



Review of the United States Marshals Service's Response to the COVID-19 Pandemic



AUDIT DIVISION

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Review of the United States Marshals Service's Response to the COVID-19 Pandemic

The Department of Justice Office of the Inspector General (OIG) is reviewing the United States Marshals Service's (USMS) initial response to the COVID-19 pandemic. During April through August 2020, we assessed the USMS's implementation of guidance and best practices for preventing, managing, and containing potential COVID-19 outbreaks among the approximately 61,000 persons in its custody.

The USMS has taken steps to prepare for, prevent, and manage the risks associated with COVID-19. However, opportunities for improvement remain. The USMS's detention facility oversight plan is inconsistent and does not ensure that all active facilities will be assessed for implementation of the latest Centers for Disease Control and Prevention (CDC) guidance. In particular, the 873 facilities operated by the USMS's state and local government partners under Intergovernmental Agreements (IGA) do not receive the same scrutiny from the USMS as do the USMS contract facilities, although the IGA facilities house approximately 70 percent of the USMS's 61,000 prisoners. The USMS's oversight plan for IGA facilities also does not identify and prioritize the highest risk facilities for timely Detention Facility Reviews. In addition, the USMS practice of transporting prisoners without first testing to confirm that they are COVID-19 free may lead to further infections and should be re-evaluated.

Coronavirus Disease 2019

According to the CDC, detention facilities are at particular risk for COVID-19 outbreaks. COVID-19 may be introduced into a detention

facility by: staff entering and exiting; transfers of detained persons between facilities, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. The CDC reports that chronic, underlying medical conditions are known to increase the risk of severe illness from COVID-19, and these conditions are prevalent among incarcerated populations. The CDC issued interim guidance for the management of COVID-19 in correctional and detention facilities on March 23, 2020, and updated that guidance on July 14, 2020. The CDC has also issued Interim Considerations for COVID-19 Testing in Correctional and Detention Facilities, which was last updated August 10, 2020.

United States Marshals Service

The USMS houses, transports, and cares for all prisoners ordered into custody by a U.S. District Court. The USMS is responsible for these individuals until they are either acquitted or convicted and delivered to the Federal Bureau of Prisons (BOP) to serve their sentence.

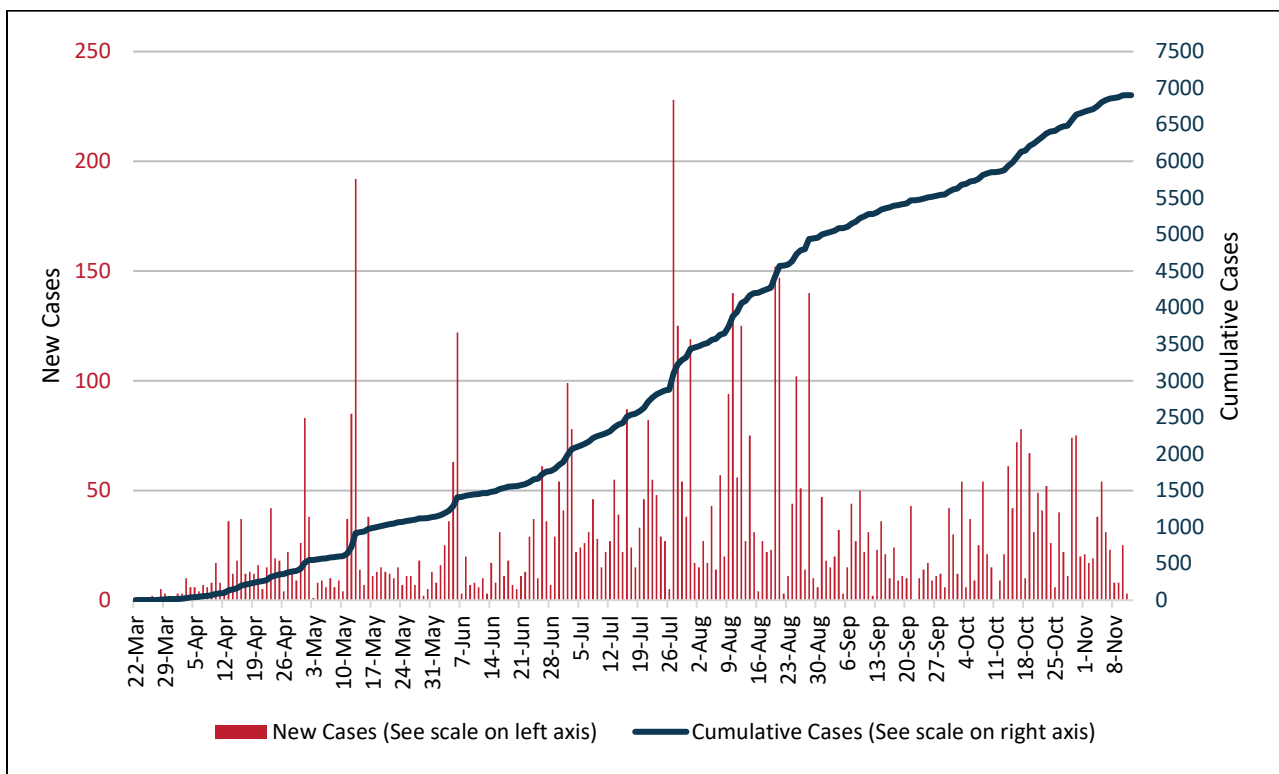
The USMS houses prisoners in BOP facilities, state and local government facilities (IGA facilities), and facilities operated under contracts. The USMS Prisoner Operations Division (POD) establishes detention policy, strategies, and programs for prisoner processing, housing, transportation, and care. The USMS houses approximately 70 percent of its prisoner population in approximately 873 facilities operated by its state and local government partners under IGAs.

The remaining population is housed in BOP facilities and 14 privately contracted facilities. The USMS transports prisoners between detention facilities and courthouses, as well as from one detention facility to another. The USMS's Justice Prisoner and Alien Transportation System Division (JPATS) manages the coordination, scheduling, in-transit security, and movement of prisoners in federal custody. JPATS transports prisoners to detention facilities, courts, and federal correctional institutions across the 94 judicial districts. During fiscal year (FY) 2019, JPATS managed the transport of an average of 1,042 prisoners per operational day.

COVID-19 Among USMS Prisoners

On March 22, 2020, the USMS identified the first confirmed case of COVID-19 among its prisoners. By November 12, 2020, there had been 6,904 confirmed cases of COVID-19 among USMS prisoners. Figure 1 shows the weekly number of new USMS prisoners with confirmed cases of COVID-19 and the total number of confirmed cases since March.

Figure 1. New and Cumulative COVID-19 Infections Among USMS Prisoners



Source: USMS

OIG Approach

The objective of this review is to provide information to assist the USMS in mitigating the health risks arising from the pandemic. The scope of this report, unless otherwise indicated, is from January 2020 through August 2020.

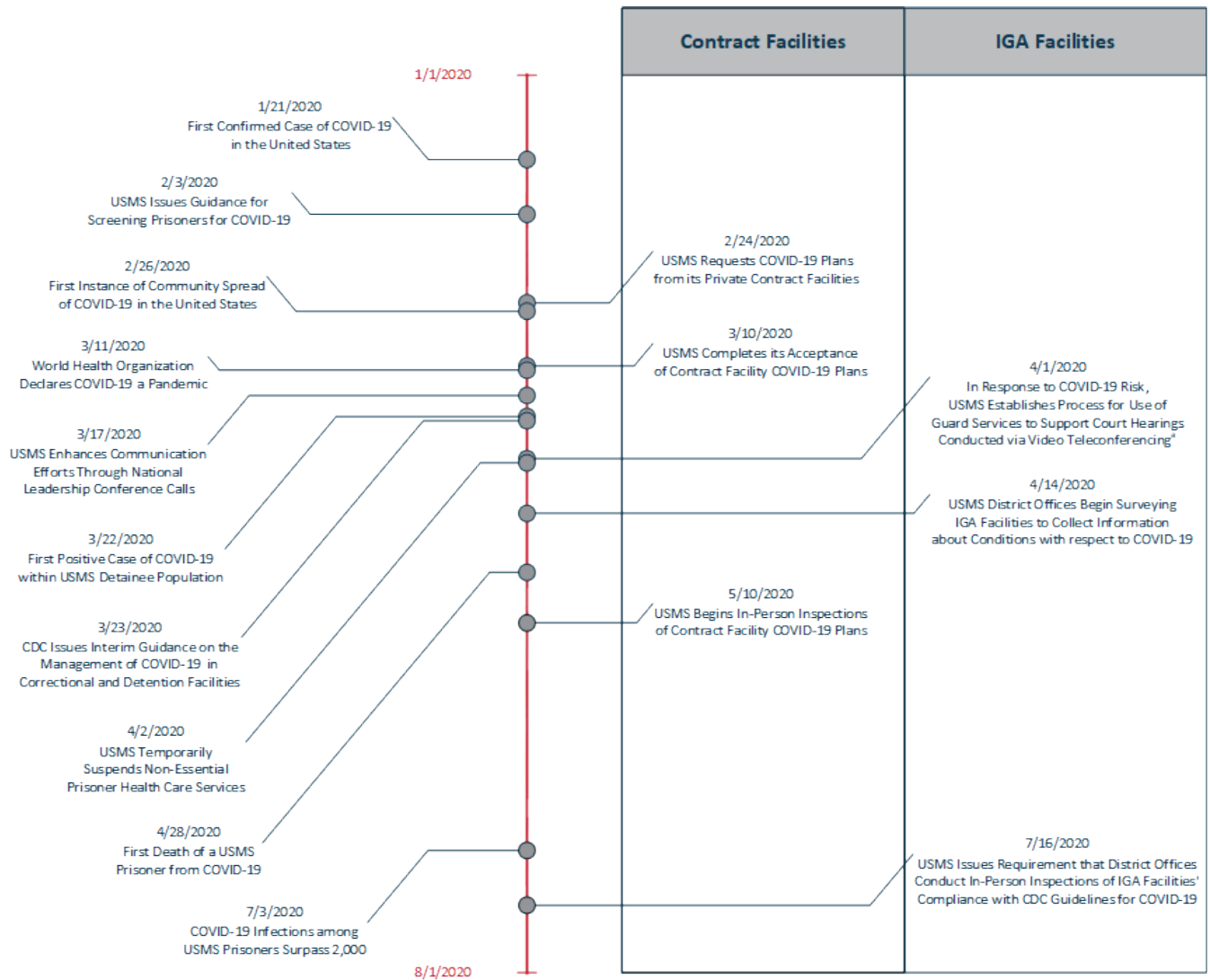
To determine whether the USMS followed industry standards, available guidance, and best practices to manage the threat of COVID-19 in its detention facilities, we reviewed CDC guidance, USMS policy directives, and requirements found in the agency's contracts and intergovernmental agreements. We then reviewed the USMS's preparedness, prevention, and management of COVID-19 cases within the

agency's detention facilities. We also conducted interviews with key personnel responsible for the USMS's COVID-19 response efforts to understand the entirety of the risks faced and the mitigation efforts being implemented.

Controls Differ Between Contract and IGA Detention Facilities

For its contract facilities, the USMS's POD acted quickly to mitigate emerging risks of COVID-19 by ensuring that each facility had a plan in place to follow applicable CDC guidelines. However, the POD did not react as quickly to mitigate risks at the IGA facilities. Figure 2 shows the timeframe of USMS oversight actions taken in response to COVID-19 risk for contract facilities and IGA facilities.

Figure 2. Timeline of USMS Oversight of Contract and IGA Facilities in Response to COVID-19 Risk



^a The USMS's contract facilities were structured to allow for the use of guard services to support court hearings conducted via video teleconferencing prior to the emergence of COVID-19.

Source: OIG analysis of significant COVID-19 events.

The USMS's controls for COVID-19 preparedness, prevention, and management are weaker for IGA facilities than for contract facilities. We found that this exists because of differences in the USMS's authority over the IGA facilities and because the POD's leadership believes that effective oversight of IGA facilities is achieved through the control program that existed prior to the pandemic.

The USMS's POD exercises considerable influence and control over the management of its 14 contract facilities, which house approximately 15 percent of USMS prisoners. In response to emerging information about the COVID-19 pandemic, on February 24, 2020, the POD requested copies of each contractor's COVID-19 plan. The contractors provided plans within about 2 weeks, and the POD staff quickly reviewed and accepted each plan. By May 2020, the POD began conducting unannounced, in-person assessments of each contract facility's implementation of its COVID-19 plan. The POD also began obtaining daily reports from each contract facility on: the number of staff who called in sick, the number of staff who tested positive for COVID-19, the number of USMS prisoners quarantined because of suspected contact or exposure, and the number of test kits and N95 protective masks on hand.

By contrast, each of the USMS's 873 IGA facilities is independently managed by a state or local government or, in some cases, a third-party contractor. As of June 3, 2020, the number of USMS prisoners housed in individual IGA facilities ranged from 1 to 1,160. The IGA facilities house USMS prisoners on an as-needed basis at a negotiated per diem rate, generally providing for the same level of services to USMS prisoners as they provide to the facility's other prisoners. Based on USMS policy, each facility agreement already required that an infectious disease control program be in place at the facility and that the facility notify the USMS of any infectious disease cases. However, at the time of our review, POD personnel could not confirm which, if any, of the infectious disease control programs had been updated to incorporate the latest CDC guidance for detention facility management of COVID-19. The facility agreements neither grant the USMS authority to manage the operations or policies of the facility nor impose consequences if the USMS's requests and recommendations are not implemented. Instead, day-to-day operation of the IGA facilities is handled entirely by the independent facility managers, and the USMS generally provides only intermittent oversight through its annual Detention Facility Reviews.

The USMS's annual IGA Detention Facility Reviews are on-site assessments of an IGA facility's compliance with a subset of the Federal Performance-Based Detention Standards, which establish the minimum performance level required by the government to meet the detention contract requirements.¹ If deficiencies are identified, the USMS district office ("district") works with the facility to develop a corrective action plan. However, if the facility fails to take corrective actions and the deficiency persists, the USMS can reduce or cease its use of the facility depending on the nature of the deficiency. Before April 14, 2020, the USMS did not have any policies or practices in place to seek data from IGA facilities regarding implementation of CDC COVID-19 guidelines.

¹ The Federal Performance-Based Detention Standards are a publication of the U.S. Marshals Service based in part on the American Correctional Association Standards.

The USMS Can Improve Its COVID-19 Oversight of IGA Facilities

The USMS Created a One-Time Survey to Assess the Implementation of CDC Guidelines in IGA Facilities

On April 14, 2020, the POD issued a memorandum that required a one-time survey of each IGA facility to measure implementation of available CDC guidance pertaining to correctional and detention facilities. The survey was to be completed by a staff member at each facility. The POD also began collecting information about COVID-19 preparedness, prevention, and management within its IGA facilities.

The POD required responses to the survey within 2 weeks of its issuance date. As of June 15, 2020, more than 8 weeks after the survey was issued, the POD had received responses from 648 of the 873 IGA facilities queried.² The IGA facilities provided their responses to USMS district staff, who then transferred the information into a shared electronic file for compilation by the POD. The IGA facility survey responses received by the POD provided information on the number of infections and the state of facility operations at a specific point in time for each IGA facility.

The USMS Did Not Initially Require Districts to Verify IGA Facility Responses to Surveys and Did Not Issue Guidance on How Districts Should Evaluate Surveys

The IGA facility survey responses were prepared by a representative from each facility. This survey approach introduces the risk that facilities could provide incomplete or inaccurate answers to the survey questions. We believe this risk could have been mitigated through on-site verifications like those conducted for the 14 contract facilities. However, the April 14 memorandum did not require the districts to perform on-site verification of the survey responses provided by the IGA facilities. POD staff told us that, early in the pandemic, some IGA facilities did not allow USMS personnel or anyone else to enter if not necessary as determined by the facility. These restrictions were intended to reduce the risk of introducing COVID-19 into the facilities.

The POD staff explained that the survey responses could be verified during the on-site reviews conducted annually as part of the Detention Facility Review program. However, we observed that these reviews could occur months after the survey responses were received, and only 74 percent of the survey responses had been received more than 8 weeks after the survey was issued. Moreover, as discussed below, the USMS did not direct districts to verify survey responses during annual reviews until July 16, 2020, and it is unclear whether any districts did so before this date.

A POD official told us that the districts were responsible for evaluating the survey results and requesting corrective action plans from the IGA facilities as necessary. However, as of August 7, 2020, USMS headquarters did not issue any guidance to the districts explaining how those evaluations should be conducted or designating an acceptable threshold of CDC guideline implementation for the USMS to continue housing prisoners at a given facility. Absent guidance from USMS headquarters, the districts could be allowing different levels of CDC guidance implementation for their IGA facilities, thereby providing inconsistent oversight for different facilities. As of August 7, 2020, the POD had not removed prisoners from any IGA facility as a result of inadequate implementation of COVID-19 related

² As of November 29, 2020, the USMS had received responses from 708 of the 873 IGA facilities queried. However, the analysis presented in this report reflects only the 648 responses received as of June 15, 2020.

guidelines. Instead, POD officials described the decision-making process for removing prisoners from a facility as “on-the-spot decisions” made by the districts.

The USMS Eventually Issued Guidance to Districts to Assess and Validate Survey Results During Annual IGA Facility Reviews but this Guidance was Limited

We expressed to POD officials our concern that guidance was needed to ensure that the survey results were evaluated consistently and to specify both acceptable levels of CDC guidance implementation and the circumstances in which a Corrective Action Plan should be developed. After we discussed our concerns, the POD issued a July 16, 2020 memorandum directing each district to assess and validate the survey responses during each facility’s FY 2020 Detention Facility Review. The POD also instructed districts to work with IGA facilities in developing corrective action plans addressing inconsistencies and deficiencies noted in survey responses. However, as of October 14, 2020, no corrective action plans have been requested from or submitted by any IGA facility.

While we found that the July 16 memorandum was a step in the right direction, it had several limitations. The memorandum still did not clarify how the survey results should be evaluated by each district. Additionally, the memorandum did not encourage any type of data-driven prioritization or sequencing of the Detention Facility Reviews based on COVID-19 risk factors.³ It also did not address whether the districts would be required to complete the additional steps described in the memorandum related to COVID-19 for facilities previously reviewed during the FY 2020 review cycle. On the date of the memorandum, USMS district offices had already completed at least 44 facility reviews that were not bound by the requirement to assess COVID-19 survey responses. Without such oversight, those facilities will remain at higher risk. Further, the memorandum did not address how, if at all, the districts should conduct an assessment and validation of CDC guideline implementation in facilities that did not respond to the survey, because the additional review procedures directed by the July 16, 2020 memorandum were framed as an assessment and validation of the facility’s survey responses. Therefore, we recommend that the USMS develop guidance to ensure that the COVID-19 survey results are evaluated consistently and to identify acceptable levels of CDC guideline implementation. We further recommend that the USMS ensure that all active IGA facilities are reviewed in-person by USMS personnel for implementation of CDC guidelines for the duration of the pandemic. This should include facilities reviewed prior to the July 16, 2020 memorandum, and facilities not responding to the survey.

An additional concern with the survey for IGA facilities is that it has not been updated to address the most recent CDC guidance. The July 16 memorandum requires assessment and validation of each facility’s original survey response. By the time the Detention Facility Review takes place, each facility’s survey response may be months old. Additionally, CDC guidance on management of COVID-19 in correctional and detention facilities is evolving, and the survey responses may no longer reflect the most up-to-date guidance at the time of the Detention Facility Review. For example, the CDC’s July 14, 2020 revision to the guidance encourages the testing of both symptomatic and asymptomatic prisoners to help prevent the spread of COVID-19. However, the USMS’s April 14 survey to the IGA facilities asked only about testing of prisoners who were flagged by the screening procedures. The survey did not ask about whether each facility tested asymptomatic prisoners. Similarly, the July 14, 2020

³ We address the lack of data-driven prioritization as part of our analysis of the survey results received by the USMS and make a related recommendation below.

revision added a new recommendation that facilities ensure that adequate stocks of testing supplies are on hand, but the prevailing guidance at the time the USMS issued its April 14 survey recommended only that facilities ensure that adequate specimen collection supplies are kept on hand. Accordingly, the USMS’s survey only asks about medical supplies in general. We recommend that the USMS update its oversight plan for IGA facilities, including its survey, to incorporate the latest CDC guidance as it changes.

The USMS Collects Information on the Management of COVID-19 Precautions and Infections, But Less Data is Collected From IGA Facilities Than Contract Facilities

Contract facilities provide daily updates to the POD related to the number of prisoners who tested positive for COVID-19, the number of USMS prisoners quarantined because of suspected contact or exposure, the number of staff who were sick or tested positive, the number of test kits on hand, and the number of N95 protective masks on hand for each facility. In contrast, IGA facilities provide daily updates related to COVID-19 that include less detailed data than provided by contract facilities. IGA facilities’ daily updates provide the number of prisoners infected at each facility. The POD was not tracking the additional data for IGA facilities. Table 1 summarizes the differences in day-to-day tracking of the conditions that we considered to be the most significant in the context of infectious disease management at each type of facility.

Table 1. Comparison of Data Tracking Efforts for USMS Detention Facilities

Items Tracked	Contract Facilities	IGA Facilities
Prisoners Testing Positive for COVID-19	Yes - Daily	Yes - Daily
Prisoners Quarantined because of Suspected Contact or Exposure	Yes - Daily	No*
Staff Calling in or Testing Positive	Yes - Daily	No
COVID-19 Test Kits on hand	Yes - Daily	No
N95 Protective Masks on hand	Yes - Daily	No

*Initially the districts were required to report to the POD the dates associated with prisoners quarantined by facilities. However, the POD told us that, as of October 15, 2020, it had decided to not require reporting of quarantine-related information by the districts.

Source: OIG review of USMS data collected.

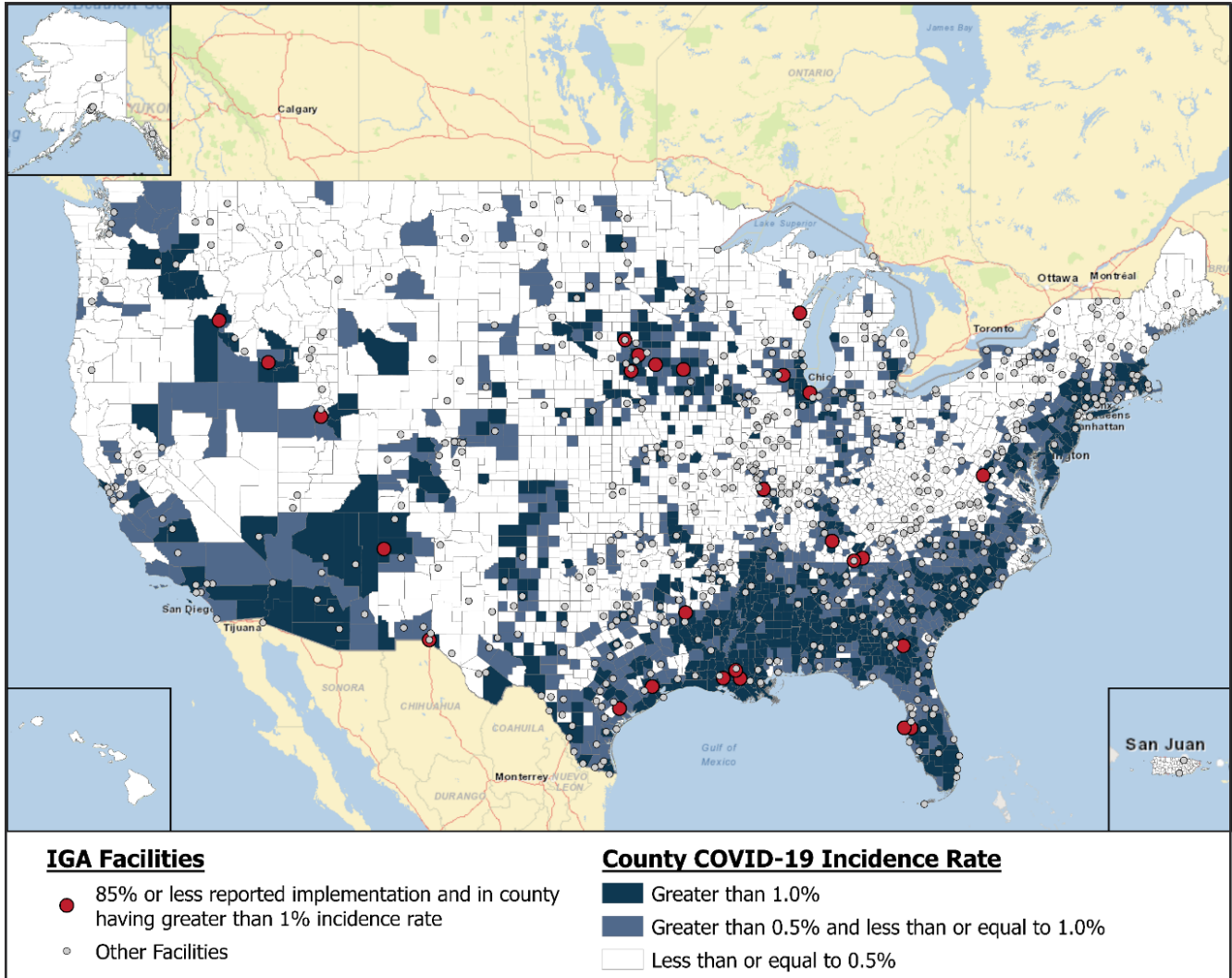
Table 1 shows that the POD obtains more detailed information about conditions and capabilities of contract facilities than IGA facilities. We raised these concerns with POD leadership who told us that, while the USMS has the same responsibility and accountability for prisoners in both IGA and contract facilities, the nature of the at-will intergovernmental agreements does not provide the same ability for control that is provided in contracts. The leadership officials also said that effective oversight is achieved for the IGA facilities through the POD’s annual Detention Facility Review process and the April 14 survey. While the USMS’s approach to COVID-19 oversight for its contract facilities cannot be replicated in its entirety for the IGA facilities, we recommend that the USMS explore the feasibility of expanding the data related to COVID-19 collected on a periodic basis for the IGA facilities.

The IGA Facility Survey Results Indicate that Certain Facilities are High Risk Environments and Should be Prioritized For Review by the Districts

Despite limitations associated with the IGA survey, those results represent the best information available at the time of this report regarding COVID-19 preparedness, prevention, and management within the IGA facilities. Given that, we analyzed the survey results to determine each facility's reported adherence to existing CDC guidelines. We found that 121 facilities, or 19 percent of the 648 IGA facilities responding as of June 15, 2020, reported 85 percent or less implementation of the standards assessed by the survey questions. We then determined the incidence rate of confirmed COVID-19 infections as of July 15, 2020, for the county where each facility was located. We selected this county-wide incidence rate as the best available representation of risk in the communities surrounding each facility. Of the 121 IGA facilities that reported 85 percent or less implementation of the guidance reflected in the survey questions, we identified 27 facilities that were also located in counties having greater than 1 percent incidence rates of COVID-19 across the entire population. See Figure 3 for the results of this analysis.⁴

⁴ The information presented in Figure 3 and in Table 2 regarding facility locations is based on our analysis of data that was made available to us by the USMS. This analysis should not be relied upon as a definitive assessment of risk, as the underlying data has not been verified or validated for accuracy, particularly with respect to the geographic location of each IGA facility. We performed a limited assessment of the data pertaining only to the 27 facilities listed in Table 2. Consequently, this analysis should be treated only as an example of how the data could be used once its reliability can be established.

Figure 3. IGA Facilities' Reported Implementation of CDC Guidelines between April and June 2020 and COVID-19 Incidence Rates by County as of July 15, 2020



Source: OIG analysis of data from USMS IGA facility survey responses, the Center for Systems Science and Engineering at Johns Hopkins University, and the U.S. Census Bureau.

We consider these 27 IGA facilities to represent high-risk environments for new and expanded infections because of the lower rates of guidance implementation and the many ways in which the virus could be brought into the facility from the surrounding community. Facilities with indicators of higher risk for spreading COVID-19, such as the 27 we identify in Table 2, should be prioritized for review by the districts.

Table 2. IGA Facilities with Indicators of Higher Risk for COVID-19 Spread

Facility ^a	State	Reported Implementation ^b	Incidence Rate for County ^c
1	NE	83%	9.29%
2	IA	82%	8.87%
3	NM	74%	5.17%
4	GA	83%	2.23%
5	TX	85%	2.16%
6	LA	85%	2.11%
7	SD	73%	1.97%
8	VA	84%	1.88%
9	LA	84%	1.61%
10	IA	81%	1.49%
11	FL	84%	1.43%
12	IA	79%	1.40%
13	LA	78%	1.35%
14	ID	62%	1.34%
15	ID	80%	1.32%
16	UT	82%	1.32%
17	WI	82%	1.27%
18	FL	78%	1.24%
19	TX	85%	1.23%
20	IN	63%	1.20%
21	IL	81%	1.20%
22	TN	79%	1.19%
23	LA	82%	1.10%
24	TX	84%	1.07%
25	IL	77%	1.06%
26	TN	85%	1.01%
27	TN	80%	1.01%

^a Facilities referenced in this table are not identified by name because it was not necessary to individually identify the facilities for the purposes of the findings and recommendations of this report.

^b The percent reported implementation for each IGA facility was calculated based on the facility's responses to the POD's April 14 survey. Facility responses were submitted to the USMS over multiple months.

^c Data as of July 15, 2020.

Source: OIG analysis of data from USMS IGA facility survey responses, the Center for Systems Science and Engineering at Johns Hopkins University, and the U.S. Census Bureau.

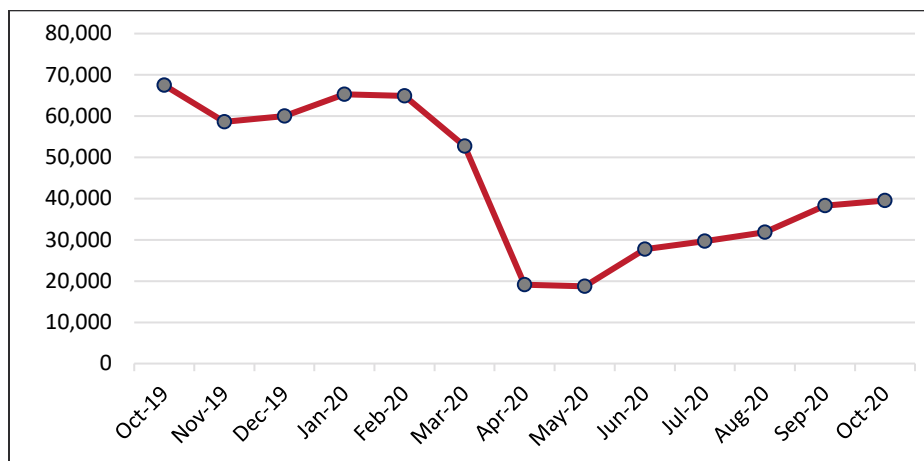
As of August 2020, POD officials told us that they were developing a system to use publicly available data pertaining to COVID-19 incidence rates in their risk analyses but had not yet begun using such data. At that time, the POD had not mandated any prioritization or sequencing of IGA facility reviews. POD officials told us that there was limited value in prioritizing the reviews for the remainder of the FY 2020 review cycle, but the officials agreed that prioritization would be beneficial for future cycles.

We acknowledge that the USMS faces challenges in exercising effective oversight over the 873 IGA facilities it uses across the country, and we recognize that the POD has made efforts to obtain more information about the conditions within those facilities. However, as we outline in this report, substantial risks remain for the IGA facilities, which are not monitored as closely as the contract facilities. We recommend that, beginning in FY 2021, and for the duration of the pandemic, the USMS implement a data-driven approach to identify COVID-19 risk factors at the IGA facilities, identify facilities with indicators of higher risk (similar to the 27 identified in this report), and prioritize high risk facilities for review by the districts.

The USMS Should Minimize Risks Associated with Prisoner Movement

We reviewed the USMS's efforts to minimize prisoner movements both into and out of its detention facilities to reduce the spread of COVID-19. The USMS transports prisoners for many reasons, including court proceedings, attorney meetings, medical appointments, to make space for new arrests, and to transfer individuals to the custody of the BOP. While some of these movements are unavoidable, we examined whether the USMS had taken actions to minimize discretionary movements in light of the COVID-19 pandemic. Figure 4 shows that prisoner movement decreased greatly during the months from October 2019 through October 2020.

Figure 4. Prisoner Movements prior to and during the COVID-19 Pandemic



Source: USMS

These reductions resulted from factors both internal and external to the USMS. The USMS made reasonable efforts to encourage district offices to scrutinize all movement requests for necessity and discourage district offices from making unnecessary prisoner movements between facilities within the jurisdiction of their district. The courts influenced reduction in prisoner movements by conducting fewer in-person hearings. The BOP also influenced reduction in movements by temporarily ceasing the acceptance of new intakes from the USMS on March 13, 2020. Routine transfers of sentenced prisoners to the BOP resumed on June 30, 2020. As a result, the USMS was able to begin moving the backlog of prisoners awaiting transfers to a BOP facility.

Any time prisoners are moved, there is an inherent risk that the prisoner could transmit COVID-19 to other parties including the transporting officials, other prisoners, and staff or inmates of the destination facility. This is because of the necessary interactions between prisoners and staff that take

place during transportation operations as well as the confined spaces of buses and aircraft, even when social distancing is encouraged. The risk existed at the time of our review because the USMS generally did not test prisoners for COVID-19 prior to transporting them out of a facility, and consequently could not be sure that a prisoner being moved was COVID-19 free. An exception to this lack of testing occurred when a prisoner had exhibited symptoms or was known to have had close contact with a known COVID-19 positive case during the 14 days prior to transportation. Limiting COVID-19 testing to prisoners exhibiting symptoms or having exposure prior to transport presents a risk that asymptomatic prisoners could be positive for COVID-19 and spread the virus.

These risks were highlighted in July 2020 when the USMS's JPATS transported 58 prisoners via aircraft from Tallahatchie Detention Center in Mississippi and Grady County Jail in Oklahoma to BOP custody at the Metropolitan Detention Center in Guaynabo, Puerto Rico. The 58 prisoners were tested for COVID-19 after they arrived in Puerto Rico, and 7 tested positive for COVID-19. A POD official told us that none of those prisoners had been tested for COVID-19 prior to transfer because none of them had been flagged during the pre-flight COVID-19 screening process. The official explained that the USMS was unable to confirm whether the prisoners became infected with COVID-19 before, during, or after the transfer. Had the prisoners been tested prior to transport, contact tracing would have been more effective, and JPATS staff could have ensured that all necessary precautions had been taken to prevent transmission among prisoners.

We discussed with the POD official our concerns about screening procedures that do not detect all individuals who may be positive for COVID-19 prior to their transportation. The official acknowledged the risk but pointed out that the USMS's JPATS Division was familiar with how to safely transport prisoners with communicable diseases. The official explained that JPATS had implemented certain universal precautions that are taken during all transportation operations, including masks for all prisoners. The official told us that the POD was discussing with the BOP the prospect of testing prisoners prior to transfer but anticipated challenges in getting some of the facilities to administer the test. We followed up with officials from the USMS JPATS Division, who clarified that JPATS' policy is to not transport any prisoner who is exhibiting symptoms of COVID-19 or who is known to have had close contact with a COVID-19 positive case. This is because there are too many unknowns with COVID-19 being a new virus and evolving CDC guidance.

We are concerned that precautions JPATS takes during transportation operations may not be sufficient for preventing the spread of COVID-19 during transport. As of the July 14, 2020 update to the CDC's Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities, testing for symptomatic as well as asymptomatic individuals is encouraged to help prevent the spread of COVID-19. Additionally, the August 10, 2020 revision of the CDC's Interim Considerations for COVID-19 Testing in Correctional and Detention Facilities recommends that facilities in communities with moderate to substantial levels of community transmission consider testing for COVID-19 and reviewing results before transferring prisoners to another facility or releasing them to the community. We recognize the challenges involved in IGA facilities testing prisoners prior to transport or release, but we believe doing so could significantly reduce the risks of spreading COVID-19 to other inmates, transportation officials, and individuals at the destination facilities. Testing individuals prior to transfer would also help the USMS identify where a COVID-19 positive individual became infected, thereby increasing the efficacy of any contact tracing efforts. After discussing our concerns with officials from POD and JPATS, the USMS reported in an October 8, 2020 response to a

Congressional inquiry that it began COVID-19 testing for some designated prisoners prior to JPATS movement and it plans to expand the use of pre-movement testing as space and testing capacity allow. Consequently, we recommend that the USMS establish a policy requiring facilities to conduct testing of USMS prisoners for COVID-19 in accordance with CDC guidance, to the maximum extent possible, prior to any transfer to other detention facilities or to BOP custody for the duration of the pandemic.

Conclusion and Recommendations

While the USMS has taken steps to manage the risks associated with COVID-19, opportunities for improvement remain. IGA facilities that had already been reviewed prior to the July 16, 2020 memorandum and IGA facilities that did not respond to the survey are not currently required by USMS policy to be assessed for implementation of CDC guidelines. Additionally, the USMS's oversight plan for IGA facilities does not provide for assessments of implementation of all of the latest CDC guidance, nor does it identify and prioritize the highest risk facilities for timely Detention Facility Reviews. Finally, the USMS practice of transporting prisoners without first testing to confirm that they are COVID-19 free may lead to further infections and should be re-evaluated in order to mitigate the spread of COVID-19.

We recommend that the USMS:

1. Develop guidance to ensure that the COVID-19 survey results are evaluated consistently and to identify acceptable levels of CDC guideline implementation.
2. Ensure that all active IGA facilities are reviewed in-person by USMS personnel for implementation of CDC guidelines for the duration of the pandemic. This should include facilities reviewed prior to the July 16, 2020 memorandum, and facilities not responding to the survey.
3. Update its oversight plan for IGA facilities to incorporate the latest CDC guidance as it changes.
4. Explore the feasibility of expanding the data related to COVID-19 collected on a periodic basis for the IGA facilities.
5. Beginning in FY 2021, and for the duration of the pandemic, implement a data-driven approach to identify COVID-19 risk factors at the IGA facilities, identify facilities with indicators of higher risk (similar to the 27 identified in this report), and prioritize high risk detention facilities for review by the districts.
6. Establish a policy requiring facilities to conduct testing of USMS prisoners for COVID-19 in accordance with CDC guidance, to the maximum extent possible, prior to any transfer to other detention facilities or to BOP custody for the duration of the pandemic.

**THE UNITED STATES MARSHALS SERVICE
RESPONSE TO THE DRAFT REPORT**



U.S. Department of Justice

United States Marshals Service

Office of Professional Responsibility

Washington, DC 20530-0001

January 11, 2021

MEMORANDUM TO: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Heather Walker *Heather Walker*
Assistant Director

SUBJECT: Audit Report: Review of the United States Marshals Service's
Response to the COVID-19 Pandemic

In response to recent correspondence from the Office of the Inspector General regarding the subject report, attached is the United States Marshals Service's response to the Formal Draft Audit report.

Should you have any questions, please contact Krista Eck, External Audit Liaison, at 202-819-4371.

Attachment

cc: Ferris Polk
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Office of the Inspector General

Bradley Weinsheimer
Associate Deputy Attorney General
Department of Justice

David Metcalf
Counsel to the Deputy Attorney General
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Justice Management Division

John Kilgallon
Chief of Staff
United States Marshals Service

United States Marshals Service
Review of the U.S. Marshals Service's Response to the COVID-19 Pandemic

Recommendation 1: Develop guidance to ensure that the COVID-19 survey results are evaluated consistently and to identify acceptable levels of CDC guideline implementation.

USMS Response (Concur): The United States Marshals Service (USMS) concurs that additional guidance should be developed to assess facility compliance with the Centers for Disease Control (CDC) guidelines and other applicable detention standards for all program areas. The USMS expects to resolve this recommendation by March 31, 2021.

Recommendation 2: Ensure that all active IGA facilities are reviewed in-person by USMS personnel for implementation of CDC guidelines for the duration of the pandemic. This should include facilities reviewed prior to the July 16, 2020 memorandum, and facilities not responding to the survey.

USMS Response (Concur): The USMS concurs with this recommendation. The USMS will ensure that all facilities currently housing USMS prisoners will be assessed for compliance with the CDC guidelines. Any additional facilities for which the USMS establishes a contract or intergovernmental agreement will be assessed prior to the USMS housing any prisoners in the facility. The USMS expects that all facilities currently used by the USMS will be assessed for compliance with the CDC guidelines by March 31, 2021.

Recommendation 3: Update its oversight plan for IGA facilities to incorporate the latest CDC guidance as it changes.

USMS Response (Concur): The USMS concurs with this recommendation. The USMS expects to resolve this recommendation by March 31, 2021.

Recommendation 4: Explore the feasibility of expanding the data related to COVID-19 collected on a periodic basis for the IGA facilities.

USMS Response (Concur): The USMS concurs, in principle, with this recommendation. As we resolve the other recommendations, we will work to identify other data elements critical to identifying best practices relating to managing detention populations and/or facilities during a pandemic. The USMS expects to resolve this recommendation by March 31, 2021.

Recommendation 5: Beginning in FY 2021, and for the duration of the pandemic, implement a data-driven approach to identify COVID-19 risk factors at the IGA facilities, identify facilities with indicators of higher risk (similar to the 27 identified in this report), and prioritize high risk detention facilities for review by the districts.

USMS Response (Concur): The USMS concurs with the recommendation. The USMS will work with the Office of the Inspector General to identify a mutually agreeable methodology for identifying facilities at greatest risk given the incidence of the COVID-19 in the surrounding community(ies). The USMS expects to resolve this recommendation by March 31, 2021.

Recommendation 6: Establish a policy requiring facilities to conduct testing of USMS prisoners for COVID 19 in accordance with CDC guidance, to the maximum extent possible, prior to any transfer to other detention facilities or to BOP custody for the duration of the pandemic.

USMS Response (Concur): The USMS concurs with this recommendation. Beginning in October 2020, the USMS began implementing a program to test prisoners prior to transfer and continues to work to expand testing at private detention facilities housing USMS prisoners, whether operated pursuant to a direct contract or an intergovernmental agreement. While the USMS has already made progress to resolve this recommendation, rapid testing availability and laboratory test result delays present a challenge to prisoner movement scheduling and a definite resolution date cannot be established at this time.

**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

The OIG provided a draft of this report to the U.S. Marshals Service (USMS). The USMS's response is incorporated in Appendix 1 of this final report. In response to our report, the USMS concurred with our recommendations, and discussed the actions it will implement in response to our findings. As a result, the status of the report is resolved. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Recommendations for the USMS:

- 1. Develop guidance to ensure that the COVID-19 survey results are evaluated consistently and to identify acceptable levels of CDC guideline implementation.**

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that additional guidance should be developed to assess facility compliance with the Centers for Disease Control (CDC) guidelines and other applicable detention standards for all program areas. The USMS expects to resolve this recommendation by March 31, 2021.

This recommendation can be closed when we receive documentation showing that the USMS has established and implemented guidance to ensure that the COVID-19 survey results are evaluated consistently and for identifying acceptable levels of CDC guideline implementation in detention facilities.

- 2. Ensure that all active IGA facilities are reviewed in-person by USMS personnel for implementation of CDC guidelines for the duration of the pandemic. This should include facilities reviewed prior to the July 16, 2020 memorandum, and facilities not responding to the survey.**

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that it will ensure that all facilities currently housing USMS prisoners will be assessed for compliance with the CDC guidelines. The USMS also stated that any additional facilities for which the USMS establishes a contract or intergovernmental agreement will be assessed prior to the USMS housing any prisoners in the facility. The USMS expects that all facilities currently used by the USMS will be assessed for compliance with the CDC guidelines by March 31, 2021.

This recommendation can be closed when we receive evidence that all facilities currently used by the USMS have been reviewed by USMS personnel and assessed for compliance with the CDC guidelines.

- 3. Update its oversight plan for IGA facilities to incorporate the latest CDC guidance as it changes.**

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that it expects to resolve this recommendation by March 31, 2021.

This recommendation can be closed when we receive documentation that the USMS has updated its oversight plan for IGA facilities to incorporate the latest CDC guidance as it changes.

4. Explore the feasibility of expanding the data related to COVID-19 collected on a periodic basis for the IGA facilities.

Resolved. The USMS concurred in principle with our recommendation. The USMS stated in its response that as it works to resolve the other recommendations in this report, it will work to identify other data elements critical to identifying best practices relating to managing detention populations or facilities during a pandemic. The USMS expects to resolve this recommendation by March 31, 2021.

Although the USMS concurred in principle, the planned corrective actions appear to be adequate to address our recommendation. This recommendation can be closed when we receive evidence that the USMS has explored the feasibility of expanding the data related to COVID-19 it collects on a periodic basis from the IGA facilities.

5. Beginning in FY 2021, and for the duration of the pandemic, implement a data-driven approach to identify COVID-19 risk factors at the IGA facilities, identify facilities with indicators of higher risk (similar to the 27 identified in this report), and prioritize high risk detention facilities for review by the districts.

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that it will work with the Office of the Inspector General to identify a mutually agreeable methodology for identifying facilities at greatest risk given the incidence of the COVID-19 in the surrounding communities. The USMS expects to resolve this recommendation by March 31, 2021.

This recommendation can be closed when we receive evidence that the USMS has implemented a data-driven approach to identify COVID-19 risk factors, identify IGA facilities with indicators of higher risk, and prioritize high risk detention facilities for review.

6. Establish a policy requiring facilities to conduct testing of USMS prisoners for COVID-19 in accordance with CDC guidance, to the maximum extent possible, prior to any transfer to other detention facilities or to BOP custody for the duration of the pandemic.

Resolved. The USMS concurred with our recommendation. The USMS stated in its response that beginning in October 2020, the USMS began implementing a program to test prisoners prior to transfer and continues to work to expand testing at private detention facilities housing USMS prisoners. The USMS also stated that while it has already made progress to resolve this recommendation, rapid testing availability and laboratory test result delays present a challenge to prisoner movement scheduling and a definite resolution date cannot be established at this time.

This recommendation can be closed when we receive documentation that the USMS has established a policy addressing the testing of USMS prisoners prior to any transfer to other detention facilities or to BOP custody for the duration of the pandemic.