2022	5/19/2022	5/26/2022	6/2/2022	6/9/2022	Sector Average
1	Big Bend (BBT)	[redacted]														
2	Del Rio (DRT)															
3	El Centro (ELC)															
4	El Paso (EPT)															
5	Laredo (LRT)															
6	Rio Grande Valley (RGV)															
7	San Diego (SDC)															
8	Tucson (TCA)															
9	Yuma (YUM)															
10	El Paso, Field Office (EFO)															
11	Laredo Field Office (LFO)															
12	Tucson Field Office (TFO)															
13	San Diego Field Office (SFO)															
	Program % - Daily Average															
											Total Average					[redacted]

Additional Information and Copies

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For further information or questions, please contact the Office of the Immigration Detention Ombudsman at:
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