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ICE Still Struggles to Hire and Retain Staff for Mental Health Cases in Immigration Detention



Homeland
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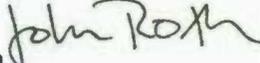
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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 21, 2016

MEMORANDUM FOR: The Honorable Sarah R. Saldaña
Director
U.S. Immigration and Customs Enforcement

FROM: John Roth 
Inspector General

SUBJECT: *ICE Still Struggles to Hire and Retain Staff for Mental Health Cases in Immigration Detention*

Attached for your information is our final report, *ICE Still Struggles to Hire and Retain Staff for Mental Health Cases in Immigration Detention*. In March 2011, we published the results of a review, *Management of Mental Health Cases in Immigration Detention (OIG-11-62)*. The review focused on U.S. Immigration and Customs Enforcement's (ICE) ability to manage cases of detained individuals with mental health conditions. We conducted this verification review to assess ICE's progress on recommendations made in our March 2011 report.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Background

ICE apprehends, detains, and removes individuals who are in the United States unlawfully. ICE's Office of Enforcement and Removal Operations (ERO) places apprehended individuals who require custodial supervision in detention facilities. For detained individuals requiring mental health services, the ICE Health Service Corps (IHSC) is responsible for providing appropriate medical treatment and care.

IHSC provides medical and mental health care at 21 of the approximately 230 ICE detention facilities nationwide. IHSC also contracts with detention facilities that employ their own staff or contract with local practitioners to provide mental health care. In addition, ICE uses local hospitals and other facilities to treat detainees whose mental health needs exceed a detention facility's capability.

In our March 2011 report, we made 20 recommendations designed to improve ICE's management of mental health cases. In general, we recommended that ICE: (1) establish a staffing plan that aligned staffing with facilities' mental



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health caseload; (2) make appropriate space available to provide needed treatment; (3) develop a classification system for facilities to determine the level of care that could be provided; (4) make timely requests for mental health information; (5) clarify decision-making authorities for detainee transfer decisions; (6) establish protocols for handling mental health information; (7) release guidance on custodians; and (8) develop field guidance for using specialty facilities.

ICE concurred with all our recommendations. Prior to this verification review, ICE provided documentation to close 15 of 20 recommendations. By implementing these recommendations, ICE improved its ability to deliver adequate health care to detainees with mental health conditions and developed IHSC mental health resources as needed to ensure the availability of proper care. For example, ICE created the Field Medical Coordinator program to better oversee and facilitate the provision of mental health care. Moreover, ICE implemented the Segregation Review Management System to prevent misuse of segregation in mental health cases and ensure detainees with mental health conditions are not assigned to or held at facilities without sufficient resources. Appendix A highlights improvements ICE made by implementing these recommendations.

However, five recommendations from our March 2011 report remained open for more than 5 years pending sufficient documentation from ICE. In addition, public concern persists about ICE's management of detainees with mental health conditions. Therefore, we conducted this verification review to assess whether ICE met the intent of the closed recommendations and its progress toward implementing the open recommendations.

Results of Review

In our 2011 report, we made three recommendations aimed at addressing challenges in attracting and retaining mental health care providers, such as psychiatrists. Although we closed these recommendations and ICE has taken steps to implement them, IHSC continues to struggle attracting and retaining mental health care providers. For instance, ICE officials explained it is difficult to attract and retain psychiatrists at detention facilities in rural and remote areas. With high demand in the public and private sectors for mental health care providers, IHSC has to compete to hire providers. As we reported in 2011, IHSC still cannot offer competitive salaries, especially for psychiatrists. In addition, ICE's lengthy security clearance process continues to discourage candidates from waiting for an ICE offer once they receive other offers.



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IHSC has attempted to mitigate staffing difficulties by using Title 38 of the U.S. Code,¹ which helps Federal agencies to better compete with nonfederal employers through more flexible recruitment, retention, and pay than that of the civil service. For example, ICE officials said they used Title 38 hiring authorities to recruit and pay for critically needed health care personnel, such as psychiatrists and registered nurses. According to ICE officials, although they have made progress, staffing challenges are likely to continue because the contributing factors are mainly outside of their control. We requested, but did not receive, documentation to support this assertion and to quantify the staffing issues. ICE needs to maintain data and provide evidence to substantiate the ongoing challenges outside of its control and the continuing staffing limitations.

At the beginning of our verification review, five recommendations from the March 2011 report remained open. We sought to determine the status of the recommendations and whether ICE fully implemented corrective actions. ICE gradually gave us updated action plans and documentation to support closing these recommendations. Specifically, ICE provided policies and guidance for:

- requesting mental health information from non-ICE facilities upon taking custody of a detainee;
- identifying detainees with mental health conditions to immigration courts and facilitating their access to legal representation; and
- using tele-psychiatry at detention facilities used by ICE.

After reviewing ICE's explanations and documentation, we consider these recommendations resolved and closed.

We plan to continue the Office of Inspector General's (OIG) oversight in this area to ensure that ICE provides appropriate care to detainees with mental health conditions. For example, we are initiating periodic inspections of facilities housing ICE detainees based on concerns raised by immigrant rights groups about conditions for detainees in ICE custody. If they arise, we will also review other serious detainee mental health-related issues.

Methodology

We reviewed relevant documents, including prior reports, mission action plans, ICE policies and guidance, mental health staffing plans, position descriptions, and explanations. We interviewed ICE headquarters and field officials from

¹ 38 USC 74



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ERO and IHSC, as well as ICE headquarters officials from the Office of Principal Legal Advisor. In addition, we observed demonstrations of the electronic health records and segregation review management systems.

We conducted this verification review between January 2016 and May 2016 pursuant to the *Inspector General Act of 1978*, as amended. This review was conducted in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency. Major contributors to this report are: Angela Garvin, Chief Inspector; Inez Jordan, Lead Inspector; Kimberley Lake de Pulla, Program Analyst; Jennifer Kim, Program Analyst; Jason Wahl, Program Analyst; Kelly Herberger, Communications Analyst; and Kimberley Crabbe, Independent Reference Reviewer.

Please call me with any questions or your staff may contact Anne L. Richards, Assistant Inspector General for Inspections and Evaluations, at (202) 254-4100 or Angela E. Garvin, Chief Inspector, at (202) 254-4196.



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Appendix A Improvements ICE Made by Implementing the Recommendations

Recommendation	Effects of Action Taken
Recommendation #1: Establish and implement IHSC's role in monitoring and providing oversight to all ICE detention facilities. At a minimum, this should include IHSC's responsibility for monitoring and tracking the mental health condition of ICE's detained population.	IHSC established the Field Medical Coordinator position and deployed these individuals to the field. These individuals improve ICE's oversight at facilities, provide advice to ICE field offices regarding mental health-related detention cases, and expedite transfers of detainees with mental health conditions. We will be initiating periodic inspections and more in-depth reviews, as needed, to determine whether IHSC has implemented processes and procedures to monitor facilities, staff, and resources, and identified measures to improve the mental health condition of ICE's detained population.
Recommendation #2: Prioritize hiring a permanent director and mental health staff. This should include maximizing the use of available hiring incentives, and minimizing processing delays to the extent practicable.	ICE selected a new permanent IHSC Assistant Director, developed a staffing plan, and hired medical staff including psychiatric nurses. With this hiring, an improvement was initially made in ICE's ability to provide an appropriate level of care. However, challenges remain due to difficulties attracting and retaining mental health care providers.
Recommendation #3: Establish and implement a system that aligns staffing levels at each facility with their respective mental health caseload.	ICE officials established a staffing plan based on productivity factors, vacancies, and operational or mission requirement changes. These staffing numbers change frequently to meet needs and missions. This flexible plan supports ICE's ability to provide resources to facilities reflective of mental health care needs.



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Recommendation	Effects of Action Taken
Recommendation #4: Place detainees with mental illnesses in facilities that have necessary space and resources available to provide needed services. At a minimum, such facilities should maintain appropriate areas for specialized treatment, and be accessible to community providers.	ICE deployed an electronic health records system to capture information about detainees' needs and established policies for identifying and placing detainees with special needs in suitable facilities or accommodations. As a result of these steps, ICE improved its ability to assign detainees to facilities that can provide adequate care. We will be initiating periodic inspections to determine whether ICE is placing detainees with mental illnesses in facilities that have necessary space and resources.
Recommendation #5: Establish time limits for holding mentally ill detainees in segregation outside of medical units, and identify recourses for detention facilities when segregated detainees are approaching set time limits.	ICE published Directive 11065.1, <i>Review of the Use of Segregation for ICE Detainees</i> , effective September 4, 2013, which established time limits for holding detainees with mental health conditions in segregation outside of medical units and facility options when segregated detainees are approaching set time limits. This guidance, if followed, could improve ICE's use of segregation, thus improving ICE's delivery of care to detainees with mental health conditions. We will be initiating periodic inspections to determine whether personnel are complying with this directive and whether personnel are properly reporting this information. If they arise, we will also review other serious detainee mental health-related issues.
Recommendation #6: Establish procedures for timely evaluating and transferring detainees requiring separation or isolation for mental health conditions, but who are in facilities that cannot accommodate such needs.	ICE published Directive 11065.1, <i>Review of the Use of Segregation for ICE Detainees</i> , effective September 4, 2013, which provided a process for IHSC to evaluate facility segregation resources and appropriate placement of detainees. This guidance enables ICE to assign detainees to facilities that can provide adequate care.



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Recommendation	Effects of Action Taken
Recommendation #7: Identify detention facility sites with minimal or no community resources, and develop IHSC mental health resources as needed to ensure the availability of proper care.	ICE collected information regarding facility sites with minimal or no community resources. ICE also expanded the use of tele-psychiatry to help provide care in remote facilities and implemented the Field Medical Coordinator Program to better identify facility resource needs.
Recommendation #8: Establish a classification system for detention facilities that takes into consideration the facilities' ability to handle detainees with varying mental health needs.	In lieu of a classification system, ICE implemented the Field Medical Coordinator Program to better manage the mental health care needs of detainees and established two transitional care facilities to ensure detainees transitioning from hospitalization are placed in a facility that has the ability to properly treat their mental health needs. ICE also implemented the Segregation Review Management System to ensure detainees with mental health conditions are assigned to and held at facilities that have the resources to provide proper care. In addition, ICE implemented an electronic health records system to identify available mental health services within the facility, from other IHSC facilities, and via community providers.
Recommendation #9: Direct field offices to request mental health information for incarcerated aliens before they arrive in detention, and establish a requirement for sending the information to medical personnel before detainees arrive in ICE detention.	ICE issued guidance to the field offices and IHSC personnel to identify detainees with serious mental disorders or conditions and forward mental health information appropriately. ICE issued a bulletin requiring ICE personnel ask facilities to provide mental health information on incarcerated aliens. Even though ICE cannot force non-ICE facilities to provide this information, ICE sent memos to the field and health practitioners and facilities explaining that privacy laws allowed the disclosure of mental health information to ICE officials taking custody of a detainee. These steps, if consistently followed, could improve ICE's ability to place detainees in facilities that can provide adequate care and reduce the need for transfers.



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Recommendation	Effects of Action Taken
<p>Recommendation #10: Identify additional data that could be collected as part of the mental health screening process that would assist in determining the health history and treatment needed for incoming detainees with mental illnesses.</p>	<p>ICE updated its intake screening form to expand the scope of information available about the patient’s mental health history. The change expands the patient’s history of mental illness from “treatment” to “diagnoses,” which is more inclusive because it captures information on individuals aware of mental illnesses who never sought formal treatment. The change also seeks information about the patient’s family history with mental illness.</p>
<p>Recommendation #11: Designate a central authority for directing transfers for mentally ill detainees.</p>	<p>ERO is the central authority for directing the transfer of all detainees in ICE custody. ICE issued Policy 11022.1, <i>Detainee Transfers</i>, effective January 4, 2012, to indicate such. Along with the increasing specificity of National Detention Standards, there is sufficient guidance regarding transfers of mentally ill detainees. This centralized authority and policy regarding detainees with mental health conditions could expedite ICE’s transfer of detainees to facilities with adequate mental health resources, thus improving their care. We will be initiating periodic inspections to determine whether personnel are adhering to this policy and whether personnel are reporting this information in a timely manner. If they arise, we will also review other serious detainee mental health-related issues.</p>
<p>Recommendation #12: Assign IHSC case managers in field positions to provide direct oversight and advice to ICE field and sub-offices, and expedite transfers of mentally ill detainees.</p>	<p>IHSC established the Field Medical Coordinator position and deployed these individuals to each field office. These individuals improve ICE’s delivery of care to detainees by providing direct oversight and advice to ICE field and sub-offices regarding medical cases and by expediting transfers of detainees with mental health conditions.</p>



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Recommendation	Effects of Action Taken
<p>Recommendation #13: Establish protocols for retaining and sharing mental health information in Alien registration files. At a minimum, protocols should include: requirements for documenting detainees' mental health status to be used by Enforcement and Removal Operations officers and ICE attorneys; and guidance for ensuring detainees' privacy rights.</p>	<p>The Department of Justice (DOJ) issued guidance requiring disclosure of mental health information to the courts, and ICE issued guidance to ensure compliance on identifying detainees with mental health conditions and sharing this information. This guidance, if implemented, could provide relevant information regarding detainee's mental health for court proceedings.</p>
<p>Recommendation #14: Publish guidance on eligible custodians.</p>	<p>DOJ issued guidance in April 2013 regarding eligible custodians. ICE's actions have supported compliance with this guidance, including issuing Policy 11063.1, <i>Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees with Serious Mental Disorders or Conditions</i>, dated April 22, 2013, and partnering with DOJ through the National Qualified Representative Program. These steps should improve detainees' access to legal representation when they are not mentally competent to represent themselves, thus improving their access to due process.</p>



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Recommendation	Effects of Action Taken
Recommendation #15: Publish internal procedures for handling cases where custodians must be used for mentally incompetent detainees.	ICE issued Policy 11063.1, <i>Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees with Serious Mental Disorders or Conditions</i> , dated April 22, 2013, which provides internal guidance that complies with DOJ's procedures on providing legal representation to detainees with mental health conditions. These steps should improve detainees' access to legal representation when they are not mentally competent to represent themselves, thus improving their access to due process.
Recommendation #16: Develop and implement guidance that outlines the process and criteria for using specialty facilities.	ICE published Directive 11065.1, <i>Review of the Use of Segregation for ICE Detainees</i> , effective September 4, 2013, which directs IHSC to assist in compiling information about facility medical resources, including cells for monitoring high-risk or suicidal detainees. In addition, IHSC is to review cases where detainees with mental health conditions are in segregation and provide feedback on appropriate placement. Moreover, IHSC must work with facilities and field offices to ensure appropriate treatment for detainees with medical or mental health conditions.
Recommendation #17: Include the use of psychiatric-mental health nurses in formal staffing plans.	ICE created 16 psychiatric nurse positions and filled 15 at the time of our fieldwork. These positions improve ICE's delivery of care to detainees because the nurses provide necessary transitional care to detainees with mental health conditions who are not ready to re-enter the general population.



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Recommendation	Effects of Action Taken
<p>Recommendation #18: Expand the use of tele-psychiatry to those facilities located in areas with limited access to psychiatrists.</p>	<p>ICE continues to provide tele-psychiatry services to facilities located in areas with limited access to psychiatrists. While challenges remain in hiring and retaining psychiatrists to staff the tele-psychiatry service, ICE continues to work through those challenges by maintaining flexibility regarding scheduling tele-psychiatry clinics and utilizing other resources (e.g., contracted providers, temporary duty, and community resources) to meet the mental health needs of the detainee population. The use of tele-psychiatry services is a significant resource in the provision of mental health services to detainees.</p>
<p>Recommendation #19: Establish procedures to ensure that tele-psychiatry is used efficiently. At a minimum, this should include a review of current tele-psychiatry connections, equipment, and any overlaps with existing mental health services.</p>	<p>IHSC issued Operations Memorandum 16-008, <i>Tele-Mental Health Services</i>, effective February 10, 2016, which documents the procedures facilities, health managers, and providers use to coordinate the use of tele-health at these facilities. The memorandum also specifies that the remote psychiatrist is a federally licensed psychiatrist. ICE plans to keep these positions as federally licensed psychiatrists until legislation allows them to expand to state licensed psychiatrists. This policy standardizes IHSC's use of tele-psychiatry and better prepares IHSC to expand its use and provide mental health services to more areas with limited access to psychiatrists. We will be initiating periodic inspections to determine whether personnel are complying with these procedures and whether improvements have been made.</p>



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Recommendation	Effects of Action Taken
<p>Recommendation #20: Expedite efforts to develop and implement an electronic medical record system.</p>	<p>ICE deployed its electronic health records system to Headquarters and all its staffed clinics by May 2014. The system has created a more efficient way to transfer and access medical records, thus improving assessments of detainee medical needs and safety. The electronic health record system appears to have improved continuity of care; simplified the detainee transfer process; and reduced lost records. The system allows IHSC to improve processes directly by altering system templates, rather than by policy alone. It also allows IHSC to perform chart audits and consultations on any facility remotely, which increased accuracy and completeness of information and reduced medical errors.</p>



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Appendix B
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