



January 2021

# PREGNANT WOMEN IN DOJ CUSTODY

## U.S. Marshals Service and Bureau of Prisons Should Better Align Policies with National Guidelines



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-147](#), a report to congressional requesters

## Why GAO Did This Study

Policymakers and advocacy groups have raised questions about the treatment of incarcerated pregnant women, including the use of restrictive housing—removal from the general prisoner population with the inability to leave the cell for the majority of the day—and restraints. Within DOJ, USMS is responsible for prisoners awaiting trial or sentencing. BOP is responsible for sentenced prisoners. GAO was asked to review issues related to pregnant women in USMS and BOP custody.

This report examines (1) what DOJ data indicate about pregnant women in USMS and BOP custody; (2) the extent to which USMS and BOP policies align with national guidance on pregnancy-related care; and (3) what is known about the care provided and the extent to which USMS and BOP track when pregnant women are placed in restrictive housing or restraints. GAO analyzed available agency data from calendar years 2017 through 2019, which were the most recent data available; compared agency policies to relevant national guidance; and interviewed officials and a non-generalizable sample of prisoners who had been pregnant in USMS or BOP custody.

## What GAO Recommends

GAO is making six recommendations, including that USMS and BOP take steps to more closely align their policies with national guidance on pregnancy-related care as feasible, and that USMS require facilities to collect data on and notify USMS when pregnant or postpartum women are placed in restrictive housing. DOJ concurred with our recommendations.

View [GAO-21-147](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or [goodwing@gao.gov](mailto:goodwing@gao.gov).

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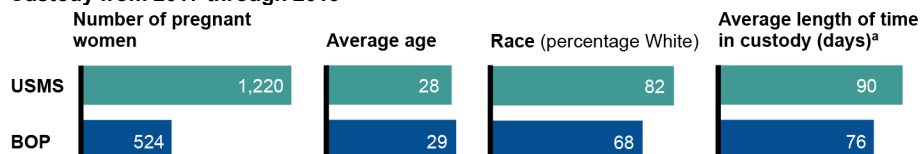
## PREGNANT WOMEN IN DOJ CUSTODY

### U.S. Marshals Service and Bureau of Prisons Should Better Align Policies with National Guidelines

## What GAO Found

GAO analyses of available data show that from calendar year 2017 through 2019, there were at least 1,220 pregnant women in U.S. Marshals Service (USMS) custody and 524 pregnant women in Bureau of Prisons (BOP) custody.

#### Pregnant Women in USMS and BOP Custody: Number, Age, Race, and Length of Time in Custody from 2017 through 2019



Source: GAO analysis of U.S. Marshals Service (USMS) and Bureau of Prisons (BOP) data. | GAO-21-147

<sup>a</sup>USMS does not track pregnancy outcomes, so length of time in custody may include time when the women were not pregnant. For BOP, the length of time represents only the period of pregnancy.

GAO analyses also show that pregnant women were held at a variety of facility types from 2017 through 2019. For example, pregnant women spent 68 percent of their time in USMS custody in non-federal facilities where USMS has an intergovernmental agreement. BOP data show that pregnant women spent 21 percent of their time in BOP custody while pregnant at Carswell—BOP's only female Federal Medical Center.

While USMS and BOP both have policies that address the treatment and care of pregnant women, not all policies fully align with national guidance recommendations on 16 pregnancy-related care topics. For example, national guidance recommends specialized nutrition and when needed, mental health care. USMS policies fully align on three of 16 care topics and BOP policies fully align on eight of 16. By taking steps to more closely align agency standards and policies with national guidance as feasible, USMS and BOP would be better positioned to help ensure the health of pregnant women in their custody.

USMS and BOP data show that the agencies provide a variety of medical care and special accommodations to pregnant women, and both agencies track the use of restraints. For example, USMS data show that women receive prenatal care and BOP data show that women receive prenatal vitamins and lower bunk assignments, among other things. However, USMS could do more to collect data on pregnant and postpartum women in their custody who are placed in restrictive housing. While USMS requests that facilities that hold USMS prisoners submit data on a regular basis indicating which prisoners were placed in restrictive housing, facilities are not required to indicate if any of these prisoners are pregnant or postpartum. In addition, USMS does not have a requirement for facilities to immediately notify USMS when such women are placed in restrictive housing. By requiring these notifications and data collection, USMS would be better positioned to ensure that facilities are complying with its USMS Detention Standards and Department of Justice (DOJ) guidance that state pregnant and postpartum women should not be placed in restrictive housing except in rare situations.

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## Abbreviations

ACOG	American College of Obstetricians and Gynecologists
BEMR	Bureau Electronic Medical Records
BOP	Bureau of Prisons
CDC	Centers for Disease Control and Prevention
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOJ	Department of Justice
ePMR	Electronic Prisoner Medical Request
FCI	Federal Correctional Institution
FDC	Federal Detention Center
FMC	Federal Medical Center
HIV	human immunodeficiency virus
IGA	intergovernmental agreement
JDIS	Justice Detainee Information System
MCC	Metropolitan Correctional Complex
MDC	Metropolitan Detention Center
MINT	Mothers and Infants Together
NCCHC	National Commission on Correctional Health Care
OIG	Office of the Inspector General
RPP	Residential Parenting Program
Tdap	tetanus, diphtheria, and pertussis
USMS	United States Marshals Service

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January 25, 2021

Congressional Requesters:

Policymakers, medical associations, and advocacy groups have raised questions about the health and safety of pregnant women in custody. For example, during a hearing before the House Judiciary Committee in July 2019, nonprofit organization officials discussed the unique needs of incarcerated pregnant women, such as access to prenatal care.<sup>1</sup> Additionally, in recent years, professional medical associations have issued a number of reports and recommendations emphasizing the importance of proper treatment and care for incarcerated pregnant women, including maternal nutrition and access to substance abuse treatment, as well as limiting the use of restrictive housing and restraints.<sup>2</sup> Furthermore, during the Coronavirus Disease 2019 (COVID-19) pandemic in the spring of 2020, lawmakers and advocacy groups

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<sup>1</sup>*Women and Girls in the Criminal Justice System: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., July 16, 2019. Nonprofit organization witnesses included officials the Independent Women's Forum, among others.

<sup>2</sup>American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women; Committee Opinion on Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females (2011); National Commission on Correctional Health Care Position Statement on Solitary Confinement (April 2016); American Correctional Association and American Society of Addiction Medicine "Joint Policy Statement on Opioid Use Disorder Treatment In the Justice System" (March 2018). The Department of Justice defines restrictive housing as any type of detention that involves (1) removal from the general prisoner population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

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highlighted the risks of incarceration for vulnerable populations, such as pregnant women, during a pandemic or national emergency.<sup>3</sup>

Within the Department of Justice (DOJ), the United States Marshals Service (USMS) is responsible for the safekeeping, security, and transportation of federal prisoners, including pregnant women, awaiting trial or sentencing. The Bureau of Prisons (BOP) is responsible for the incarceration of sentenced prisoners, including pregnant women.

You asked us to review issues related to pregnant women in USMS and BOP custody.<sup>4</sup> This report addresses (1) what available USMS and BOP data indicate about the numbers and characteristics of pregnant women in their custody; (2) what policies USMS and BOP have on the treatment and care of pregnant women in custody and the extent to which they align with national guidance recommendations; and (3) what is known about the treatment and care provided to pregnant women in USMS and BOP custody and the extent to which USMS and BOP track when pregnant women are placed in restrictive housing or are restrained.

To address the first objective on the numbers and characteristics of pregnant women, we analyzed data from calendar years 2017 through 2019 from USMS and BOP data systems that contain information on pregnant women in their custody. We selected 2017 because it is the first full calendar year BOP required data on pregnant women to be entered in SENTRY, its prisoner management database; we selected the same time frames for USMS data for consistency. USMS's prisoner management database—the Justice Detainee Information System (JDIS)—does not

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<sup>3</sup>A number of bills have been introduced related to the early release of pregnant women from custody. See H.R. 6414, 116<sup>th</sup> Cong. (2020), COVID-19 Correctional Facility Emergency Response Act of 2020, which authorizes appropriations to reduce the spread of COVID-19 in correctional facilities through the award of grants to state or local governments that release, or have a plan to release, susceptible individuals, including pregnant women, who do not pose a serious, imminent risk of injury to others, within 60 days of the President's March 13, 2020 declaration of a national emergency related to the COVID-19 outbreak. See also S.3579, 116<sup>th</sup> Cong. (2020), Emergency Community Supervision Act, which would make certain federal prisoners with covered health conditions, including pregnancy, eligible for community supervision during a national emergency related to a communicable disease, provided the prisoner does not pose a specific and substantial risk of causing bodily injury or using violent force against another person.

<sup>4</sup>This request also asked us to review issues related to pregnant women in Department of Homeland Security (DHS) detention, which we addressed in a separate report issued in March 2020. See GAO, *Immigration Detention: Care of Pregnant Women in DHS Facilities*, [GAO-20-330](#) (Washington, D.C.: Mar. 24, 2020).



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have a distinct pregnancy data field. In order to determine the number and characteristics of pregnant women in USMS custody from 2017 through 2019, we used other USMS data as a means to indirectly calculate the minimum number of pregnant women in USMS custody, including medical request and billing data. Using the list of pregnant women identified through other data sources, USMS queried JDIS to obtain additional information on the women, which we used to determine average age, race, and the facilities in which the women were held, among other things.

To determine the numbers and characteristics of pregnant women in BOP custody, we analyzed data from BOP's Pregnancy Registry Data File, a data file BOP uses to track pregnant women, and SENTRY. First, BOP identified all pregnant women in its custody from 2017 through 2019 in the Pregnancy Registry Data File and then queried the list of pregnant women in SENTRY to obtain additional information about them. We used these data to determine average age, race and ethnicity, and their pregnancy outcomes such as live births or miscarriages, among other things. We assessed the reliability of both the USMS and BOP data by analyzing available documentation, such as related data dictionaries; interviewing USMS and BOP officials knowledgeable about the data; conducting electronic tests to identify missing data, anomalies, or potentially erroneous values; and following up with officials, as appropriate. We determined the data were sufficiently reliable for the purposes of describing what available data indicate about the number and characteristics of pregnant women in USMS and BOP custody.

To address the second objective on what policies USMS and BOP have on the treatment and care of pregnant women in their custody and the extent to which they align with national guidance recommendations, we reviewed both agencies' policies and standards including policies on prisoner health care, the use of restrictive housing, and restraints. We conducted analyses to determine whether agency policies and standards included any recommendations or requirements on 16 pregnancy-related topics identified in our prior work.<sup>5</sup> We then determined the extent to which each agency policy or standard aligned with national guidance

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<sup>5</sup>See [GAO-20-330](#) and appendix VI for the list of national guidance recommendations we used.

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recommendations by identifying the number of significant differences between the agency policies or standards and recommendations.

In addition, we assessed USMS and BOP policies and actions against selected *Standards for Internal Control in the Federal Government* related to having control activities—such as policies to achieve an entity’s goals—and communicating them.<sup>6</sup> Further, the communications component of internal controls was also significant to this objective. For example, we reviewed USMS’s Federal Performance Based Detention Standards (Detention Standards) to determine if they contained USMS’s updated policy on restraint restrictions for pregnant and postpartum women.<sup>7</sup> We also compared the Detention Standards to standard practices for program management.<sup>8</sup>

In addressing our third objective about the treatment and care provided to pregnant women in USMS and BOP custody and the extent to which these agencies track instances in which pregnant women are placed in restrictive housing or are restrained, we analyzed various documentation and data that provided insight into the treatment and care of pregnant women in USMS and BOP custody. This information included key agency documents on pregnancy-related care, such as BOP’s Female Offender Manual, agency policies on the use of restraints, and facility inspection reports, among others. We evaluated USMS and BOP policies and efforts on tracking the use of restrictive housing against selected *Standards for Internal Control in the Federal Government*.<sup>9</sup> For example, we assessed USMS and BOP restrictive housing practices for pregnant or postpartum women against the internal control standards related to identifying and communicating information on use of such practices, as well as monitoring their use. We also analyzed USMS and BOP data captured in our first question from calendar years 2017 through 2019 that reflect the treatment and care of pregnant women in custody.

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<sup>6</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

<sup>7</sup>[GAO-14-704G](#).

<sup>8</sup>Project Management Institute, Inc. *A Guide to the Project Management Body of Knowledge (PMBOK® Guide)*, Sixth Edition (Newtown Square, PA: 2017).

<sup>9</sup>[GAO-14-704G](#).

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For all objectives, we interviewed USMS and BOP officials from headquarters and selected field locations and nongovernmental organizations to obtain their perspectives on the care of pregnant women in USMS and BOP custody. We conducted site visits and met with field officials in California, Texas, and West Virginia at three BOP facilities and two Mothers and Infants Together (MINT) facilities.<sup>10</sup> We selected these field locations to reflect the BOP facilities with the greatest number of pregnant women in their custody during calendar years 2017 through September 2019, and to ensure the facilities represented a range of BOP medical care levels and facility types and were in close proximity to MINT facilities. We also conducted site visits to three USMS District offices in California, Texas, and West Virginia, and six facilities that hold USMS prisoners. We selected these districts and facilities based on whether the facility had an agreement with USMS to hold female prisoners as well as their proximity to the BOP facilities. During these BOP and USMS site visits, we observed facility operations and conducted semi-structured interviews with officials responsible for the management and operations of the facility and the treatment and care of prisoners, to include pregnant women.

Furthermore, during our site visits to BOP facilities, we interviewed 16 women who were pregnant or had given birth while serving prison sentences for federal offenses about their perspectives on their treatment and care while in custody. While these site visits and interviews with field officials, women, and groups are not generalizable and may not be indicative of the treatment and care provided to all pregnant women in USMS and BOP custody, they provided contextual information on some treatment and care topics. For more details on our scope and methodology, see appendix I.

We conducted this performance audit from July 2019 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>10</sup>MINT is a voluntary, community-based residential program that aims to assist women during their pregnancies. We discuss MINT in greater detail later in this report.

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## Background

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### Roles, Responsibilities, and Facility Types

Within DOJ, USMS is responsible for the safekeeping, security, and transportation of prisoners, including pregnant women, who are awaiting trial or sentencing on federal charges.<sup>11</sup> USMS's Prisoner Operations Division is responsible for managing prison-related expenses and developing policy, including policies related to pregnant women. BOP is responsible for incarcerating prisoners, including pregnant women, after they have been tried, convicted, and sentenced to prison. It also operates facilities that hold pretrial prisoners to accommodate USMS's needs. BOP's Central Office oversees the Health Services Division and the Women and Special Populations Branch, both of which develop policies related to and have oversight of the treatment and care of pregnant women in BOP custody.

USMS's operations are located across 94 geographical districts, which align with 94 federal judicial districts throughout the United States. USMS does not own or operate its own facilities.<sup>12</sup> Instead, it acquires bed space for prisoners through:

1. the use of reserved beds at BOP facilities, for which USMS does not pay,<sup>13</sup>

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<sup>11</sup>In addition to the security and transportation of prisoners, other USMS mission responsibilities include fugitive apprehension, witness and court protection and security, custody and management of property and money administered under the DOJ Asset Forfeiture Fund, and special missions.

<sup>12</sup>See appendix II for a map of the number of facilities that held female prisoners in the 94 USMS districts.

<sup>13</sup>USMS-reserved bed space at BOP facilities is normally at BOP's pretrial facilities. USMS also has some reserved bed space for prisoners at other BOP facilities, such as federal medical centers, for unique circumstances. According to USMS, in fiscal year 2019 the average daily detention population was 61,489 prisoners, of which 9,575 (16 percent) were held at a BOP facility.

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2. intergovernmental agreements (IGAs) with state and local governments that have excess prison or jail bed capacity and with which USMS negotiates a daily rate for the use of a bed,<sup>14</sup> and
  3. privately-owned and operated facilities with which USMS enters a fixed-price contract based on a minimum number of prisoners it guarantees to hold at a facility.<sup>15</sup>

By contrast, BOP owns and operates 122 prisons nationwide and has contracts with corporations to operate 12 additional facilities.<sup>16</sup>

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## USMS and BOP Responsibilities for Federal Prisoners at Different Stages in the Criminal Justice Process

**USMS responsibilities from arrest through sentencing.** USMS generally holds individuals arrested for federal offenses in cellblocks adjacent to the federal courthouse where U.S. Marshals will bring the individuals for their initial court appearance.<sup>17</sup> At the initial court appearance, a U.S. magistrate or district court judge will determine whether the individual may be released pending trial or sentencing or will be remanded to USMS custody. In the latter case, USMS is responsible for identifying an available facility to hold the prisoner, which could be an IGA facility, a contract facility, or a BOP facility with bed space reserved for USMS's use. USMS typically selects a facility near the courthouse where the prisoner will be tried. A prisoner's court appearances can include pretrial proceedings, trial (assuming charges are not dismissed

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<sup>14</sup>In fiscal year 2019, USMS had approximately 1,200 IGAs with state and local governments for use of bed space at their facilities, but according to USMS, they do not use every facility on a regular basis. The actual number of facilities used by USMS on any given day varies depending on district needs. In addition, not all facilities that USMS classifies as an IGA facility are run by a state or local government. For example, USMS may have an IGA with a state or local government to hold its prisoners, but the state or local government contracts with a privately-owned and operated facility. According to USMS, in fiscal year 2019 the average daily detention population was 61,489 prisoners, of which 41,511 (68 percent) were held at an IGA facility. Throughout this report we refer to any facility that has an IGA with USMS to hold its prisoners as an IGA facility.

<sup>15</sup>In fiscal year 2019, USMS had a contract with 13 privately-owned and operated facilities. According to USMS, in fiscal year 2019 the average daily detention population was 61,489 prisoners, of which 10,403 prisoners (17 percent) were held at a contract facility. Throughout this report we refer to these facilities as contract facilities.

<sup>16</sup>BOP does not hold female prisoners in contract facilities. See appendix II for a map of the BOP facilities for female prisoners.

<sup>17</sup>Prisoners are not held overnight in the cellblock. In some circumstances—for example, if court hearings are not held the same day as the arrest—prisoners may await their initial court appearance in another facility, such as a contract or IGA facility.

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during pretrial proceedings) and sentencing (assuming the defendant is not acquitted at trial).

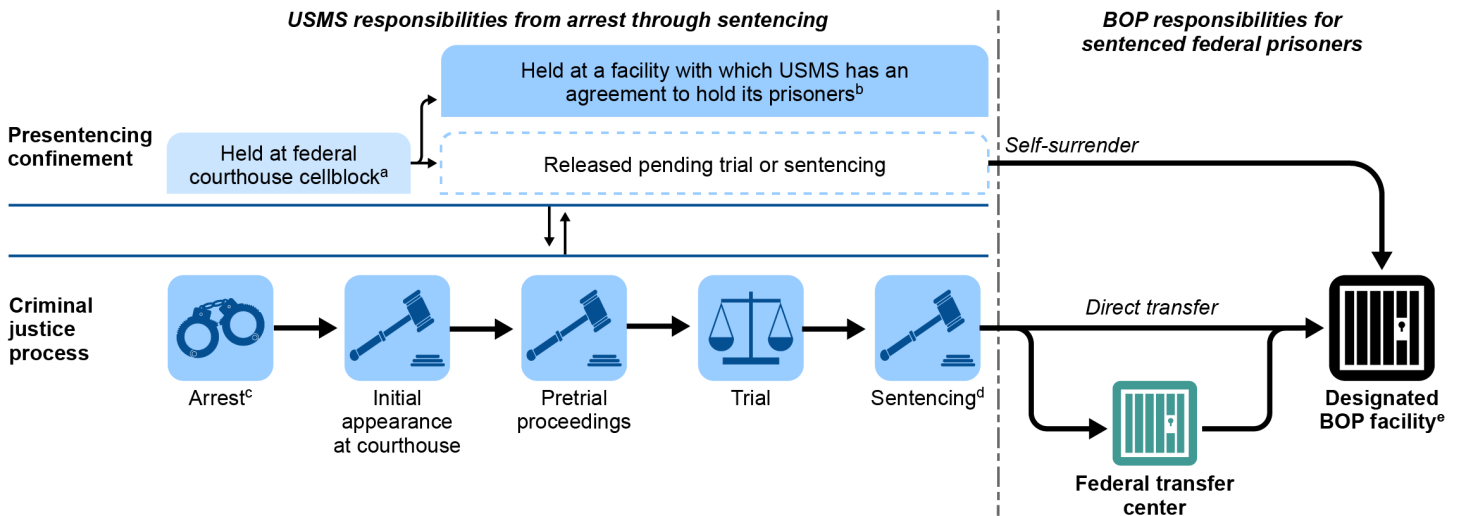
**BOP responsibilities for sentenced federal prisoners.** BOP is responsible for the incarceration, or commitment, of federal prisoners who have been tried, convicted, and sentenced to prison for a federal offense. USMS transfers sentenced prisoners from the facilities where they are held while awaiting trial and sentencing to their designated BOP facilities.<sup>18</sup> In some cases, USMS may first transfer the prisoner to BOP's Federal Transfer Center in Oklahoma City, while the prisoner awaits a facility designation where the sentence will be served.

The responsibilities of USMS and BOP for federal prisoners at different stages of the criminal process are outlined in Figure 1.

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<sup>18</sup>Prisoners who receive short-term sentences of 90 days or less may serve their sentences in the same facility where they were held while awaiting trial and sentencing, such as a contract or IGA facility.

**Figure 1: U.S. Marshals Service (USMS) and Bureau of Prisons (BOP) Responsibilities for Federal Prisoners at Different Stages in the Criminal Justice Process**



Source: GAO analysis of USMS and BOP information. | GAO-21-147

Note: Some individuals may be released from custody by a court pending trial or sentencing. In addition, some individuals may be released from custody because the charges against them are dismissed before trial or because their trial results in a verdict of acquittal. Finally, others may be sentenced to time served or probation, rather than imprisonment in a BOP facility.

<sup>a</sup>Prisoners are not held overnight in the cellblock. In some circumstances—for example, if court hearings are not held the same day as the arrest—prisoners may await their initial court appearance in another facility identified by USMS.

<sup>b</sup>USMS does not own or operate its own facilities. USMS holds prisoners remanded to its custody at BOP facilities, facilities with which USMS has an intergovernmental agreement with a state or local government, or privately-owned and operated facilities with which USMS has a contract. BOP is responsible for the payment and provision of the treatment and care of prisoners remanded to USMS custody who are held in BOP facilities.

<sup>c</sup>A federal agency besides USMS may have made the arrest and referred the matter for prosecution to the Department of Justice (DOJ). For example, the Department of Homeland Security makes referrals of immigration-related offenses to DOJ for prosecution. For additional information on DOJ prosecution of immigration-related offenses, see GAO, *Immigration Enforcement: Immigration-Related Prosecutions Increased from 2017 to 2018 in Response to U.S. Attorney General’s Direction*, GAO-20-172 (Washington, D.C.: Dec. 3, 2019).

<sup>d</sup>Prisoners who receive short-term sentences of 90 days or less may serve their sentences in the same facility where they were held while awaiting trial and sentencing, such as a contract or intergovernmental agreement facility.

<sup>e</sup>After sentencing, prisoners may be transferred directly to their designated BOP facility; however, some pregnant women may be transferred directly to a residential program for pregnant women, such as the Mothers and Infants Together program.

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## National Guidance, Laws, and Agency Policies on Treatment and Care of Pregnant Women in USMS and BOP Custody

National professional associations consider incarcerated pregnant women a vulnerable population with special needs and have issued guidance with recommendations for their care. For example, the American College of Obstetricians and Gynecologists (ACOG) issued a statement noting that prenatal care in correctional settings should include frequent visits with a qualified prenatal care provider and screening for human immunodeficiency virus (HIV), among other things.<sup>19</sup> USMS and BOP also have policies in place to guide the treatment and care of pregnant women in their custody. For example, USMS's Detention Standards require that pregnancy-related care be timely and appropriate.<sup>20</sup> BOP's Female Offender Manual includes policies that address the unique needs of pregnant women in BOP custody.<sup>21</sup>

On December 21, 2018, Congress passed the First Step Act of 2018 (First Step Act), which generally prohibits U.S. Marshals or BOP corrections officials from restraining pregnant or postpartum prisoners.<sup>22</sup> The First Step Act defines a "prisoner" as a person in the custody of BOP, including a person in a BOP contracted facility or, in the case of USMS, a person who has been sentenced to a term of imprisonment pursuant to a conviction for a federal criminal offense.<sup>23</sup> According to USMS officials, although the First Step Act's definition of a prisoner extends only to sentenced prisoners in USMS custody, the agency chose to adopt the First Step Act's protections as a matter of policy for its pretrial and presentenced pregnant prisoners.<sup>24</sup>

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<sup>19</sup>American College of Obstetricians and Gynecologists. *Committee Opinion: Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females* (2011).

<sup>20</sup>See *Federal Performance Based Detention Standards*, November 2017 Rev 9. USMS developed the Detention Standards.

<sup>21</sup>See BOP's program statement, *Female Offender Manual (5200.02)*, January 2018.

<sup>22</sup>See Pub. L. No. 115-391, tit. III, § 301(a), 132 Stat. 5194, 5217-5219 (2018) (codified at 18 U.S.C. § 4322). The requirements under the First Step Act are specific to U.S. Marshals and are not directed at corrections officials at USMS contract or IGA facilities. See 18 § 4322(b)(1)(A), (c)(1).

<sup>23</sup>18 U.S.C. § 4322(g)(2).

<sup>24</sup>As previously noted, sentenced prisoners in USMS custody may include those who are serving their sentences in a contract facility or an IGA facility, instead of a BOP facility, because they received short-term sentences of 90 days or less. In addition, sentenced prisoners in USMS custody may include prisoners whom USMS transfers to another BOP facility because BOP has changed their facility designation.



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The basic protection enacted by the First Step Act, and extended to pretrial and presentenced prisoners in USMS custody by policy, is to prohibit the use of restraints on prisoners during pregnancy, labor, and the postpartum recovery period—defined as 12 weeks following delivery—barring any exceptions.<sup>25</sup> Exceptions are if the prisoner presents an immediate and credible flight risk, poses serious and immediate harm to herself or others, or if a healthcare professional determines that restraints are appropriate for the prisoner’s medical safety.<sup>26</sup> If a U.S. Marshal or BOP corrections official uses restraints in accordance with one of the exceptions described above, they must use the least restrictive restraints necessary (e.g., restraints may not be placed around ankles, legs, waist, or behind the back).<sup>27</sup> Additionally, the U.S. Marshal or BOP corrections official who applied the restraints must submit a report within 30 days of the incident to their agency’s director and the healthcare professional responsible for the prisoner’s care that describes the details of the incident.<sup>28</sup> Finally, the First Step Act requires both USMS and BOP to submit an annual report to the House and Senate Judiciary committees certifying their compliance with the act, including information on incidents where officials reported having used restraints under a First Step Act exception.<sup>29</sup>

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## USMS and BOP Provision of Health Care

Multiple U.S. courts over the years have determined that prisoners have a constitutional right to adequate medical and mental health care.<sup>30</sup> In addition, USMS and BOP have a statutory duty to provide for the

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<sup>25</sup>18 U.S.C. § 4322(a), (b)(1), (g)(1).

<sup>26</sup>*Id.* § 4322(b)(1).

<sup>27</sup>*Id.* § 4322(b)(2)-(3).

<sup>28</sup>*Id.* § 4322(c)(1).

<sup>29</sup>*Id.* § 4322(c)(3).

<sup>30</sup>For example, the United States Supreme Court held in the case of *Brown v. Plata*, 563 U.S. 493, 501-502 (2011), that adequate medical and mental health care must meet minimum constitutional requirements and meet prisoners’ basic health needs. Similarly, the United States Supreme Court concluded in the case of *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), that deliberate indifference to the serious medical needs of prisoners by prison personnel constitutes the unnecessary and wanton infliction of pain prohibited by the Eighth Amendment.

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safekeeping of prisoners in their custody.<sup>31</sup> While it is the policy of both agencies to provide medically necessary care to prisoners in their custody, including pregnant women, there are differences in the way each agency provides such care. Specifically, USMS has the authority to pay for reasonable and medically necessary care for prisoners in its custody. USMS policy states that in some instances, medically appropriate non-urgent health care services can be deferred until the prisoner is released from USMS custody, as long as there is no significant health risk to the prisoner.

In addition, USMS does not directly provide medical care to prisoners. Rather, prisoners in USMS custody either receive medical care within the BOP, IGA, or contract facility in which they are held, or are taken outside of the facility to a provider in the community. The daily rate for bed space at IGA facilities or the fixed-price contract at contract facilities cover the costs of medical care in the facility; however, before prisoners are taken outside of the facility for medical care, facilities are to submit a request to their respective USMS district office for approval.<sup>32</sup>

By comparison, BOP provides most medical and dental care inside its facilities, usually with BOP-employed medical staff.<sup>33</sup> BOP is responsible for providing care in a manner consistent with standards of care for the non-prison community.<sup>34</sup> Specifically, it provides a range of medical care,

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<sup>31</sup>See 18 U.S.C. § 4042(a)(2), which requires BOP to “provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States,” and 18 U.S.C. § 4086, which states, “United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.”

<sup>32</sup>According to USMS’s 2020 Prisoner Operations fact sheet, it expended \$123 million for prisoner medical care in fiscal year 2019. According to USMS, BOP pays for and provides all medical care for USMS prisoners held in its facilities.

<sup>33</sup>According to BOP’s fiscal year 2021 budget request, it expended \$1.3 billion for prisoner medical care in fiscal year 2019.

<sup>34</sup>BOP distinguishes between medically necessary acute or emergent care, and medically necessary non-emergent care. Medically necessary acute or emergent care is associated with medical conditions that without care would cause rapid deterioration of health, significant irreversible loss of function, or may be life-threatening. Medically necessary, non-emergent care is associated with conditions that are not immediately life-threatening. However, without care, there could be significant risk of deterioration that could potentially lead to premature death, reduction in the possibility of repair, and significant pain or discomfort that impacts daily living. See: BOP, *Program Statement: Patient Care*, Number: 6031.04 (June 3, 2014).

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focused primarily on acute care, medically necessary non-acute care, and certain elective care that is not always medically necessary but would improve a prisoner's quality of life. BOP's Health Services Division oversees the provision of medical, dental, and psychiatric services. Its Psychology Services Branch is responsible for providing psychology services, including psychology treatment programs and drug abuse treatment programs.

The kinds of services provided inside a BOP facility depend upon its medical care level, with federal medical centers providing the highest level of care.<sup>35</sup> Apart from some national BOP contracts that standardize goods and services, each facility acquires its own health care goods and services, which vary by facility. Federal Medical Center Carswell is BOP's only all-female federal medical center, and BOP may send pregnant women whose pregnancies have been designated as high risk to Carswell. When BOP is unable to provide a medical service to a prisoner inside the facility, it is to transport them to a provider in the community for outside care. Generally, each facility has its own outside care contact that sets payment rates for services provided with the contracted community medical center and providers.<sup>36</sup>

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<sup>35</sup>BOP classifies all of its facilities by medical care level, which is discussed in greater detail later in this report.

<sup>36</sup>See appendix III for additional information on USMS and BOP costs related to the treatment and care of pregnant women.

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## Available Data Indicate Hundreds of Pregnant Women Were in USMS and BOP Custody from 2017 through 2019

Available USMS Data Show that at Least 1,220 Women Were Pregnant in USMS Custody from 2017 through 2019 in Varying Types of Facilities

**Number and characteristics of pregnant women.** From calendar years 2017 through 2019, we determined that at least 1,220 pregnant women were in USMS custody.<sup>37</sup> The average age of pregnant women in USMS custody during this time was 28 years, with ages ranging from 18 years to 49 years. Of the 1,220 women, 62 percent (753 women) reported that they were U.S. citizens and 20 percent (245 women) reported that they were Mexican citizens. The remaining women reported other countries of citizenship (13 percent, 159 women), and USMS did not provide citizenship data for 5 percent (63 women). In addition, the majority of the pregnant women in USMS custody reported their race as White (82 percent).<sup>38</sup>

**Length of time in custody, types of facilities, and USMS districts.** According to our analysis, the 1,220 women who were pregnant during

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<sup>37</sup>The USMS prisoner management database did not have a distinct pregnancy data field during the scope of our review, so we obtained data from a variety of sources to determine the minimum number of pregnant women in USMS custody. For additional information on our methodology, see appendix I. This report distinguishes between USMS and BOP prisoners based on where they are incarcerated. USMS does not operate its own facilities, it incarcerates prisoners remanded to its custody either in a BOP facility or a facility with which it has an IGA or contract. When USMS uses a BOP facility, the prisoner is a “BOP prisoner” for purposes of this report because BOP is responsible for the prisoner’s care. Therefore, pregnant women in USMS custody held at BOP facilities are not included in the count of 1,220 pregnant women in USMS custody. When, on the other hand, USMS uses an IGA or contract facility, the prisoner is a “USMS prisoner” for purposes of this report because USMS is responsible for overseeing the prisoner’s care consistent with the terms of its IGA or contract. Pregnant women represented approximately 1 percent of the total number of female prisoners received by USMS in calendar years 2017 through 2019, according to USMS summary data.

<sup>38</sup>The remaining pregnant women in USMS custody reported their race as Black (11 percent), Native American (5 percent), or Asian (1 percent) and 1 percent of pregnant women’s records were missing race data. According to USMS officials, the USMS data system used to generate our data request did not have a field for ethnicity during the timeframe for which we requested data.

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calendar years 2017 through 2019 were held an average of 90 days in USMS custody.<sup>39</sup> The pregnant women were held at a variety of facility types.<sup>40</sup> Specifically, pregnant women spent:

- 68 percent of their time at an IGA facility (held for an average of 144 days),
- 27 percent of their time at a contract facility (held for an average of 117 days),
- 4 percent of their time at a BOP facility<sup>41</sup> (held for an average of 33 days) and,
- 1 percent of their time at medical facilities—such as community hospitals—for outside medical care (held for an average of 4 days).<sup>42</sup>

In addition, of the 94 USMS districts, five judicial districts along the Southwest border had the majority of pregnant women in their custody from 2017 through 2019: the Western District of Texas (12 percent), Southern District of Texas (12 percent), District of Arizona (11 percent),

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<sup>39</sup>USMS does not track pregnancy outcomes, such as live births and miscarriages. As such, we were unable to determine the length of time the 1,220 pregnant women spent in USMS custody while pregnant. We calculated the number of days in USMS custody from the women's facility entrance date associated with their first recorded pregnancy-related medical procedure request or billing date to their last recorded facility exit date. However, if they were in USMS custody as of July 31, 2020, the date USMS queried the data, we used July 31, 2020 as an artificial stop date. However, the women may not have been pregnant for this entire time. The 1,220 pregnant women were held a combined total of 204,557 days in USMS custody. For additional information on our methodology, see appendix I.

<sup>40</sup>According to our analysis, some pregnant women were held in more than one facility type during their time in USMS custody. The 1,220 pregnant women were transferred between facilities an average of three times.

<sup>41</sup>While the USMS data we received do not include pregnant women held at BOP facilities, a pregnant women might be held in more than one facility, including a BOP facility, during her time in USMS custody. If a pregnant woman was in both a BOP facility and a contract or IGA facility, a request or bill for pregnancy-related medical care might have been generated during the time that they were held in a contract or IGA facility. As such, these women's time at a BOP facility appeared in our dataset.

<sup>42</sup>According to USMS officials, when USMS transports a prisoner to a medical facility, they note it as such in their prisoner management database.

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the Southern District of California (11 percent), and District of New Mexico (6 percent).<sup>43</sup>

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## About 520 Women Were Pregnant in BOP Custody from 2017 through 2019 in Varying Types of Facilities

**Number and characteristics of pregnant women, and length of time in custody while pregnant.** From calendar years 2017 through 2019, we determined that there were 524 pregnant women in BOP custody.<sup>44</sup> This includes approximately 4 percent (19 women) who were pregnant as of February 26, 2020.<sup>45</sup> The average age of these women was 29 years at their facility entrance date, with ages ranging from 18 years to 52 years, and the majority reported that they were U.S. citizens (88 percent or 462 women).<sup>46</sup> In addition, the majority of pregnant women reported their race as White (68 percent or 358 women) and 23 percent (122 women) reported their race as Black.<sup>47</sup> In addition to race data, BOP also collects ethnicity data and of the 524 pregnant women in BOP custody, 43 percent (224 women) reported they were Hispanic and the remaining 57 percent (300 women) had an ethnicity listed as “other than Hispanic.” These women were pregnant in BOP custody for an average of 76 days, a minimum of 1 day, and a maximum of 268 days.<sup>48</sup> See Figure 2 for additional information.

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<sup>43</sup>Some pregnant women were held in USMS custody in more than one district. See appendix II for a map of USMS facilities that held female prisoners by district.

<sup>44</sup>Pregnant women represented approximately 1 percent of the total number of female prisoners in BOP custody in calendar years 2017 through 2019, according to BOP summary data. Of the 524 pregnant women in BOP custody, 249 of them also appeared in our USMS dataset and are also included in the 1,220 pregnant women in USMS custody described above. For example, some of the 249 women were sentenced and transferred to BOP custody.

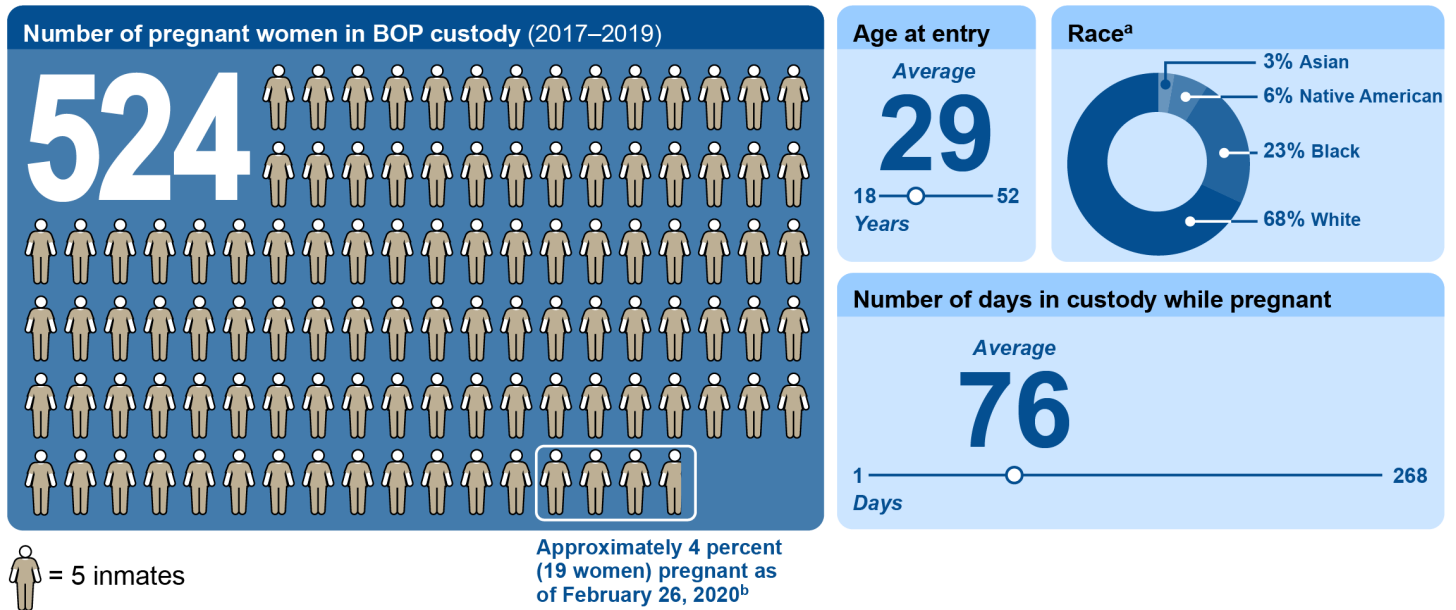
<sup>45</sup>While we received BOP data on pregnant women from calendar years 2017 through 2019, some of these women’s pregnancies extended into calendar year 2020. Specifically, there were 19 women who were still pregnant as of February 26, 2020, the date BOP queried these data. For additional information on our methodology, see appendix I.

<sup>46</sup>Of the remaining women, 7 percent (37 women) reported they were Mexican citizens, 2 percent (12 women) reported they were citizens of countries other than the United States or Mexico, and BOP did not provide citizenship data for 2 percent (13 women). Numbers do not add to 100 percent due to rounding.

<sup>47</sup>The remaining women reported their race as either Native American (6 percent or 30 women) or Asian (3 percent or 14 women).

<sup>48</sup>We calculated the number of days in BOP custody while pregnant using women’s facility entry date as the start date and the pregnancy outcome date as the end date. There were 19 women who were still pregnant as of February 26, 2020, the date BOP queried these data. For those women, we calculated their number of days in custody while pregnant using February 26, 2020 as an artificial stop date.

**Figure 2: Number and Characteristics of Pregnant Women in Bureau of Prisons (BOP) Custody from Calendar Years 2017 through 2019**



Source: GAO analysis of BOP data. | GAO-21-147

<sup>a</sup>Of the 524 women, 43 percent reported their ethnicity as Hispanic. Those who reported they were Hispanic also reported their race as Black or White.

<sup>b</sup>There were 19 women who were still pregnant as of February 26, 2020, the date BOP queried these data. For those women, we calculated their length of time in custody while pregnant using February 26, 2020 as an artificial stop date.

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**BOP Security and Medical Facility Classifications**

BOP classifies all of its facilities according to security level—minimum, low, medium, high, or administrative. Security classifications are based on barriers, the type of housing within the facility, and the staff-to-prisoner ratio, among other things. BOP also classifies prisoners according to these security levels and generally assigns prisoners to facilities that correspond to their security level.

BOP also classifies both facilities and prisoners by medical care level depending on the medical resources available to meet the needs of prisoners. Care level 4 facilities offer the most advanced care. According to BOP officials, while BOP employs obstetrician/gynecologist practitioners at level 4 facilities, BOP also stations some at level 2 and 3 facilities.

Source: BOP information. | GAO-21-147

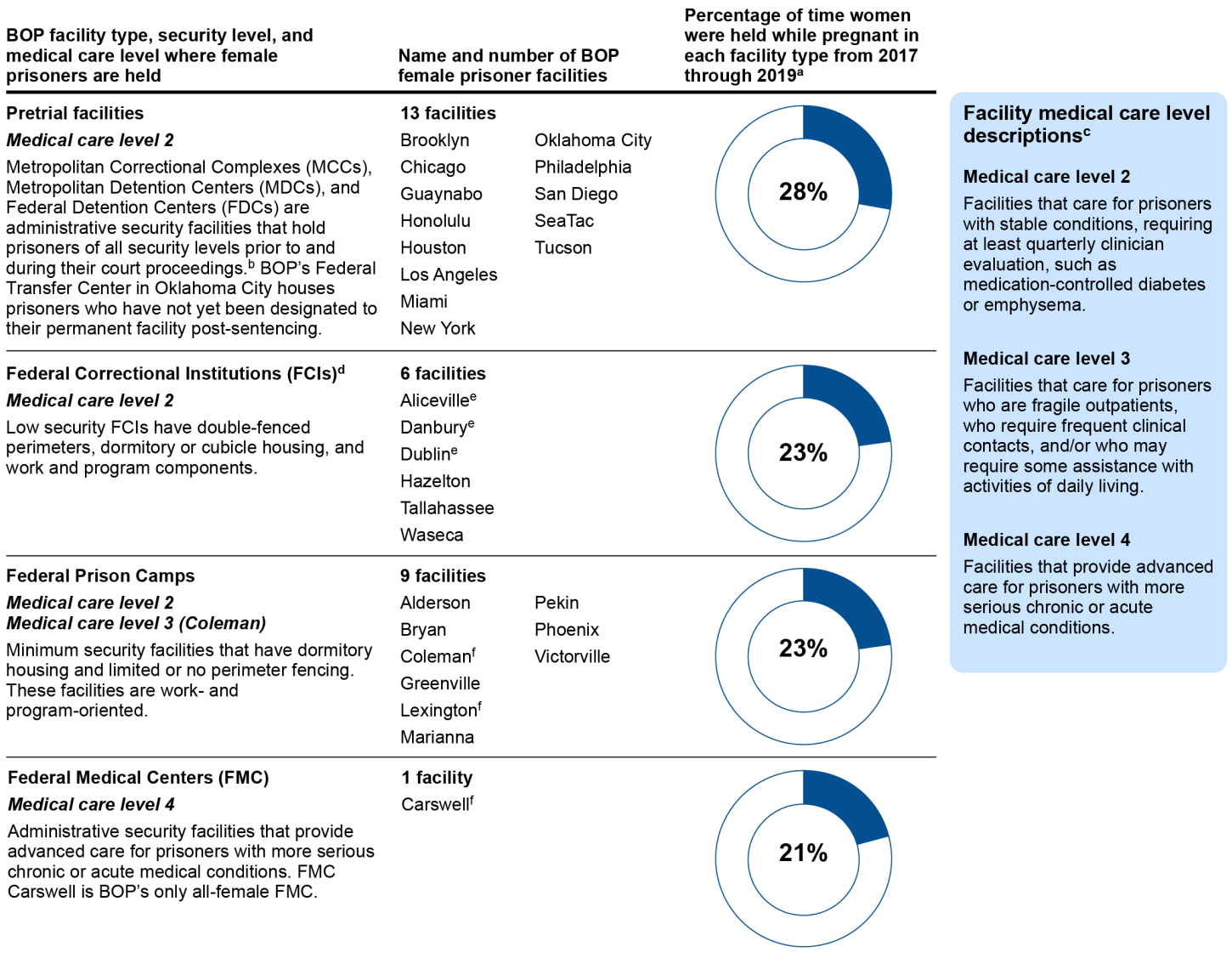
**BOP facilities where pregnant women were held.** BOP holds female prisoners, including pregnant women, in one of 29 BOP-operated federal prisons.<sup>49</sup> While USMS determines where to place pretrial prisoners, including its pretrial prisoners held in BOP facilities, once sentenced, BOP is responsible for determining to which facility prisoners, including pregnant women, are designated. According to BOP policy, BOP attempts to designate prisoners to facilities within 500 driving miles of a prisoner's release residence and commensurate with their security and program needs as well as their medical care needs. Figure 3 provides additional information on facility type, security level, and medical care level of the 29 BOP female prisoner facilities as well as the amount of time women were held while pregnant at the facilities.

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<sup>49</sup>For the purposes of our review, we categorize the BOP prisons that hold female prisoners as BOP facilities. This does not include other BOP facility types, such as regional offices or training centers. See appendix II for a map of BOP facilities that hold female prisoners.



**Figure 3: Percentage of Time Women Were Held While Pregnant in Bureau of Prisons (BOP) Female Prisoner Facilities by Facility Type and Medical Care Level from 2017 through 2019**



Source: GAO analysis of BOP data and documents. | GAO-21-147

Notes: According to BOP officials, female security level institutions are classified as Minimum, Low, High, and Administrative. The majority of female offenders are housed in minimum and low security settings. Female prisoners may be classified as High security and designated to BOP's only female high security unit at Carswell Federal Medical Center if they are assaultive or predatory, have a history of escape or an attempt to escape from a secure institution, display chronic behavior problems, or are special management concerns.

<sup>a</sup>The 524 women were pregnant in BOP custody for an average of 76 days and spent a combined total of 56,653 days pregnant in BOP custody. Women were held for an average of 63 days while pregnant in pretrial facilities, an average of 112 days while pregnant in FCIs, an average of 119 days

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while pregnant in federal prison camps, and an average of 87 days in FMCs. In addition, pregnant prisoners spent five percent of their time while pregnant at “other” facilities. This includes the time spent at facilities that administer pregnancy programs, such as the Mothers and Infants Together program. According to BOP, these other facilities may also include when a woman is in home confinement or released to Residential Reentry Centers, also known as halfway houses, designed to facilitate a prisoner’s reentry into society. Women were held for an average of 21 days while pregnant at these other facilities.

<sup>b</sup>BOP defines administrative security facilities as those with special missions such as the detention of pretrial prisoners, the treatment of prisoners with serious or chronic medical problems, or the containment of violent and escape-prone prisoners. For the purposes of our analysis, we categorized MCCs, MDCs, FDCs, and the federal transfer center together as pretrial facilities.

<sup>c</sup>Medical care level 1 facilities hold prisoners who are generally healthy, under 70 years of age, and may have some limited medical needs requiring clinician evaluation and monitoring such as mild asthma or diet-controlled diabetes. None of the 29 facilities that hold female prisoners are medical care level 1 facilities.

<sup>d</sup>BOP also operates medium security FCIs, but none for female prisoners.

<sup>e</sup>FCIs Aliceville, Danbury, and Dublin also have minimum security prison camps for female prisoners; however, the data BOP provided did not distinguish if a pregnant woman was held at the FCI or the camp. For the purposes of our analysis we categorized the pregnant women at Aliceville, Danbury, and Dublin as being held at a low security FCI.

<sup>f</sup>Three of the 29 BOP facilities that hold female prisoners are classified at more than one medical care level—Coleman is classified as a medical care level 2 and 3 and Carswell is classified as medical care level 3 and 4. For the purposes of our analysis, we used the highest medical care level for Coleman and Carswell. Lexington is classified as a medical care level 2, 3, and 4. According to BOP officials, the main facility at Lexington is a medical care level 3 and 4 FMC, but female prisoners, to include pregnant women are held at a medical care level 2 satellite camp and do not receive medical care at the FMC. For the purpose of our analysis we classified Lexington as medical care level 2.

**Facilities that administer pregnancy programs.** Pregnant women in BOP custody may also be held during their pregnancies at facilities that administer pregnancy programs. BOP has two voluntary residential programs for pregnant women—the MINT program and the Residential Parenting Program (RPP). MINT is a community-based residential program that aims to assist women during their pregnancies. There are five MINT locations nationwide: Phoenix, Arizona; Tallahassee, Florida; Springfield, Illinois; Fort Worth, Texas; and Hillsboro, West Virginia. Participants are transferred to a MINT program location, typically in the last 2 months of their pregnancies, and remain there after birth to bond with their child for at least 3 months, although policy recommends a minimum of 6 months, before returning to the facility to complete their sentence or being released from custody.<sup>50</sup>

RPP, offered through the Washington State Department of Corrections, allows minimum security pregnant women with a sentence of less than 30

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<sup>50</sup>BOP contracts with Residential Reentry Centers, also known as halfway houses, which are designed to supervise prisoners in a community setting to facilitate their reentry into society.

months the opportunity to reside with their child after birth in a supervised environment. During their time in MINT or RPP, the women also receive a variety of services such as mental health, medical care, and vocational training. According to our analysis of BOP data, 124 of the 524 pregnant women (24 percent) participated in MINT or RPP during calendar years 2017 through 2019. See Table 1 for a breakout of where these women specifically stayed.

**Table 1: Number of Pregnant Women in Bureau of Prisons (BOP) Custody Who Participated in the Mothers and Infants Together (MINT) or the Residential Parenting Program (RPP) from 2017 through 2019**

Pregnancy program and location	Number of participants
Phoenix, Arizona (MINT)	19
Tallahassee, Florida (MINT)	24
Springfield, Illinois (MINT)	3
Fort Worth, Texas (MINT)	23
Hillsboro, West Virginia (MINT)	46
Gig Harbor, Washington (RPP)	7
MINT locations no longer in operation	2
<b>Total</b>	<b>124</b>

Source: GAO analysis of BOP data. | GAO-21-147

For additional information on MINT and RPP, see appendix IV.

**Pregnancy outcomes.**<sup>51</sup> Our analysis of BOP pregnancy outcome data shows that 47 percent of pregnant women (or 245 women) had live births while in custody, and 36 percent of pregnant prisoners (or 191 women) were released pregnant.<sup>52</sup> Our analysis also shows that 3 percent (14

<sup>51</sup>The First Step Act of 2018 requires that the Bureau of Justice Statistics, with information provided by BOP, annually report the number of female prisoners known by BOP to be pregnant, as well as the outcomes of such pregnancies, including information on pregnancies that result in live birth, stillbirth, miscarriage, abortion, ectopic pregnancy, maternal death, neonatal death, and preterm birth. Pub. L. No. 115-391, tit. VI, § 610(a)(3), 132 Stat. 5194, 5245 (2018). According to BOP officials, BOP has recorded pregnancy outcomes since 1997.

<sup>52</sup>In addition, our analysis shows that 66 percent (345 women) of pregnant women had been sentenced at the time of their pregnancy outcome while the remaining 34 percent (179 women) were not yet sentenced at the time of their pregnancy outcome. Sentencing information is as of February 26, 2020, the date BOP queried the data.

women) experienced a miscarriage.<sup>53</sup> See Table 2 for additional information on pregnancy outcomes.

**Table 2: Pregnancy Outcomes for Women in Bureau of Prisons (BOP) Custody, Calendar Years 2017 through 2019**

Outcome	Total
Live birth	245
Miscarriage	14
Abortion	8
Other <sup>a</sup>	7
Unknown <sup>b</sup>	40
Released pregnant <sup>c</sup>	191
Incarcerated pregnant <sup>d</sup>	19
<b>Total</b>	<b>524</b>

Source: GAO analysis of BOP data. | GAO-21-147

Notes: The First Step Act of 2018 requires that the Bureau of Justice Statistics, with information provided by BOP, annually report the number of female prisoners known by BOP to be pregnant, as well as the outcomes of such pregnancies, including information on pregnancies that result in live birth, stillbirth, miscarriage, abortion, ectopic pregnancy, maternal death, neonatal death, and preterm birth. Pub. L. No. 115-391, tit. VI, § 610(a)(3), 132 Stat. 5194, 5245 (2018).

<sup>a</sup>Before the First Step Act required BOP to track specific pregnancy outcome categories, BOP recorded the pregnancy outcome as “other” when the outcome did not fit into one of their categories listed in the table above.

<sup>b</sup>Before the First Step Act required BOP to track specific pregnancy outcome categories, BOP recorded the pregnancy outcome as “unknown” when they were unable to obtain additional information on the outcome. For these pregnancies, BOP recorded the outcome date as the expected due date. In addition, we included the unknown outcomes for women who participated in Mothers and Infants Together (MINT) or a Residential Reentry Center in this category. According to BOP officials, once a pregnant woman was transferred to a program, BOP did not always obtain details of a woman’s pregnancy outcome. In those cases, BOP entered the pregnancy outcome as “MINT” in their tracking system. The pregnancy outcomes for the remaining women who participated in these pregnancy programs for which BOP does know the pregnancy outcome are incorporated into the other outcome categories in this table. According to BOP officials, after the First Step Act began requiring BOP to track specific pregnancy outcome categories, they obtain the details of every pregnant woman in their custody’s pregnancy outcome.

<sup>c</sup>BOP records the pregnancy outcome as “released pregnant” when a woman is released from BOP custody before the end of her pregnancy. For these pregnancies, BOP records the outcome date as the release date.

<sup>d</sup>According to BOP data, these women were still pregnant as of February 26, 2020, the date BOP queried these data.

**Postpartum women.** After giving birth, women may spend some or all of their postpartum recovery period in BOP custody. In accordance with the First Step Act, BOP defines the postpartum recovery period as 12 weeks

<sup>53</sup>BOP data do not indicate in which trimester the miscarriage occurred or the cause.

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following delivery. Of the 524 women who were pregnant in BOP custody from 2017 through 2019, 291 of them were held in BOP custody during their postpartum recovery period. On average, these women were held 12 days in BOP custody during their postpartum recovery period, ranging from a minimum of 1 day to 84 days, which is equivalent to the full 12-week postpartum recovery period.<sup>54</sup> In addition, the 291 women who were postpartum in BOP custody from 2017 through 2019 spent 27 percent of their time at a federal prison camp (medical care levels 2 and 3), 22 percent at a federal medical center (medical care level 4), 13 percent at a federal correctional institution (medical care level 2), 8 percent at a pretrial facility (medical care level 2) and 31 percent at other facilities.<sup>55</sup>

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## USMS and BOP Have Numerous Policies that Address Pregnancy-Related Care of Women in Custody, but These Policies Do Not Fully Reflect National Guidance Recommendations

USMS and BOP have policies that address pregnancy-related care of women in their custody.<sup>56</sup> USMS policies fully align with recommendations related to three of the 16 pregnancy-related care

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<sup>54</sup>For the purposes of our analysis we included women who had a pregnancy outcome of live birth, miscarriage, abortion, unknown, or other as postpartum. Our analysis does not include women who may have entered BOP custody during their 12 week postpartum period, only those who were pregnant and had one of the outcomes listed above. The 291 postpartum women were held a combined total of 3,287 days during postpartum recovery in BOP custody.

<sup>55</sup>This includes the time spent at facilities that administer pregnancy programs, such as the MINT program. According to BOP, these other facilities may also include when a woman is in home confinement or released to Residential Reentry Centers, also known as halfway houses, designed to facilitate a prisoner's reentry into society. Numbers do not add to 100 percent due to rounding.

<sup>56</sup>See appendix V for additional information on USMS and BOP policies related to COVID-19.

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topics. BOP's policies fully align with national guidance recommendations related to eight of the 16 care topics.<sup>57</sup>

#### **National Guidance Recommendations**

National guidance recommendations consist of statements on pregnancy-related care made by governmental, multilateral, and professional organizations with expertise in aspects of pregnancy-related care. For example:

- The American College of Obstetricians and Gynecologists recommend that prenatal care in correctional settings reflect national standards, including frequent visits with a qualified prenatal care provider, and screening and diagnostic tests.
- The National Commission on Correctional Health Care states that pregnancy-related treatment and care for incarcerated women should provide comprehensive maternal health, provide prenatal care, and address pregnant women's symptoms in a timely manner, among other recommendations.

Source: GAO analysis of national guidance. | GAO-21-147

USMS also has Detention Standards that apply to all facilities that hold USMS prisoners, and require that pregnancy-related care be timely and appropriate. However, the USMS Detention Standards have not been updated to reflect the USMS policy that restricts the use of restraints on pregnant and postpartum women. In addition, USMS has no policy or standard that requires postpartum women be identified at intake or tracked after giving birth in custody. Regarding BOP, it has multiple policies that address pregnancy-related care, but has no policy that requires postpartum women be identified at intake.

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<sup>57</sup>See [GAO-20-330](#). In that report, we selected guidance based on research and review of non-governmental and agency documents and recommendations from non-governmental organization officials. For the purposes of this report, we used the guidance in [GAO-20-330](#) as a starting point. We revised the list of guidance to ensure relevance to USMS and BOP. Recommended guidance is from the American College of Obstetricians and Gynecologists, National Commission on Correctional Health Care, and the American Correctional Association, as well as other relevant organizations including the Department of Justice, the United Nations, and the American Public Health Association working groups assembled by both the Departments of Justice and Homeland Security. Non-governmental organization officials we spoke with said that their recommended guidance was designed to apply in a criminal incarceration setting. For further information, see the full list of national guidance used in appendix VI.

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## USMS Has Pregnancy-Related Care Policies, but the Policies Could More Closely Align with National Recommendations and Require Tracking of Postpartum Women in Its Custody

### USMS Has Standards and Policies that Address Pregnancy-Related Care

The USMS-developed Detention Standards address pregnancy-related care and apply to IGA and contract facilities. The Detention Standards require that pregnant women in USMS custody have access to timely and appropriate prenatal, postpartum, and specialized obstetrical services when indicated. According to the Detention Standards, all prisoners, to include pregnant and postpartum women, must receive medical, mental health, and substance use screenings during the facility intake process. The Detention Standards also address segregation, stating that pregnant and postpartum women should not be placed in restrictive housing and that senior facility officials must approve the decision to place a pregnant or postpartum woman in restrictive housing.<sup>58</sup>

In addition to USMS's Detention Standards, USMS has five policies that address pregnancy-related care, though according to USMS officials, IGA and contract facilities are not subject to these policies unless the agreement they have with USMS requires it.<sup>59</sup> Per USMS policy, all women are to be asked if they are pregnant during intake screenings, and facilities are required to administer pregnancy tests to women at the USMS district's request. One of these policies states that pregnant women in custody may elect to have an abortion, consistent with state

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<sup>58</sup>DOJ defines restrictive housing as any type of detention that involves (1) removal from the general prisoner population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

<sup>59</sup>See appendix VII for the complete list of USMS pregnancy-related policies.

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Extent of USMS Alignment with National Guidance Recommendations

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and federal law.<sup>60</sup> USMS also updated its Prisoner Restraints policy in December 2019 to restrict the use of restraints on women during pregnancy, labor, and the postpartum recovery period unless one of three exceptions is met, which address flight risk, threat of harm, or the prisoner’s medical safety.<sup>61</sup>

While USMS’s Detention Standards and other policies fully align with national guidance recommendations related to 3 of the 16 topics of pregnancy-related care for incarcerated women, these standards and policies partially align or do not align with national guidance recommendations on the other topics of care. As described earlier, in our prior work, we identified 16 topics of care into which national guidance recommendations on pregnancy-related care for incarcerated women can be categorized.<sup>62</sup> Specifically, national guidance recommends care topics that include specialized nutrition, HIV care, mental health care, and vaccinations, among others. For example, ACOG and the National Commission on Correctional Health Care (NCCHC) recognize that incarcerated pregnant women are at a higher risk for mental health disorders, and treatment, when needed, is critical to ensure a healthy pregnancy, stable mother, and optimal outcomes for the baby’s health.

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<sup>60</sup>In terms of federal law, annual appropriations acts prohibit DOJ from funding abortions in most circumstances. See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019). Consistent with these annual appropriations restrictions, USMS policy states that federal funds may be used for an abortion under limited circumstances—specifically, when the pregnancy endangers the woman’s life or resulted from rape or incest.

<sup>61</sup>USMS *Policy Directive (Prisoner Operations) 9.18 Prisoner Restraints* (Washington, D.C.: Dec. 16, 2019). Throughout the report, we refer to this policy as the USMS restraint policy, which incorporates restraint restrictions enacted by the First Step Act of 2018. According to USMS officials, although the First Step Act’s definition of a prisoner extends only to sentenced prisoners in USMS custody, see 18 U.S.C. § 4322(g)(2), the agency chose to adopt the First Step Act’s restraint restrictions as a matter of policy for its pretrial and presentenced pregnant prisoners. While the updated USMS restraint policy was published in December 2019, USMS issued a memorandum applying the restrictions on the use of restraints to all pregnant and postpartum women in USMS custody regardless of adjudication status in February 2019. The February 2019 memo and the December 2019 updates to the restraint policy state three exceptions to the use of restraints on pregnant and postpartum women, which are if (1) there is an immediate and credible flight risk that cannot reasonably be prevented by other means; (2) there is an immediate and serious threat of harm to the prisoner or others that cannot reasonably be prevented by other means; or (3) a healthcare professional responsible for the health and safety of the pregnant prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner. The USMS restraint policy applies to pregnant and postpartum women in the custody of a U.S. Marshal as well as corrections officials in contract facilities.

<sup>62</sup>See [GAO-20-330](#).



Additionally, they note the importance of vaccinations for influenza because pregnant women who are exposed to influenza are more prone to severe illness. According to USMS officials, the agency uses ACOG standards to define the appropriate level of prenatal care for pregnant women. In addition, in its 2017 update to its Detention Standards, USMS noted that it used a number of industry standards, to include *NCCHC Standards for Health Services in Jails*.

As shown in Table 3, USMS Detention Standards and policies fully align with national guidance recommendations on three care topics, partially align on six care topics, and do not align on seven care topics. For example, USMS Detention Standards and policy do not require that pregnant women receive mental health services and counseling, HIV care, vaccinations, nutrition, or special accommodations specific to pregnant women, as national guidance recommends. See appendix VI for more detailed information on the national guidance recommendations we used in our analysis and appendix VII on USMS Detention Standards and policy alignment with national guidance recommendations.

**Table 3: Extent of Alignment of U.S. Marshals Service (USMS) Federal Performance Based Detention Standards (Detention Standards) and Policies with National Guidance Recommendations on the Treatment and Care of Pregnant Women**

Pregnancy-related care topic <sup>a</sup>	Extent of alignment
Intake health screening involving pregnant women <sup>b</sup>	●
Record keeping on care	●
Segregation	●
Access to abortion	◐
Pregnancy testing at intake	◐
Provision of labor and delivery care	◐
Provision of postpartum care	◐
Provision of prenatal care	◐
Use of restraints <sup>c</sup>	◐
Human immunodeficiency virus care	○
Mental health services and counseling	○
Nutrition	○
Prenatal vitamins	○
Special accommodations <sup>d</sup>	○
Substance use disorder care	○
Vaccinations	○

Legend: ● Indicates that USMS Detention Standards or policy fully aligns with national guidance recommendations on this care topic.

◐ Indicates that USMS Detention Standards or policy partially aligns with national guidance recommendations on this care topic.

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○ Indicates that USMS Detention Standards or policy do not align with national guidance recommendations on this care topic.

Source: GAO analysis of USMS Detention Standards, policies, and national guidance recommendations on the treatment and care of pregnant and postpartum women. | GAO-21-147

<sup>a</sup>USMS Detention Standards address pregnancy-related care and apply to intergovernmental agreement and contract facilities. USMS also has five policies that address pregnancy-related care, though according to USMS officials, IGA and contract facilities are not subject to these policies unless the agreement or contract they have with USMS requires it.

<sup>b</sup>National guidance states that for pregnant women, intake health screening should include screenings for substance use, tuberculosis, and mental illness.

<sup>c</sup>While the USMS restraint policy fully aligns with national guidance recommendations on the use of restraints on pregnant and postpartum women, the USMS-developed Detention Standards do not. Because the USMS restraint policy applies only to USMS personnel and operations and contract facilities, whereas the Detention Standards apply to IGA facilities, the alignment is partial. Additional information on the USMS Detention Standards is discussed in more detail later in this report and additional details of our analysis of USMS Detention Standards and policies alignment with national guidance is in appendix VII.

<sup>d</sup>National guidance states that for pregnant women, special accommodations may include housing (including lower bunk assignment); work or program assignments; transportation outside the facility; special clothing; and adjustments to daily activities. For postpartum women, accommodations may include activity limitations and accommodations to continue lactation.

USMS officials stated that the agency designed its Detention Standards and policies to ensure that pregnant prisoners in contract and IGA facilities receive medically necessary care, as required by law. These officials also stated that they rely on medical providers to make decisions about the prisoners they treat. However, our results are not based on whether pregnant women in USMS custody received medically necessary care in compliance with constitutional requirements, but whether USMS's policies align with national guidance recommendations.<sup>63</sup> These recommendations do not establish the constitutional standard of care for any particular pregnant woman in custody, but address the needs and risks across this vulnerable population, such as screenings and care for HIV, substance abuse disorders and mental health disorders when diagnosed.

Without taking steps to more closely align its Detention Standards and policies with national guidance recommendations as feasible or appropriate, USMS may be less equipped to protect pregnant women against health risks that might correspond with a need for medically necessary care across the six care topics in which we found partial

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<sup>63</sup>As previously noted, the United States Supreme Court held in the case of *Brown v. Plata*, 563 U.S. 493, 501-502 (2011), that adequate medical and mental health care must meet minimum constitutional requirements and meet prisoners' basic health needs. Similarly, the United States Supreme Court concluded in the case of *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), that deliberate indifference to the serious medical needs of prisoners by prison personnel constitutes the unnecessary and wanton infliction of pain prohibited by the Eighth Amendment.

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USMS Does Not Identify Postpartum Women or Have Data on Women Who Give Birth While in Custody

alignment and the seven care topics in which we found no alignment. For example, USMS may miss opportunities to prevent in utero transmission of HIV from mother to child or identify postpartum depression.

While USMS Detention Standards and policy provide for specialized care and considerations for postpartum women in USMS custody, USMS does not identify or track which women in its custody are in postpartum recovery.<sup>64</sup> Per policy, USMS officials are to ask women whether they are pregnant during the intake process, and USMS districts must notify USMS headquarters of all pregnancies confirmed by a health care provider.<sup>65</sup> However, the agency does not have similar requirements to identify women who are in the postpartum period during the intake process or track those who give birth while in custody. For example, we asked USMS officials from one of the districts we visited whether they had a way to track postpartum women, and officials stated that they did not, nor were they aware of how many postpartum women were in their custody. According to USMS officials, USMS had not considered asking female prisoners about whether they were in postpartum recovery as part of its intake process.

*Standards for Internal Control in the Federal Government* state that, in order to achieve an entity's objectives, such as ensuring that postpartum women receive appropriate care and are not unnecessarily restrained, management should design control activities that help achieve and enforce management's directives.<sup>66</sup> Such control activities could include policies, procedures, techniques, or mechanisms to track and maintain data on women who have given birth in custody or are in postpartum recovery. By developing and implementing a policy for identifying and tracking postpartum prisoner data—starting with intake—USMS would have greater awareness of postpartum women in its custody and would be better positioned to ensure their treatment and care, in accordance with USMS policy. Specifically, having this information would enable USMS to ensure that facilities are providing appropriate postpartum care

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<sup>64</sup>As described earlier, USMS Detention Standards require that postpartum women in USMS custody receive appropriate care, and USMS policy requires they not be unnecessarily restrained.

<sup>65</sup>Districts were required to begin notifying headquarters when a woman in their custody has a confirmed pregnancy in December 2019 with the update of its pregnant prisoner policy.

<sup>66</sup>[GAO-14-704G](#).

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USMS Has Not Updated Detention Standards to Reflect Restraint Prohibitions for Pregnant Women or Communicated Such Prohibitions

per their Detention Standards, and that USMS personnel are adhering to agency policy that restricts the use of restraints on postpartum women.

While USMS has incorporated its updated restraint policy for pregnant and postpartum women into its contracts, it has not yet done so for IGAs. Specifically, USMS contracts incorporate its restraint policy, updated in December 2019, which prohibits pregnant or postpartum women from being restrained absent an exception.<sup>67</sup> In contrast, the template USMS uses to generate IGAs requires IGA facilities to follow the USMS-developed Detention Standards, which were last updated in November 2017 and do not include the restraint prohibition.<sup>68</sup>

Although the November 2017 Detention Standards do not require IGA facilities to follow the updated restraint policy, USMS officials stated that districts are instructed to notify their IGA facilities about the restraint policy prior to holding pregnant women in such facilities. If a facility is unable or unwilling to comply with the restrictions, districts are instructed to hold pregnant women elsewhere. However, we found that communication between USMS and IGA facilities was not always clear. In our interviews with IGA facility staff, there were inconsistent communications from USMS officials about the updated restraint policy, since some had received updates from USMS while others said they had not heard of it. We also interviewed seven women who said they had been held in USMS custody at an IGA facility. Six of the seven told us that they had been restrained during their pregnancies.<sup>69</sup>

According to USMS officials, the agency is planning to include language requiring facilities to follow the updated restraint policy whenever it modifies existing IGAs or awards new IGAs. However, there were

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<sup>67</sup>USMS Policy Directive (Prisoner Operations) 9.18 Prisoner Restraints (Washington, D.C.: Dec. 16, 2019). Throughout this report, we refer to this policy as the USMS restraint policy, which incorporates requirements enacted by the First Step Act of 2018. According to USMS officials, although the First Step Act's definition of a prisoner extends only to sentenced prisoners in USMS custody, see 18 U.S.C. § 4322(g)(2), the agency chose to adopt the First Step Act's restraint prohibitions as a matter of policy for its pretrial and presentenced prisoners.

<sup>68</sup>USMS officials noted that approximately one-half of states have enacted statutes that restrict the use of restraints on pregnant and postpartum women. Regardless of whether this is the case, USMS's reliance upon state law is not a substitute for requiring IGAs to follow its new restraint policy by updating the Detention Standards.

<sup>69</sup>We did not independently verify statements made by the women we interviewed. See appendix IX for additional information on our interviews with pregnant and postpartum women.

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approximately 550 IGA facilities that held women nationwide from 2017 through 2019. According to USMS officials, as of September 2020, they have modified or awarded eight IGAs to reflect the restrictions on restraint use. In the meantime, pregnant and postpartum women continue to be held in IGA facilities that are subject to USMS's 2017 Detention Standards, which do not prohibit the use of restraints.

USMS officials also told us in January 2021 that they are in the process of updating their Detention Standards and they are under final review with Prisoner Operations Division leadership. They stated that the updated standards reflect prohibitions on using restraints on pregnant and postpartum women. Further, USMS was not able to provide a documented plan or strategy with a timeline for communicating changes to the standards to internal and external stakeholders, such as IGA facilities. Standard practices for program management state that the successful execution of any plan includes identifying in the planning process a timeline for delivering the plan.<sup>70</sup> In addition, *Standards for Internal Control in the Federal Government* state that management should internally and externally communicate quality information to achieve objectives.<sup>71</sup> Developing a plan with a timeline for updating the Detention Standards to reflect the restrictions on restraint use on pregnant women, and communicating updates internally within USMS and externally with facility staff at IGAs, would help ensure a more efficient and expedient way to ensure pregnant and postpartum women held in IGA facilities are not unnecessarily restrained.

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**BOP Has Pregnancy-Related Care Policies That Fully Align with Several, but Not All, National Guidance Recommendations, and Do Not Require Tracking of Postpartum Women at Intake**

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<sup>70</sup>Project Management Institute, Inc. *A Guide to the Project Management Body of Knowledge (PMBOK® Guide)*, Sixth Edition (Newtown Square, PA: 2017). PMBOK is a trademark of Project Management Institute, Inc.

<sup>71</sup>[GAO-14-704G](#).

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**BOP Has Policies that Address Pregnancy-Related Care**

BOP has 19 policies that address a number of topics on pregnancy-related care. For example, all prisoners in BOP custody, to include pregnant and postpartum women, are to receive medical, mental health, and substance use screenings at intake. During the course of these intake screenings, women are asked if they are pregnant and policy allows pregnancy tests to be administered during intake or other appropriate circumstances. If a woman is pregnant, policy requires that a physician examine her within 14 days of the pregnancy confirmation.

According to BOP policy, pregnant women must receive medical, counseling, and social services. For example, policy recommends that pregnant women with depression be treated using non-medication alternatives, and that opiate-addicted pregnant women be treated with methadone. The policy also recommends that pregnant women be tested for HIV and treated in accordance with national guidelines.<sup>72</sup> Additionally, the policy recommends that influenza and Tdap (tetanus, diphtheria, and pertussis) vaccinations, prenatal vitamins, maternity uniforms, and breast pumps be offered to pregnant or postpartum women. Medical staff are allowed to authorize work restrictions, additional food, alternate programming or housing, and extra phone calls or visits before and after delivery, but the policy does not recommend or require that they do so.

BOP policy also addresses the treatment of pregnant and postpartum women with regard to access to abortion, segregation, and the use of restraints. For example, the policy states that pregnant women in custody may elect to have an abortion, consistent with state and federal law.<sup>73</sup> Related to segregation, the policy states that pregnant and postpartum women should not be placed in restrictive housing; if BOP staff plan to do so, then senior facility officials must approve such a decision. Concerning the use of restraints, policy prohibits the use of restraints on pregnant women from pregnancy confirmation until the end of postpartum recovery,

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<sup>72</sup>Specifically, BOP policy states that HIV-positive pregnant women should receive antiretroviral treatment that follows the Department of Health and Human Services guidelines for treating HIV positive pregnant women using antiretroviral therapy.

<sup>73</sup>In terms of federal law, annual appropriations acts prohibit DOJ from funding abortions in most circumstances. See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019). Consistent with these annual appropriations restrictions, BOP policy states that federal funds may be used for an abortion under limited circumstances, such as when the pregnancy endangers the woman's life or resulted from rape or incest.

unless one of the three statutory exceptions applicable to BOP corrections officials under the First Step Act of 2018 is met.<sup>74</sup>

**Extent of BOP Alignment with National Guidance Recommendations**

While BOP’s policies fully align with national guidance recommendations related to half of the 16 pregnancy-related care topics, its policies only partially align with recommendations related to seven of the remaining care topics, which included providing prenatal, postpartum, and labor and delivery care (see table 4 below). Furthermore, BOP’s policies do not address any requirements related to the care topic of nutrition for pregnant women. For example, while BOP policy states that women must be provided medical services related to pregnancy, it does not recommend or require a minimum set of prenatal or postpartum services be provided, or specify that care be appropriate or in line with national standards. See appendix VI for more detailed information on the national guidance recommendations we used in our analysis and appendix VIII for BOP policy alignment with national guidance recommendations.

**Table 4: Extent of Alignment of Bureau of Prisons (BOP) Policies with National Guidance Recommendations on the Treatment and Care of Pregnant Women**

Pregnancy-related care topic	Extent of alignment
Access to abortion	●
Human immunodeficiency virus care	●
Intake health screening involving pregnant women <sup>a</sup>	●
Prenatal vitamins	●
Record keeping on care	●
Segregation	●
Special accommodations <sup>b</sup>	●
Vaccinations	●
Mental health services and counseling	◐
Pregnancy testing at intake	◐
Provision of labor and delivery care	◐
Provision of postpartum care	◐
Provision of prenatal care	◐

<sup>74</sup>18 U.S.C. § 4322(a), (b)(1), (g)(1)-(2). A February 2019 BOP memorandum notified Regional Directors of applicable statutory restrictions on the use of restraints, unless a pregnant or postpartum woman (1) is an immediate and credible flight risk that cannot reasonably be prevented by other means or (2) poses an immediate and serious threat of harm to herself or other that cannot be prevented by other means; or if (3) the Clinical Director determines that the use of restraints is appropriate for the medical safety of the woman.

Pregnancy-related care topic	Extent of alignment
Substance use disorder care	●
Use of restraints	◐
Nutrition	○

Legend: ● Indicates that BOP policy fully aligns with national guidance recommendations on this care topic.

◐ Indicates that BOP policy partially aligns with national guidance recommendations on this care topic.

○ Indicates that BOP policy does not align with national guidance recommendations on this care topic.

Source: GAO analysis of BOP policies and national guidance recommendations on the treatment and care of pregnant and postpartum women. | GAO-21-147

<sup>a</sup>National guidance states that for pregnant women, intake health screening should include screenings for substance use, tuberculosis, and mental illness.

<sup>b</sup>National guidance states that for pregnant women, special accommodations may include housing (including lower bunk assignment); work or program assignments; transportation outside the facility; special clothing; and adjustments to daily activities. For postpartum women, accommodations may include activity limitations and accommodations to continue lactation.

BOP officials stated that BOP health services staff follow ACOG guidance. ACOG, as well as other national guidance such as NCCHC, state that pregnancy-related treatment and care for incarcerated women should optimize maternal health, provide prenatal care, address pregnant women’s symptoms in a timely manner, and refer them to a specialist when indicated to ensure both the mother and fetus are healthy and have good birth outcomes. For example, ACOG recommends providing early and regular prenatal care to promote a healthy pregnancy, which is defined as visits every 4 weeks until 28 weeks gestation, every 2 weeks until 36 weeks gestation, and weekly thereafter for low-risk pregnancies.

According to BOP officials, BOP provides the same baseline health care to all prisoners in its custody, including pregnant women. These officials also said that BOP is required to provide all medical care that is clinically indicated, and officials said the agency provides additional care for pregnant women on a case-by-case basis, driven by the woman’s medical status and in response to the needs of the pregnancy. In addition, according to officials, BOP relies on its facility staff to care for pregnant women and the staff have discretion to determine what care a pregnant woman needs. For example, officials stated that if a pregnant



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woman needs additional food, she would first meet with a dietitian to make the determination.<sup>75</sup>

While BOP reliance on facility staff to make decisions about clinically-indicated care is reasonable, the partial alignment or nonalignment of BOP policy with national guidance recommendations we identified—particularly in the areas of nutrition, prenatal, labor and delivery, and postpartum care—increases the risk that pregnant and postpartum women may not receive treatment and care in accordance with national guidance recommendations. According to ACOG, incarcerated women are among the most vulnerable populations, and pregnant and postpartum women in particular have unique health care and psychosocial needs. For example, incarcerated pregnant women often have medical and mental health conditions that make their pregnancies a high risk for adverse outcomes, which is compounded by inconsistent access to adequate, quality pregnancy care and nutrition while in custody. By taking steps to more closely align its treatment and care policies for pregnant and postpartum women in its custody with national guidance recommendations, as feasible or appropriate, particularly when it comes to those care topics that currently only partially align or do not align with national guidance, BOP would be better positioned to help ensure the health of pregnant and postpartum women in its custody.

#### BOP Does Not Identify Postpartum Women during Facility Intake

While BOP requires that postpartum women receive medical services and not be placed in restraints through the postpartum period, it does not identify women in postpartum recovery at intake.<sup>76</sup> According to policy, BOP officials are to ask women whether they are pregnant as part of the intake screening process, and women who give birth in custody are to be identified as postpartum; however, the agency does not have similar requirements to identify women who are in the postpartum recovery period at intake. For example, the question “Are you pregnant?” is included in the intake screening form, but a history of recent or previous pregnancies is not included in the form or as part of the intake medical

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<sup>75</sup>According to BOP officials, they are developing Clinical Guidelines for Pregnant and Postpartum Women and are updating the Female Offender Manual, both of which officials said will contain additional recommendations on pregnancy-related care. However, BOP could not specify which aspects of care would be included or if such aspects would more closely align with national guidance on issues like providing prenatal, postpartum, and labor and delivery care, or requirements on nutrition for pregnant women. As of October 2020, these were still under development and BOP could not provide an estimated date when they would be finalized.

<sup>76</sup>BOP must follow the First Step Act’s definition of the postpartum recovery period with regard to restraint restrictions, which is at least 12 weeks after birth.

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examination. According to BOP, they do not explicitly ask if a woman is postpartum because they believe their question “Are you pregnant?” covers both pregnancy and postpartum status since BOP assumed that if a prisoner provided information on a current or previous pregnancy, intake personnel would have the opportunity to ask further questions to clarify the prisoner’s current status.

However, it is conceivable that a woman who gave birth or had a miscarriage within the previous 12 weeks could self-surrender to a facility without advising BOP officials of this fact; in this case the intake medical screening is the BOP’s first opportunity to identify her as postpartum. *Standards for Internal Control in the Federal Government* state that, in order to achieve an entity’s objectives, such as ensuring that postpartum women receive medical services and are not unnecessarily restrained, management should design control activities—that is, policies, procedures, techniques, and mechanisms—that enforce management’s directives.<sup>77</sup> By developing a policy that requires the identification of postpartum women at intake—to include specific questions about recent or previous pregnancies—BOP can better ensure its staff has the information needed to provide appropriate postpartum care in accordance with its policies, and that BOP corrections officials do not restrain postpartum women in their custody unless a statutory exception applies.<sup>78</sup>

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## USMS and BOP Data and Facility Inspections Provide Information on Pregnancy-Related Care, But USMS’s Restrictive Housing Data Are Limited

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<sup>77</sup>See [GAO-14-704G](#).

<sup>78</sup>18 U.S.C. § 4322(a), (b)(1), (g)(1)-(2).

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## USMS Data Show that Pregnant and Postpartum Women Receive Care, but USMS Does Not Track When They are Placed in Restrictive Housing

### Medical and Special Accommodations Data

Certain USMS medical data provide insight into the treatment and care of pregnant and postpartum women in custody. When IGA or contract facilities request outside medical care for pregnant and postpartum women, such as prenatal, postpartum, or specialist appointments, USMS tracks these requests and the associated medical bills. Based on our analysis of available USMS data from 2017 through 2019, approximately 758 of the 1,220 pregnant women in custody received prenatal, postnatal, or delivery-related care outside of the facility in which they were held.<sup>79</sup> For example, data show that postpartum women who underwent a Caesarian section received treatment for scarring, and pregnant women received outside care for high-risk pregnancies. Additionally, from 2017 through 2019, 16 pregnant women in USMS custody requested an abortion.<sup>80</sup>

Data on the routine care provided inside individual IGA and contract facilities—including data on health records and special

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<sup>79</sup>These are the same data used to identify what is known about the population of pregnant women in USMS custody discussed above. USMS does not provide medical care directly. USMS IGAs and contracts cover medical care provided within the facility. When a prisoner needs medical care outside of the facility, to include pregnancy-related care, facilities submit prisoner medical requests for these outside services. If USMS approves the request for outside care and the prisoner receives the care, USMS is billed. While the remaining women may have had a request for pregnancy-related outside medical care associated with their record, USMS had not yet been billed as of July 31, 2020, the date USMS queried the data, so we were unable to confirm if the women received the care.

<sup>80</sup>USMS policy states that pregnant women in custody may elect to have an abortion, consistent with state and federal law. In terms of federal law, annual appropriations acts prohibit DOJ from funding abortions in most circumstances. See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019). Consistent with these annual appropriations restrictions, USMS policy states that federal funds may be used for an abortion under limited circumstances, specifically, when the pregnancy endangers the woman's life or resulted from rape or incest.

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accommodations—are maintained by the facilities.<sup>81</sup> For example, the IGA and contract facilities we visited keep health records that can include data on pregnancy tests and prenatal vitamins, among other things. While we did not review such data at individual facilities, we interviewed women and facility staff about their qualitative experiences on these topics. For instance, of the seven women we spoke with who stated they had experience in USMS custody, five said they had received a pregnancy test at their facility at intake. The two women not offered a pregnancy test at intake requested and received a test when they suspected they were pregnant. Additionally, of these seven women, five commented on prenatal vitamins and all five said they received prenatal vitamins while in USMS custody.<sup>82</sup>

Regarding special accommodations, officials at all six of the IGA and contract facilities we visited said that pregnant women at their facilities are given special accommodations such as a lower bunk assignment, extra bedding, or larger uniforms. Of the four women we interviewed who spoke about special accommodations while in USMS custody, all four said the facility made special accommodations on account of their pregnancy. Specifically, three out of the four women stated they were given a lower bunk assignment, one received an extra mattress, and another received an extra blanket. For additional information on our interviews with pregnant and postpartum women, see appendix IX.

## Restrictive Housing Data

USMS data on restrictive housing provides limited information on the treatment and care of pregnant and postpartum women. Specifically, USMS requests that its IGA and contract facilities submit data on a regular basis to USMS on USMS prisoners placed in restrictive housing. However, according to USMS officials, in the data submitted, facilities are not required to indicate whether any of these prisoners are pregnant or

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<sup>81</sup>National guidance states that for pregnant women, special accommodations may include housing (including lower bunk assignment); work or program assignments; transportation outside the facility; special clothing; and adjustments to daily activities. For postpartum women, accommodations may include activity limitations and accommodations to continue lactation.

<sup>82</sup>We interviewed 16 women who were pregnant or had given birth while serving prison sentences for federal offenses in a BOP or MINT facility. Seven out of the 16 women discussed their experiences in the custody of U.S. Marshals Service at IGA facilities. We did not visit any of the facilities identified by the women during our site visits. In addition, we did not independently verify statements made by the women we interviewed or assess agency compliance with policies based on the statements. For additional information on our interviews with pregnant and postpartum women, see appendix IX.

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postpartum.<sup>83</sup> In addition, according to USMS officials, in fiscal year 2019 only 19 percent of IGA facilities self-reported restrictive housing data.

However, data on pregnant or postpartum women who are placed in restrictive housing would provide USMS with information it needs to ensure that the use of such housing is undertaken in accordance with DOJ guidance and USMS Detention Standards. Specifically, DOJ's 2016 *Report and Recommendations Concerning the Use of Restrictive Housing* states that pregnant and postpartum women should not be placed in restrictive housing except in very rare situations where the prisoner poses a serious and immediate risk of physical harm. USMS Detention Standards and the DOJ report both state that if pregnant or postpartum women are placed in restrictive housing, the decision should be made in consultation with senior management and health officials at the facility and reviewed within 24 hours of placement and reviewed on a daily basis thereafter.

Additionally, six of seven women we spoke with who stated they had experiences in USMS custody discussed restrictive housing with us, and two of those six women said that they had been placed in restrictive housing at an IGA facility. USMS does not require facilities to identify pregnant or postpartum women in the restrictive housing data that they report to USMS.<sup>84</sup> According to USMS officials, this is because USMS restrictive housing guidance is based on DOJ's 2016 report, which addresses pregnant women separately from other populations with regards to the use of restrictive housing.<sup>85</sup>

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<sup>83</sup>There are differences in the way IGA facilities and contract facilities report restrictive housing data to USMS. USMS requires that IGA facilities collect data on all USMS prisoners who are placed in restrictive housing and report to USMS on such prisoners every month. The IGA facilities submit these data through the Restrictive Housing Module, a USMS tool that allows facilities to report basic information regarding the use of restrictive housing for USMS prisoners. The Restrictive Housing Module is not available to contract facilities; rather, USMS requires that contract facilities report which USMS prisoners were placed in restrictive housing to their Detention Contract Monitor, the USMS official who manages their contract.

<sup>84</sup>USMS guidance currently requires that IGA facilities immediately notify USMS when they place a USMS prisoner who is a juvenile or has a serious mental illness in restrictive housing but they do not do the same for pregnant or postpartum prisoners.

<sup>85</sup>U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* (Washington, D.C.: January 2016).

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*Standards for Internal Control in the Federal Government* state that agencies should use quality information to achieve their objectives—such as ensuring pregnant or postpartum women are not placed in restrictive housing, in accordance with DOJ guidance—and that they should identify and obtain relevant data needed to achieve such objectives on a timely basis for effective monitoring.<sup>86</sup> By requiring facilities to collect data on and immediately notify USMS when pregnant and postpartum women are placed in restrictive housing, USMS’s senior management officials will be better positioned to ensure that facilities are complying with the USMS Detention Standards and DOJ’s guidance stating that women should not be placed in restrictive housing except in very rare situations.

## Restraint Data

The First Step Act of 2018 requires the Director of USMS to report annually to the Judiciary committees of both Houses of Congress if a U.S. Marshal uses restraints on a pregnant or postpartum prisoner based on an exception listed in the statute, which generally relate to risk of flight, risk of harm, and medical safety.<sup>87</sup> To comply with this reporting requirement, USMS collects data on the use of restraints on pregnant women by U.S. Marshals. USMS policy requires each use of restraints on a pregnant woman to be documented, and USMS has used this information to produce internal reports showing which of its districts has the highest occurrences of restraint usage, among other things.

In its internal reporting as well as its 2019 First Step Act report to Congress, USMS reported that there were 52 instances of restraint usage by U.S. Marshals on a pregnant woman during calendar year 2019 using one of the three exceptions: 22 instances were due to an immediate and credible flight risk; 19 instances were due to an immediate and serious threat of harm to self or others; and 11 instances were due to a healthcare professional’s determination that the use of restraints was

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<sup>86</sup>See [GAO-14-704G](#).

<sup>87</sup>18 U.S.C. § 4322(c)(3). Specifically, a U.S. Marshal must report on the use of any of the following statutory exceptions to the restraint prohibition, which are if the woman (1) is an immediate and credible flight risk that cannot reasonably be prevented by other means or (2) poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means; or if (3) a healthcare professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner. 18 U.S.C. § 4322(b)(1), (c)(1). The reporting requirement is specific to BOP corrections officials and U.S. Marshals, not USMS contractor or IGA staff. *Id.* § 4322(c)(1).

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appropriate for medical safety.<sup>88</sup> USMS has also implemented online training on the First Step Act which USMS personnel were to complete beginning in April 2020. The training discusses, among other aspects of the First Step Act, the three exceptions that authorize the use of restraints on pregnant women, as well as the reporting requirements for documenting each use of restraints.

USMS submitted its 2020 First Step Act report to Congress on December 28, 2020. USMS reported that there were 12 instances of restraint usage on pregnant women during fiscal year 2020: 7 instances were due to immediate and credible flight risk and 5 instances were due to immediate and serious threat of harm to self or others.<sup>89</sup>

Regarding the use of restraints on pregnant or postpartum women at USMS contract facilities, some facilities have developed their own practices—such as visual aids—in order to help prevent restraint usage, as required by USMS policy.<sup>90</sup> For example, in one of the contract facilities we visited, we observed the use of different colored uniforms that distinguished pregnant and postpartum women from other prisoners. Facility staff said that these uniforms—as illustrated in Figure 4 below—help them ensure they do not use restraints on pregnant and postpartum women in a way that could violate USMS policy on the use of restraints.

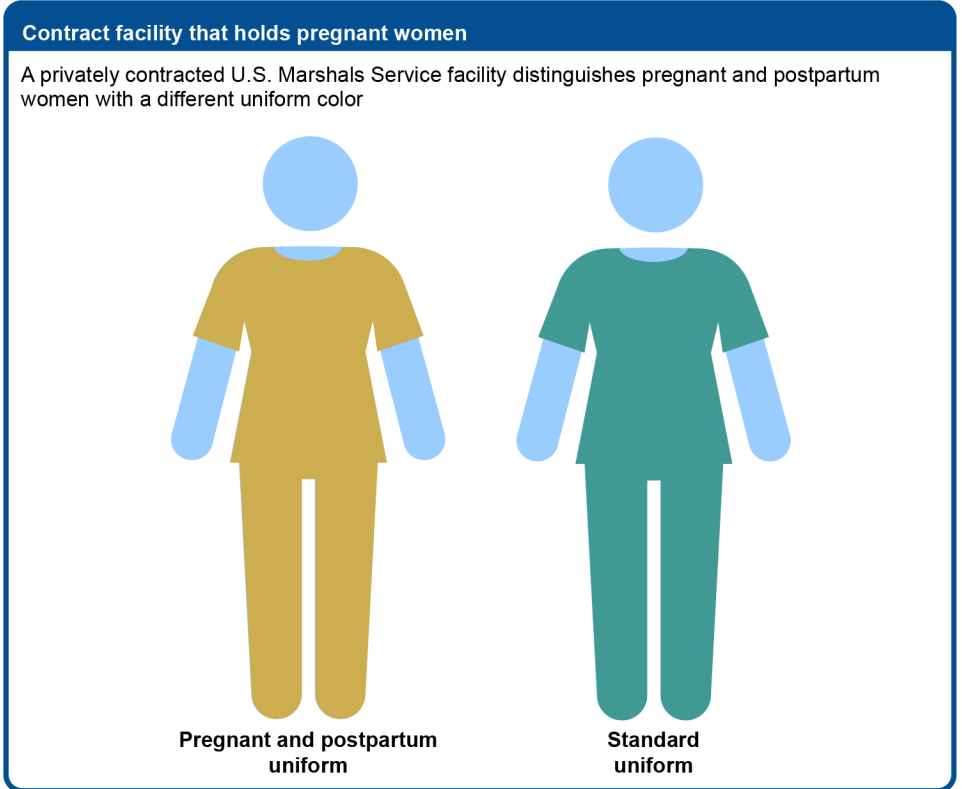
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<sup>88</sup>The USMS First Step Act Report submitted to Congress does not indicate if any of the women who were restrained were in postpartum recovery. As noted above, USMS does not identify postpartum women or have data on women who give birth while in custody.

<sup>89</sup>USMS's 2019 First Step Act report to Congress reported restraint usage by calendar year, whereas in 2020 it was reported by fiscal year. According USMS, seven of the 12 instances reported in its 2020 report were also reported in its 2019 report.

<sup>90</sup>According to USMS officials, although the First Step Act's definition of a prisoner extends only to sentenced prisoners in USMS custody, see 18 U.S.C. § 4322(g)(2), the agency chose to adopt the First Step Act's restraint restrictions as a matter of policy for its pretrial and presentenced pregnant prisoners, including those who may be in the custody of its contract facilities. In particular, USMS contracts list the restraint policy as a requirement for contract facility staff to follow.

**Figure 4: Example of How a U.S. Marshals Service (USMS) Contract Facility Identifies Pregnant and Postpartum Women to Prevent the Improper Use of Restraints**



Source: GAO observation of facility operations. | GAO-21-147

Notes: The improper use of restraints on pregnant and postpartum women would include any use of restraints that are not in accordance with one of the three exceptions outlined in USMS's restraint policy. According to policy, exceptions are permitted if the prisoner presents an immediate and credible flight risk, poses serious and immediate harm to herself or others, or if a healthcare professional determines that restraints are necessary for the prisoner's medical safety.



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## BOP Data Show that It Provides Pregnancy-Related Care and Tracks Restrictive Housing and Restraints

### Medical and Special Accommodations Data

BOP data show that BOP provides a range of medical care and special accommodations for pregnant and postpartum women. BOP uses an electronic medical records system, the Bureau Electronic Medical Records (BEMR), to track data on pregnancy-related medical care such as initial prisoner medical examinations, pregnancy tests, prenatal vitamin prescriptions, HIV care, and vaccinations, among other things. According to our analysis of available BEMR data, of the 524 women who were pregnant in BOP custody from 2017 through 2019, 97 percent (506 women) received a prenatal vitamin prescription. On average, the 506 women received their prescription within 3 days of arriving at their first BOP facility.<sup>91</sup> BOP uses a separate data system, SENTRY, to maintain additional data related to the treatment and care of pregnant women. Specifically, BOP officials can use this system to assign medical status codes to pregnant and postpartum women, which help corrections staff at BOP facilities determine if pregnancy-related restrictions apply for certain prisoners, such as restrictions on lifting heavy items or participating in work programs.

BOP data also show that the agency provides special accommodations to pregnant and postpartum women, such as lower bunk assignments, and whether a breast pump was provided, among other things.<sup>92</sup> Although BOP policy does not require that all pregnant women receive lower bunks, the policy allows health services staff to recommend a lower bunk,

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<sup>91</sup>We were only able to obtain prenatal vitamin data from BEMR because during the course of our review, BOP health services officials who oversee the BEMR data were deployed to various prisons as a result of the COVID-19 pandemic. While we were not able to collect additional BEMR data from these officials, we believe that the data we received from SENTRY, information contained in BOP's Health Services program reviews, discussions with BOP Central Office officials, our visits to prisons, and interviews with pregnant and postpartum women and prison officials provided data that addressed our reporting objective on BOP's treatment and care of pregnant and postpartum women.

<sup>92</sup>According to our discussions with BOP facility officials, other examples of special accommodations include soft shoes, larger uniforms, additional bedding, additional snacks, and changes in work assignments, if needed.

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if bunk beds are used at the facility, for safety reasons. Based on our analysis of BOP data from 2017 through 2019, we found that on average, most pregnant women were assigned a lower bunk during their pregnancy while in BOP custody. Specifically, 511 of the 524 pregnant women in BOP custody were assigned to a lower bunk for some amount of time during their pregnancy, for an average of 76 days and ranging from a minimum of 0 days to a maximum of 257 days.<sup>93</sup> We also found that 188 of the 524 pregnant women in BOP custody were assigned to an upper bunk for some amount of time during their pregnancy, for an average of 10 days and ranging from a minimum of 0 days to a maximum of 124 days.<sup>94</sup> Officials at two of the BOP facilities we visited said that pregnant women are given a lower bunk assignment. Bunk assignment data were not applicable to the third BOP facility that we visited because that facility only assigns pregnant women to single beds, not bunk beds. According to the four women we interviewed who were in a BOP facility with upper and lower bunks, three of them stated that they were provided a lower bunk during their pregnancy and the other did not respond to this question. One of these women also spent time during her pregnancy at another BOP facility where she stated she was assigned to an upper bunk for a period of time before a fellow prisoner offered to switch bunk assignments with her.

According to our analysis of BOP data, no postpartum women had been issued a breast pump from March 2019—the date BOP started collecting data on the issuance of breast pumps—through the end of 2019.<sup>95</sup> BOP policy requires that breast pumps be made available to postpartum women upon request, and national guidance recommends that lactation support, including breast pumps, be offered to postpartum women. According to BOP officials at the three BOP facilities we visited, all three facilities have breast pumps available to postpartum women. According to

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<sup>93</sup>In our analysis, zero days indicates anywhere from one hour up to 24 hours.

<sup>94</sup>The 524 women were pregnant in BOP custody from 2017 through 2019 for an average of 76 days, a minimum of 1 day, and a maximum of 268 days. Not all BOP facilities have upper and lower bunk assignments. For example, Federal Medical Center Carswell assigns pregnant women to its Nursing Care Center in which prisoners' rooms are single beds, not bunk beds. The number of women assigned to a lower bunk plus the number of women assigned to an upper bunk may not add up to the total of 524 pregnant women because some pregnant women were in both upper and lower bunks during their pregnancies.

<sup>95</sup>The data do not indicate if postpartum women were informed about the availability of breast pumps, or if they requested a breast pump—only if one was provided.

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the three women we spoke with who were postpartum at the time of our interview, two said that they had not requested a breast pump, and one woman said that she was not offered a breast pump.<sup>96</sup>

## Restrictive Housing Data

BOP data on the use of restrictive housing provides information related to the treatment and care of pregnant and postpartum women. BOP uses its Special Housing Unit Application data system to track and manage its use of restrictive housing. Although this system does not specifically indicate whether a prisoner in restrictive housing is pregnant or postpartum, BOP is able to identify such prisoners through a separate code it uses to monitor the duration of a woman's pregnancy and postpartum period in SENTRY. Moreover, BOP policy also requires that senior agency officials be consulted when placing a pregnant or postpartum woman into restrictive housing.

Our analysis of BOP data found that 31 of the 524 pregnant women in BOP custody were assigned to a restrictive housing unit for an average of 6 days, ranging from a minimum of 0 days to a maximum of 28 days during calendar years 2017 through 2019.<sup>97</sup> According to BOP officials, pregnant women were placed in restrictive housing due to a pending incident report, among other reasons. Our analysis of BOP data found that none of the 291 women who were in BOP custody during their postpartum recovery period were placed in restrictive housing during the postpartum time. In addition, 14 of the women we spoke with in BOP custody discussed the topic of restrictive housing and two stated they had been placed in restrictive housing in a BOP facility while they were pregnant. In each case, the woman said that the reason for being placed in restrictive housing was for fighting with another prisoner.

## Restraint Data

The First Step Act requires the Director of BOP to report annually to the Judiciary committees of both Houses of Congress if a corrections official uses restraints on a pregnant or postpartum prisoner under an exception to the statute's restraint prohibition, which generally relate to risk of flight,

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<sup>96</sup>Based on our interview, it was not clear whether the third woman who was not offered a breast pump had requested one. According to BOP Central Office officials, pregnant women receive a pamphlet which states that breast pumps are available upon request. In addition, wardens at the 29 female prisoner facilities are required to take a training on the unique needs of the female prisoner population which emphasizes that postpartum women are to be offered breast pumps.

<sup>97</sup>In our analysis, zero days indicates anywhere from one hour up to 24 hours.

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risk of harm, and medical safety.<sup>98</sup> As required by the First Step Act, BOP submitted its annual report to Congress in December 2019 detailing the use of restraints on pregnant women in the previous calendar year. BOP's report listed one instance of the use of restraints on a pregnant woman. After a BOP staff member identified her as pregnant, the restraints were removed. According to BOP officials, she was immediately medically assessed. During our interviews with the 15 women who had been pregnant or postpartum in BOP facilities, one of them said she was placed in restraints while pregnant for fighting with another prisoner, although she did not indicate whether the incident occurred during the reporting period for BOP's first annual First Step Act report (calendar year 2019). BOP officials told us they plan to submit their 2020 First Step Act report in late January 2021.

BOP staff, to include wardens, who work at a BOP facility that holds female prisoners are required to take training specific to the unique needs of female prisoners. These training sessions include information on how to comply with the First Step Act's restrictions on the use of restraints on pregnant and postpartum women, among other things.<sup>99</sup> BOP staff at each of the three facilities we visited said they were familiar with the First Step Act's restrictions on the use of restraints and had received some form of training about it. Furthermore, officials said that if they were to restrain a pregnant or postpartum woman based on one of the exceptions outlined in the First Step Act, they would notify senior officials when restraints were used.

To avoid the improper use of restraints that could violate the First Step Act, two of the BOP facilities we visited have a system in place to visually identify pregnant and postpartum women in their custody. Specifically, as shown in Figure 5, one of the facilities provides pregnant and postpartum women with a pink card to attach to their lanyard. This pink card includes

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<sup>98</sup>18 U.S.C. § 4322(c)(3). Specifically, a BOP correctional official must report on the use of any of the following statutory exceptions to the restraint prohibition, which are if the woman (1) is an immediate and credible flight risk that cannot reasonably be prevented by other means or (2) poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means; or if (3) a healthcare professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner. 18 U.S.C. § 4322(b)(1), (c)(1). The reporting requirement is specific to BOP corrections officials and U.S. Marshals. *Id.* § 4322(c)(1).

<sup>99</sup>In addition to the First Step Act restraint restrictions, the required training covers BOP facility staff roles and responsibilities for working with pregnant women, the MINT and RPP pregnancy programs, and the option for women to receive breast pumps, if desired.

an explanation of the BOP restraint policy for pregnant and postpartum prisoners. The other facility uses a blue wristband to distinguish pregnant and postpartum women from the rest of the population and serves as a signal to BOP staff not to restrain the women.

**Figure 5: Example of How Two Bureau of Prisons (BOP) Facilities Identify Pregnant and Postpartum Women to Prevent the Improper Use of Restraints**



Source: GAO observation of facility operations. | GAO-21-147

Notes: The improper use of restraints on a pregnant or postpartum women would include any use of restraints that are not in accordance with one of the three exceptions outlined in the First Step Act of 2018. According to the First Step Act, exceptions are permitted if the prisoner presents an immediate and credible flight risk, poses serious and immediate harm to herself or others, or if a healthcare professional determines that restraints are necessary for the prisoner's medical safety. 18 U.S.C. § 4322(b)(1). The text displayed on the card on the tag on the left is a replica of the tag from the facility. In this case, the Captain is responsible for security and transportation at the facility and the Clinical Director manages the Health Services Department. According to BOP, all 29 of the facilities that hold female prisoners use SENTRY, BOP's prisoner management database, as their primary source to identify pregnant and postpartum women. While some facilities may use additional systems to identify the women, such as the tag and bracelet identified above, these are supplemental to the use of SENTRY.

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## USMS and BOP Facility Inspections Provide Some Insights into Pregnancy-Related Care

### USMS Inspections

USMS and BOP use various inspections for assessing facilities' compliance with policies and detention standards, and some inspections contain information related to the treatment and care of pregnant and postpartum women, such as a review of pregnant women's medical records.<sup>100</sup>

USMS inspections of its contract facilities—the Quality Assurance Review—assess facility performance against the USMS Detention Standards. While the Detention Standards contain standards that are applicable to all prisoners, they also contain several standards that are specific to the treatment and care of pregnant and postpartum women, such as limitations on the use of restrictive housing and providing appropriate prenatal and postnatal care. Based on our analysis of all annual Quality Assurance Review inspection reports from 2017 through 2019 for the two contract facilities that we visited, each of the inspection reports contained positive statements related to the treatment and care of pregnant women. For example, several of the inspections assessed the medical records of pregnant women and found that they were receiving appropriate prenatal care and that facilities were providing specialized meals to pregnant women. None of the Quality Assurance Review inspection reports contained deficiencies regarding pregnancy-related care.<sup>101</sup>

Additionally, inspection reports conducted by external accrediting organizations also contain information on pregnancy-related care. Of the six USMS IGA and contract facilities we visited, five provided such reports from the American Correctional Association or NCCHC.<sup>102</sup> Based on our review of these inspection reports from 2017 through 2019, we found that they contained a number of positive statements related to providing

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<sup>100</sup>We did not independently verify the accuracy or effectiveness of any USMS or BOP inspection reports. See appendix X for information on each inspection type.

<sup>101</sup>In addition to inspections, we also requested pregnancy-related complaints submitted to USMS. During the time period of our review, 2017 to 2019, only one complaint tracked by USMS headquarters had a nexus to a pregnancy-related issue. Specifically, USMS was notified that a USMS prisoner had become pregnant by a non-USMS prisoner through a consensual act. While the complaint did not allege misconduct by the USMS personnel, according to officials, it was forwarded to headquarters and is being investigated. See appendix X for additional information on USMS's complaint processes.

<sup>102</sup>USMS requires contract facilities to maintain accreditation from the American Correctional Association and NCCHC, but does not require IGA facilities to do so. However, according to USMS officials, many IGA facilities have American Correctional Association accreditation because it is an industry standard.

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prenatal and postpartum care, mental health care, and substance abuse care. For example, reports stated that pregnant women had access to mental health counseling services and female prisoners who reported substance abuse were tested for pregnancy. Several of the reports also noted that newly admitted female prisoners were tested for pregnancy. None of the American Correctional Association or NCCHC reports we reviewed contained deficiencies related to the treatment and care of pregnant or postpartum women.

Privately-owned and operated facilities, to include contract facilities, may also undergo corporate inspections, which contain information on the treatment and care of pregnant and postpartum women.<sup>103</sup> We examined annual corporate inspection reports from 2017 through 2019 for three of the USMS facilities we visited and found that the reports generally contained positive statements related to the treatment and care of pregnant and postpartum women. Several reports noted that the facility was in compliance with policies on the use of restraints and that pregnant women had received a timely pregnancy test upon entering the facility. In addition, corporate inspection reports conducted in 2018 and 2019 for one of the facilities we visited noted that pregnant women are receiving prenatal vitamins during their pregnancies and through the postpartum period.

However, the 2018 and 2019 inspection reports for one of the three facilities identified that the facility did not administer a required HIV test to five of seven pregnant women. These reports identified three other deficiencies—that a pregnant woman was not offered an influenza vaccination; that another pregnant woman did not receive prenatal vitamins through the end of the postpartum period and that the current orders for prenatal vitamins did not extend through the postpartum period; and that facility medical staff did not respond to a request for a health services appointment for a pregnant woman in a timely manner.<sup>104</sup>

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<sup>103</sup>USMS can have an IGA or a contract with a privately-owned and operated facility. For example, for one of the privately-owned facilities we visited, USMS has an IGA with the county and the county has a contract with the private company that owns and operates the facility.

<sup>104</sup>According to the inspection closeout reports, facility officials were to correct these deficiencies by conducting additional training on clinical practice guidelines for pregnant women and by conducting increased monitoring of pregnant women's health charts. Although USMS policy does not necessarily require all of these aspects of care for pregnant women, corporate inspections conducted by privately-owned and operated facilities may use additional criteria for identifying deficiencies.

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## BOP Inspections

BOP has two internal inspections that provide information on the treatment and care of pregnant and postpartum women—the Female Offender program review and the Health Services Program review—both conducted every 3 years at the 29 BOP facilities that hold female prisoners. The Female Offender program review assesses a facility’s compliance with the Female Offender Manual, among other polices, and includes an assessment against the following pregnancy-related topics:

- Correctly entering pregnancy codes and medical status codes in SENTRY;
- Providing special uniforms during pregnancy;
- Having a social worker meet with the prisoner to discuss options for child placement, abortion, and pregnancy programs such as the MINT and RPP programs;
- Notifying BOP senior management officials if a pregnant woman was placed in restrictive housing;
- Having medical staff evaluate postpartum women for activity limits;
- Having facility social workers assist with infant placement after birth and establish a liaison with a child welfare agency, if needed;
- Giving postpartum women the option to pump breast milk with a pump provided by the facility; and
- Allowing women to nurse infants in the visiting room.

We reviewed all available Female Offender program review reports for each of the 29 facilities that hold female prisoners for information on the treatment and care of pregnant and postpartum women, which contained both positive statements on the treatment and care of pregnant women as well as a number of deficiencies.<sup>105</sup> BOP facilities took action to address all of the deficiencies identified. For example, reports from seven facilities noted that pregnant women were provided accommodations to include modified clothing and special equipment. Further, reports from ten facilities indicated appropriate record keeping for pregnant women, to include entering pregnancy codes in SENTRY and documenting their approved accommodations. However, we also found that the Female

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<sup>105</sup>BOP conducted its first onsite Female Offender program review in April 2019 and as of October 2020, BOP had conducted reviews for 10 of 29 facilities. Before establishing the permanent review, BOP conducted a remote, interim Female Offender program review of each of the 29 facilities in 2018. We reviewed all such reports from 2018 through February 2020.



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Offender program reviews contained several deficiencies related to the treatment and care of pregnant and postpartum women. Specifically, we found 29 relevant deficiencies identified across 19 facilities. The majority (22) of these deficiencies were related to record keeping, noting that pregnancy codes were not always properly documented in SENTRY. Other deficiencies included that a social worker did not meet with the prisoner to discuss options for child placement, abortion, and pregnancy programs (such as MINT and RPP); there was a lack of written procedures about nursing infants in the visiting room; and a liaison was not established with a child welfare agency. BOP facilities with recorded deficiencies took a number of corrective actions to address issues. For example, facilities conducted staff training or altered procedures to comply with BOP policy.

We also reviewed all available Health Services program reviews that BOP conducted from calendar years 2017 through 2019 for all 29 facilities that hold female prisoners to gain insights into pregnancy-related care.<sup>106</sup> The BOP Health Services program review assesses a facility's compliance with a number of BOP's health care policies, and it includes an assessment of pregnant women's health records against the following pregnancy-related topics:

- Conducting a physical examination within 14 days of arrival and administering a pregnancy test for women of child-bearing age as part of this examination;
- Offering prenatal care and counseling;
- Providing treatment for substance abuse;
- Providing appropriate nutrition;
- Offering an HIV antibody test;
- Completing postpartum follow-up; and
- Enabling nursing mothers to nurse their infants during visitation.

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<sup>106</sup>We included one BOP Health Services program review inspection report from calendar year 2016 in our analysis. According to BOP officials, that facility had not had a review conducted during the 2017 through 2019 scope of our review. The facility was scheduled to undergo a review in 2019 but it was cancelled due to an extreme weather event. Therefore, we substituted the facility's most recent 2016 review in our analysis. We reviewed a total of 36 Health Services program review inspection reports.

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The Health Services program reviews identified seven deficiencies at six facilities related to the treatment and care of pregnant women, all of which were resolved and closed by BOP. Specifically, at two facilities pregnant women were not given a pregnancy test within the required time frame, and at five facilities, chemical addictions were not always addressed for pregnant women. BOP facilities implemented corrective actions to address these deficiencies by augmenting staff, providing training to staff, or altering policies to ensure compliance with treatment and care policies. When a program review inspection report identifies deficiencies, BOP policy requires that the inspected facility certify in writing that corrective actions have been taken, generally within 30 days of receiving the inspection report, and when program review officials have reasonable assurance that deficiencies have been corrected, they will formally close the program review, generally within 180 days.<sup>107</sup>

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## Conclusions

Pregnant and postpartum women who are incarcerated have special needs that require different treatment and care considerations. While USMS and BOP have various policies and standards on pregnancy-related care for these women, such policies do not fully align with national guidance recommendations on a number of different care topics. By taking steps to more closely align agency standards and policies with national guidance, as feasible, USMS and BOP would have greater assurance that pregnant and postpartum women in their custody receive appropriate treatment and care. Also, developing policies for identifying postpartum women in USMS and BOP custody would better position the agencies to ensure their proper treatment and care.

Pregnant and postpartum women may also be subject to different treatment and care policies while in USMS custody depending on whether they are held at a contract facility or an IGA facility. In particular, while USMS has incorporated its updated restraint policy into its contracts, which prohibit contract facility staff from restraining pregnant and postpartum women absent an exception, it has not yet updated the

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<sup>107</sup>In addition to inspections, we also reviewed the two BOP pregnancy-related formal complaints submitted through the Administrative Remedy Program during calendar years 2017 through 2019. According to BOP officials, the first complaint was rejected because she did not attempt an informal resolution as is required before submitting a formal complaint and she never refiled the complaint. BOP did not provide a rationale for why the second complaint was rejected, but she was released from BOP custody 11 days after filing it. According to BOP, they receive few complaints because they attempt to resolve issues before they rise to the level of a formal complaint. BOP officials also said that there were no pregnancy-related complaints submitted to BOP's Office of Internal Affairs from calendar years 2017 through 2019. See appendix X for additional information on BOP's complaint processes.

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detention standards or communicated changes to its IGA facilities. Developing a timeline for doing so would help ensure that pregnant and postpartum women in IGA facilities receive the same protections as pregnant and postpartum women in contract facilities. In addition to prohibitions on the use of restraints, DOJ and USMS guidance also limit the placement of pregnant or postpartum women in restrictive housing. Accordingly, requiring facilities to collect data on and notify USMS when pregnant or postpartum women are placed in such housing, would allow USMS to ensure facilities are complying with USMS and DOJ guidance stating that women should not be placed in restrictive housing except in very rare situations.

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## Recommendations for Executive Action

We are making a total of six recommendations, including four to the U.S. Marshals Service and two to the Bureau of Prisons. Specifically:

The Director of the U.S. Marshals Service should take steps to more closely align its Detention Standards and policies with national guidance recommendations on pregnancy-related treatment and care, as feasible or appropriate. (Recommendation 1)

The Director of the U.S. Marshals Service should develop and implement a policy to identify and collect postpartum prisoner data starting with the intake process. (Recommendation 2)

The Director of the U.S. Marshals Service should develop a plan with a timeline for updating the Federal Performance Based Detention Standards to reflect updated policy restrictions on the use of restraints on pregnant and postpartum women as well as communicating such updates within USMS and to IGA facilities. (Recommendation 3)

The Director of the U.S. Bureau of Prisons should take steps to more closely align its policies with national guidance recommendations on pregnancy-related treatment and care, as feasible or appropriate. (Recommendation 4)

The Director of the U.S. Bureau of Prisons should develop and implement a policy to identify and collect postpartum prisoner data during the intake process. (Recommendation 5)

The Director of the U.S. Marshals Service should require IGA and contract facilities that hold USMS prisoners to collect data on and immediately notify USMS when pregnant or postpartum women are

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placed in restrictive housing, so that USMS can help ensure appropriate use of such housing in accordance with its policies. (Recommendation 6)

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## Agency Comments

We provided a draft of this product to DOJ, including USMS and BOP, for review and comment. DOJ concurred with our recommendations and told us they had no comments on the draft report. DOJ did provide technical comments, which we incorporated as appropriate. In addition, we provided relevant excerpts of the report to American College of Obstetricians and Gynecologists, American Correctional Association, and National Commission on Correctional Health Care for review. Officials from these entities provided technical comments, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Acting Attorney General, the USMS and BOP Directors, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [goodwing@gao.gov](mailto:goodwing@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix XI.



Gretta L. Goodwin  
Director, Homeland Security and Justice Issues

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*List of Requesters*

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
House of Representatives

The Honorable Karen Bass  
House of Representatives

The Honorable Nanette Barragán  
House of Representatives

The Honorable Donald S. Beyer Jr.  
House of Representatives

The Honorable Tony Cárdenas  
House of Representatives

The Honorable André Carson  
House of Representatives

The Honorable Katherine Clark  
House of Representatives

The Honorable Steve Cohen  
House of Representatives

The Honorable J. Luis Correa  
House of Representatives

The Honorable Adriano Espaillat  
House of Representatives

The Honorable Dwight Evans  
House of Representatives

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The Honorable Ruben Gallego  
House of Representatives

The Honorable Vicente Gonzalez  
House of Representatives

The Honorable Raúl M. Grijalva  
House of Representatives

The Honorable Eleanor Holmes Norton  
House of Representatives

The Honorable Pramila Jayapal  
House of Representatives

The Honorable Hakeem Jeffries  
House of Representatives

The Honorable Barbara Lee  
House of Representatives

The Honorable James P. McGovern  
House of Representatives

The Honorable Gwen S. Moore  
House of Representatives

The Honorable Frank Pallone, Jr.  
House of Representatives

The Honorable Mark Pocan  
House of Representatives

The Honorable Jamie Raskin  
House of Representatives

The Honorable Lucille Roybal-Allard  
House of Representatives

The Honorable Jan Schakowsky  
House of Representatives

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The Honorable David Scott  
House of Representatives

The Honorable Juan Vargas  
House of Representatives

The Honorable Nydia M. Velázquez  
House of Representatives

The Honorable Bonnie Watson Coleman  
House of Representatives

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# Appendix I: Objectives, Scope, and Methodology

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This report addresses the following objectives:

1. What do available U.S. Marshals Service (USMS) and Bureau of Prisons (BOP) data indicate about the numbers and characteristics of pregnant women in their custody?
2. What policies do USMS and BOP have on the treatment and care of pregnant women in custody, and to what extent do they align with national guidance recommendations?
3. What is known about the treatment and care provided to pregnant women in USMS and BOP custody and the extent to which USMS and BOP track when pregnant women are placed in restrictive housing or are restrained?

To address the first question on the numbers and characteristics of pregnant women and aspects of the third question on what is known about the treatment and care provided to pregnant women, we analyzed data from calendar years 2017 through 2019 from USMS and BOP data systems that contain information on pregnant women in their custody. We selected 2017 because it is the first full calendar year BOP required data on pregnant women to be entered in SENTRY, its prisoner management database; we selected the same timeframes for USMS data for consistency.

In regard to USMS data on pregnant women, USMS's prisoner management database—the Justice Detainee Information System (JDIS)—does not have a distinct pregnancy data field.<sup>1</sup> In order to determine the number and characteristics of pregnant women in USMS custody from 2017 through 2019, we used other USMS data as a means to indirectly calculate the minimum number of pregnant women in USMS custody. Specifically, we requested (1) USMS pregnancy-related medical requests and approval data, (2) medical billing data, and (3) records with pregnancy-related terminology from the “prisoner cautions” field, a free-form text field. USMS provided the medical requests and approval data from the Electronic Prisoner Medical Request (ePMR) system. Specifically, USMS provided a data set on women with a “pregnancy notification,” which is a blanket approval from USMS headquarters of all pregnancy-related medical care a pregnant woman receives outside of the intergovernmental agreement (IGA) or contract facility in which she is

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<sup>1</sup>USMS plans to phase out JDIS and move to a new prisoner management database—called Capture—by January 2021. Capture contains a mandatory pregnancy data field.



held. This dataset may not have included data on pregnant women for whom only routine prenatal and postpartum care was requested because such requests can be approved at the district office and do not need to be submitted through ePMR. Specifically, when prisoners in USMS custody need to go outside of the facility in which they are held for medical care, officials at IGA and contract facilities submit a request form to USMS officials in their respective district office. If the medical care is listed in USMS's approved list of services, USMS district officials may approve the request at the district office. If the list does not include the care requested, USMS district officials must submit the request through ePMR to USMS headquarters for review and approval. The approved list of services includes routine prenatal and postpartum care. Therefore, it is possible that for some pregnant women, USMS headquarters may have never received a request for outside pregnancy-related care through ePMR during the timeframe of our review.

In addition to the ePMR data, USMS provided data on women who had billing data associated with pregnancy-related medical care, but may not have had a pregnancy notification or requests for pregnancy-related medical care in ePMR.<sup>2</sup> USMS provided medical billing data by accessing a database managed by its National Managed Care Contractor.

With these two data sets, we are able to determine the minimum number of pregnant women in USMS custody from 2017 through 2019, not the total number of pregnant women in USMS custody. There may have been additional pregnant women in USMS custody during our time frame who were not identified by the methods described above for the following reasons: (1) USMS began requiring the pregnancy notification in ePMR in December 2019, but prior to that, districts were not required to enter a pregnancy notification; (2) if a pregnant woman never received pregnancy-related outside medical care—for example, if she was held for a short amount of time or received care only inside the facility—she would not have been identified in the ePMR and billing data queries described above; or (3) there may have been pregnant women in USMS custody

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<sup>2</sup>The ePMR and billing data do not include USMS prisoners held in BOP facilities because BOP pays for and provides all of their medical care. However, information on the number and characteristics of pregnant women in USMS custody held at BOP facilities is represented in the BOP data we used. USMS officials used the International Classification of Diseases obstetrics codes for pregnancy, childbirth, and postpartum recovery to run their query for pregnancy-related services in the National Managed Care Contractor database. As described above, district offices may approve some requests for outside medical care without submitting the request through ePMR.

who received outside pregnancy-related medical care that did not require approval by USMS headquarters through ePMR, and for whom USMS had not yet been billed for the service as of July 31, 2020, the date they ran their queries.

Finally, USMS also queried the prisoner cautions data field in JDIS—a free-form text field—for pregnancy-related terminology, which we used to match with BOP data to identify some pregnant women in USMS custody.<sup>3</sup> USMS district officials may use the prisoner cautions field, for example, when they find out a woman in their custody may be pregnant during the intake process or after pregnancy is confirmed by a healthcare professional, but there was not a requirement to do so during the time frame of our review. As such, in the cases where USMS provided a record with only JDIS caution data and no associated ePMR or billing data, we did not include the record in the total number of pregnant women in USMS custody. However, if these records also appeared in BOP data, we included the record in the total number of pregnant women in USMS custody, as we had added assurance that the women were pregnant. Using the list of pregnant women identified through the ePMR, billing, and cautions data sources described above, USMS queried JDIS to obtain additional information on the women.

We used the ePMR, billing, and JDIS data to determine the average age, self-reported citizenship,<sup>4</sup> and race of the identified pregnant women in USMS custody;<sup>5</sup> the USMS district in which the women were received;<sup>6</sup> the facilities in which the women were held, as well as the length of time

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<sup>3</sup>BOP provided the matching unique identifiers of the pregnant women who were in USMS custody so we were able to determine which pregnant women were in both USMS and BOP custody during the timeframe of our review.

<sup>4</sup>We received self-reported data on citizenship maintained by USMS. According to USMS, USMS officials ask about citizenship during intake and may later verify it with the Department of Homeland Security (DHS), but USMS does not add DHS verification to their prisoner management database. We did not independently verify citizenship data.

<sup>5</sup>If pregnant women in the USMS datasets who also appeared in the BOP data described below had missing demographic data, specifically date of birth, self-reported citizenship, and race, we supplemented their records with BOP demographic data.

<sup>6</sup>According to USMS officials, most often the district where a prisoner is initially received into custody is the same district where the prisoner is prosecuted.

they were held<sup>7</sup> and any pregnancy-related medical care the women received outside of the facility in which they were held.

In order to determine the numbers and characteristics of pregnant women in BOP custody from 2017 through 2019, we analyzed data from (1) BOP's Pregnancy Registry Data File, a data file BOP uses to track pregnant women, and (2) SENTRY, BOP's prisoner management database. First, BOP identified all pregnant women in its custody from 2017 through 2019 in the Pregnancy Registry Data File and then queried the pregnant women in SENTRY to obtain additional information about them.<sup>8</sup> We used these data to determine the average age, self-reported country of citizenship,<sup>9</sup> race and ethnicity of the pregnant women in BOP custody, the average number of days women spent in BOP custody while pregnant,<sup>10</sup> the types and medical care levels of the BOP facilities in which they were held while pregnant, their participation in BOP's Mothers and Infants Together (MINT) and Residential Parenting Program (RPP) pregnancy programs, and their pregnancy outcomes such as live births or

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<sup>7</sup>We calculated the number of days in USMS custody from the women's facility entrance date associated with their first recorded pregnancy-related medical procedure request or billing date to their last recorded facility exit date, or if they were in USMS custody as of July 31, 2020, the date USMS queried the data, we used July 31, 2020 as an artificial stop date. However, the women may not have been pregnant for this entire time. We were unable to calculate the length of time women were in USMS custody while pregnant because USMS does not track women who give birth in their custody and does not have data on pregnancy outcomes, such as live births and miscarriages. We discuss USMS's tracking of postpartum women in the report. For the analysis of the amount of time pregnant women in USMS custody were held at various facility types, we used the number of days as our unit of analysis because women spent time in more than one facility type during 2017 through 2019.

<sup>8</sup>While we received BOP data on pregnant women from calendar years 2017 through 2019, some of these women's pregnancies extended into calendar year 2020. For the 19 women who were still pregnant as of February 26, 2020, the date BOP queried the data, we used February 26, 2020 as an artificial stop date for all of our analyses.

<sup>9</sup>Our prior work has shown that citizenship data maintained by BOP may be updated over time as BOP obtains additional information from other sources, such as information from the Department of Homeland Security (DHS). See GAO, *Criminal Alien Statistics: Information on Incarcerations, Arrests, Costs, and Removals*, [GAO-18-433](#) (Washington, D.C.: July 17, 2018). We did not independently verify citizenship data.

<sup>10</sup>For the analyses of the amount of time pregnant women spent at various BOP facility types and medical care levels, we used the number of days as our unit of analysis because women spent time in more than one BOP facility during their pregnancies. We calculated the number of days in BOP custody while pregnant using women's facility entry date as the start date and the pregnancy outcome date as the end date. There were 19 women who were still pregnant as of February 26, 2020, the date BOP queried the data. For those women, we calculated their length of time in custody while pregnant using February 26, 2020 as an artificial stop date.

miscarriages. To address aspects of our third question on the treatment and care of pregnant women, we used these data to determine housing assignments for pregnant women, to include bunk and restrictive housing placements, as well as any special accommodations codes that may have been assigned to their records in SENTRY while they were pregnant. Finally, using the list of pregnant women identified through the Pregnancy Registry File and SENTRY, BOP provided data on the prenatal vitamin prescriptions from the Bureau Electronic Medical Record System which we used to determine the number of pregnant women who were prescribed prenatal vitamins during their pregnancies for our third question. The agencies also provided a unique identifier that allowed us to determine the number of women who were in both USMS custody and BOP custody during the time frame of our review.

We assessed the reliability of both the BOP and USMS data used above by analyzing available documentation, such as related data dictionaries; interviewing USMS and BOP officials knowledgeable about the data; conducting electronic tests to identify missing data, anomalies, or potentially erroneous values; and following up with officials, as appropriate. We determined the data were sufficiently reliable for the purposes of describing what available data indicate about the number and characteristics of pregnant women in USMS and BOP custody.

To address additional aspects of our first question on the numbers and characteristics of pregnant women, we compiled descriptive information in our appendix on the MINT and RPP programs. We reviewed BOP policies for female prisoners, and MINT and RPP program materials to include brochures, handbooks, and programming curricula. Additionally, we reviewed related Department of Justice (DOJ) Office of the Inspector General (OIG) work on BOP's female prisoner population, which made recommendations about MINT and RPP.<sup>11</sup> We also conducted two site visits to facilities in West Virginia and Texas that operated MINT programs. During these site visits, we interviewed MINT program staff who performed administrative and programming functions, as well as BOP staff who worked at BOP's Residential Reentry Management Offices that oversee the program's contracts with BOP. We also interviewed women who were participating in MINT at the time of our site visits who were available to meet with us using a semi-structured question set.

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<sup>11</sup>DOJ OIG, *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population*, Evaluations and Inspections Division 18-05 (Washington, DC: September 2018).

These women were either pregnant or had given birth while in BOP custody.

To address our second question on what policies USMS and BOP have on the treatment and care of pregnant women in their custody and the extent to which they align with national guidance recommendations, we reviewed both agencies' policies and standards to identify those relevant to the treatment and care of pregnant and postpartum women in their custody. These included USMS and BOP policies on prisoner health care, and the use of restrictive housing and restraints.<sup>12</sup> Of the policies and standards that were applicable to the treatment and care of pregnant women, we analyzed the extent to which they had any recommendations or requirements on any of the 16 pregnancy-related topics identified in our prior work.<sup>13</sup> To analyze the extent to which USMS's and BOP's policies and standards align with national guidance recommendations on the treatment and care of incarcerated pregnant women, we identified applicable national guidance from our prior work. We further refined our set of national guidance by adding other guidance or laws relevant to the justice system, such as DOJ's report on restrictive housing, the National Commission on Correctional Health Care's (NCCHC) position statements, and the restrictions on the use of restraints on pregnant or postpartum women under the First Step Act of 2018.<sup>14</sup> Additionally, we asked each

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<sup>12</sup>For the purposes of this report, we use the terms policies and standards when referring to agency requirements for the treatment and care of pregnant women. However, some of the BOP documents we reviewed included clinical guidance, which are designed to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances. Further, we did not consider pregnancy-related care listed in USMS *Publication 9 Prisoner Health Care Guidance to Districts* (Washington, D.C.: Nov. 2019), a supplement to USMS *Policy Directive 9.4 Prisoner Health Care Management* (Washington, D.C.: Jan. 13, 2020) as part of our analysis. Publication 9 lists outside health care services which USMS district officials may approve without USMS headquarters review. While USMS is required to provide all medically necessary care to prisoners, services listed in Publication 9 are not automatically considered medically necessary or automatically provided. According to USMS officials, determinations about whether a health care service is medically necessary are made on a case by case basis in accordance with criteria established in the USMS Policy Directive 9.4, which we refer to as the USMS prisoner health care management policy throughout this report.

<sup>13</sup>See GAO, *Immigration Detention: Care of Pregnant Women in DHS Facilities*, [GAO-20-330](#) (Washington, D.C.: Mar. 24, 2020). For this March 2020 report, we reviewed national guidance recommendations from professional associations, non-governmental organizations, and federal agencies and identified 16 categories of care that were commonly cited across the various guidance documents.

<sup>14</sup>The First Step Act of 2018 is codified at 18 U.S.C. § 4322. See [GAO-20-330](#) and appendix VI for the list of national guidance recommendations we used.

agency to review the policies, standards, and national guidance included in the analysis and whether there were any additional policies or standards that were applicable to the treatment and care of pregnant women.

We examined the extent to which USMS and BOP policies aligned with national guidance recommendations by assessing the level of agreement or gaps between the recommendations and agency policies or standards. Where there were significant areas of agreement and no significant gaps between recommendations and agency policies or standards, we categorized the alignment as fully aligned; if there were a few significant gaps but also areas of agreement, we categorized the alignment as partially aligned; and where there were many significant gaps and no areas of agreement, we categorized the alignment as not aligned.<sup>15</sup> One analyst made the initial alignment assessment, and another analyst verified the result. If there were differences in their assessments, these were reconciled through discussion between the two analysts and a final determination of the appropriate alignment assessment was made.

In addition, the control activities component of internal controls was significant to this objective, along with the principle that agencies should implement control activities through policies to achieve their goals. We assessed USMS's and BOP's policies for identifying postpartum women in their custody against these control standards to determine the extent to which agency policies help ensure the appropriate care and treatment of such women.<sup>16</sup>

Further, the information and communication component of internal controls was also significant to this objective, along with the principle that management should internally communicate the necessary quality information to achieve the entity's objectives.<sup>17</sup> We reviewed USMS's Federal Performance Based Detention Standards (Detention Standards) to determine if they contained USMS's updated policy on restraint

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<sup>15</sup>Each care topic may contain one or more recommendations for care. For example, in the nutrition care topic, there were multiple recommendations, such as guidance on the frequency and amount of food to be provided and guidance on reducing the risk of a listeria infection through food consumption. We assessed agency policies against such recommendations for each care topic.

<sup>16</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

<sup>17</sup>[GAO-14-704G](#).

restrictions for pregnant and postpartum women, and assessed USMS's efforts to update the standards, including efforts to communicate such changes to internal and external stakeholders, against standard practices for program management—specifically the need for time frames to guide a project.<sup>18</sup>

To further address the second question, we reviewed USMS and BOP policies and information related to the cost of providing pregnancy-related treatment and care. Specifically, we reviewed USMS and BOP policies related to the payment and provision of medical care. We also reviewed fiscal year 2020 appropriation requests related to medical care costs and spoke with USMS and BOP officials familiar with the payment and provision of medical care. In addition, we reviewed the USMS Detention Standards and IGA and contract information regarding the payment and provision of medical care, including our prior work and the DOJ OIG's work on related medical care costs.

To address the third question about the treatment and care provided to pregnant women in USMS and BOP custody and the extent to which these agencies track instances in which pregnant women are placed in restrictive housing or are restrained, we analyzed various documentation and data that provided insight into the treatment and care of pregnant women in USMS and BOP custody. We reviewed key guidance documents, such as the 2016 DOJ Report on the use of restrictive housing,<sup>19</sup> USMS Detention Standards, BOP's Female Offender Manual, and internal USMS and BOP policies and memos governing the use of restrictive housing and the application of restraints on pregnant women. We also analyzed USMS and BOP data captured in objective one from calendar years 2017 through 2019 that reflect the treatment and care of pregnant women in custody.

We determined that the information and communication and monitoring components of internal controls were significant to this objective, along with the related principles to identify and communicate quality information on a timely basis. We assessed the extent to which USMS and BOP

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<sup>18</sup>Project Management Institute, Inc. *A Guide to the Project Management Body of Knowledge (PMBOK® Guide)*, Sixth Edition (Newtown Square, PA: 2017).

<sup>19</sup>U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* (Washington, D.C.: January 2016).

identify, communicate, and monitor information about pregnant or postpartum women who have been placed in restrictive housing.<sup>20</sup>

Additionally, the control environment and risk assessment components of internal control were also significant to this objective. Specifically, we reviewed USMS's and BOP's efforts on following practices and assessing risks related to the use, or potential use, of restraints or restrictive housing.

We also analyzed inspection reports of facilities that hold USMS and BOP prisoners, which contained information relevant to the treatment and care of pregnant women. To determine which USMS inspections contained standards related to the treatment and care of pregnant women, we obtained input from USMS officials and reviewed policy directives. We reviewed all available USMS inspection reports from 2017 through 2019 for the six IGA and contract facilities that we visited on our site visits. Specifically, we reviewed USMS's Detention Facility Reviews for the four IGA facilities we visited, and the Quality Assurance Reviews for the two contract facilities we visited for calendar years 2017 through 2019.

Since information on the treatment and care of pregnant women is only a portion of the findings contained in the USMS inspection reports, we also reviewed additional third-party inspection reports from the facilities we visited. These included inspection reports from the American Correctional Association and NCCHC and corporate inspection reports for the privately-owned facilities we visited. These third-party inspection reports were not available for all facilities for all years in our scope. For this reason, and because of our limited sample size, the results of our analysis of USMS inspection reports cannot be generalized to all IGA and contract facilities that hold USMS prisoners. However, they provide insight into how USMS inspections address some pregnancy-related aspects of care.<sup>21</sup> In addition, we reviewed state inspection reports from 2017 through 2019 for an IGA facility that we visited and determined that the inspections were not relevant to the scope and nature of our work because they did not contain specific standards related to pregnant women.

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<sup>20</sup>[GAO-14-704G](#).

<sup>21</sup>We did not independently verify the accuracy or efficacy of USMS or third-party inspection reports.



For BOP, we determined that three of BOP's program reviews were relevant for our purposes because they address aspects of the treatment and care of pregnant women: Female Offender Program Review, Female Offender Interim Program Review, and Health Services Program Review.<sup>22</sup> BOP began conducting Female Offender Program Reviews in 2019, so our analysis of these inspection reports was limited to the 10 reviews that BOP conducted in calendar years 2019 and 2020. BOP conducted remote Female Offender Interim program reviews in 2018 for all 29 facilities that hold female prisoners before it established a permanent Female Offender program review. We analyzed the inspection reports for each of these reviews.<sup>23</sup> Finally, BOP conducts Health Services Program Reviews at least once every 3 years at all facilities, to include the 29 facilities that hold female prisoners, and we analyzed all available Health Services program review inspection reports conducted from calendar years 2017 through 2019. Our analysis of the 36 available Health Services program review reports included at least one inspection report for each of the 29 BOP facilities that hold female prisoners.<sup>24</sup> We also reviewed 29 third-party inspections, specifically the accreditation reviews conducted by the American Correctional Association. We

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<sup>22</sup>We determined that several additional types of reviews were relevant to our scope. For example, BOP Religious Services Program Reviews inspect whether facilities are notifying pregnant women of the availability of religious counseling; BOP Correctional Programs Program Reviews inspect whether facilities are notifying pregnant women of the availability of community resources; and Correctional Services Program Reviews inspect whether restraints are being properly applied to pregnant women. During the course of our review, BOP personnel were deployed to various prisons as a result of the Coronavirus Disease 2019 (COVID-19) pandemic, and as a result we withdrew several requests for information, including requests for a comprehensive inventory of all three types of inspection reports discussed above. In deciding to withdraw certain requests, we determined that the inspection reports we already obtained would provide a reasonable basis for discussing the treatment and care of pregnant and postpartum women. While BOP facilities' medical programs are inspected by either the Accreditation Association for Ambulatory Health Care and the Joint Commission, neither inspection has standards related to the treatment and care of pregnant women, so we did not include those reports in our analysis.

<sup>23</sup>As noted earlier, these reports found deficiencies related to BOP's SENTRY data system—specifically, that BOP staff had not always correctly entered pregnancy status codes into SENTRY. However, these deficiencies did not affect our identification of pregnant women in BOP custody as discussed in objective one, which was generated from a different data system that we determined was sufficiently reliable for our purposes.

<sup>24</sup>We included one BOP Health Services Program Review inspection report from calendar year 2016 in our analysis. According to BOP officials, that facility did not have a review conducted during the 2017 through 2019 time frame of our review. The facility was scheduled to undergo a review in 2019 but it was cancelled due to an extreme weather event. Therefore, we substituted the facility's most recent 2016 review in our analysis.

reviewed at least one of these inspection reports conducted during 2017 through 2019 for all 29 BOP facilities that hold female prisoners.<sup>25</sup>

We searched each USMS and BOP inspection report for key pregnancy-related terms and identified both positive statements and deficiencies related to the treatment and care of pregnant women.<sup>26</sup> We categorized each positive statement and deficiency according to the 16 pregnancy-related care topics identified in our prior work. Specifically, one analyst reviewed each positive statement and deficiency and assigned it one of the 16 pregnancy-related care topics, and another analyst verified those results. If there were differences in their assessments, these were reconciled through discussion between the two analysts and a final determination of the appropriate topic was made. In addition, for any deficiencies identified in USMS and BOP inspection reports, we reviewed the inspection report to see if any corrective actions were described. If they were not described in the inspection report, we asked agency officials to provide information on what corrective actions, if any, were taken to address the deficiencies.

We also assessed information on complaints for any insight into the treatment and care of pregnant and postpartum women. For USMS, we requested all complaints related to the treatment and care of pregnant women that were submitted to USMS's Prisoner Operations Division and the USMS Office of Professional Responsibility from calendar year 2017 through 2019. USMS prisoners may also submit complaints to the facility where they are being held, but facilities do not systematically report these data to USMS. Therefore, we included questions in our semi-structured interviews with officials at the six IGA and contract facilities we visited about complaints submitted by pregnant women in their custody, and we analyzed the testimonial evidence we collected during these interviews.

For BOP, we requested all complaints submitted through BOP's formal grievance process, the Administrative Remedy Program, for calendar years 2017 through 2019 that had been specifically tagged with the

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<sup>25</sup>We did not independently verify the accuracy or efficacy of BOP program review or American Correctional Association inspection reports.

<sup>26</sup>While we included counts of deficiencies for some types of inspection reports, we did not include a comparable count of positive statements. By design, the inspection reports that we reviewed were intended to reveal deficiencies about USMS and BOP facilities, not systematically identify or include positive statements. Therefore, we elected not to assign them equal analytical consideration as we did with the deficiencies.

pregnancy-related code in SENTRY. Based on the parameters of our request, there were two complaints with the pregnancy-related SENTRY code. However, BOP was able to provide limited details because in each instance, BOP had rejected the complaint. According to BOP officials, BOP does not retain detailed documentation related to rejected complaints.<sup>27</sup> We also requested all pregnancy-related complaints that had been submitted to BOP's Office of Internal Affairs. According to BOP officials, there were no pregnancy-related complaints submitted to this office from calendar years 2017 through 2019. We assessed the reliability of Administrative Remedy Program data collected from BOP's SENTRY data system by reviewing related information, interviewing agency officials responsible for analyzing data from the system, and conducting electronic testing of the data for missing data, outliers, and obvious errors. We determined the data were sufficiently reliable for the purposes of identifying prisoner complaint data involving pregnancy-related complaints.

To address aspects of our second and third questions, we compiled information on USMS and BOP responses to COVID-19 in appendix V. In addition, we reviewed written responses from USMS and BOP about the number of pregnant women with positive COVID-19 test results, their policies and procedures enacted in response to the pandemic, and the challenges they have experienced responding to the pandemic. We reviewed the agencies' websites for any public COVID-19 related updates and the DOJ OIG's report on the agencies' pandemic response.<sup>28</sup> In addition, we reviewed DOJ memorandum and congressional letters on USMS and BOP responses to COVID-19. We also reviewed agency action plans and policies that guide their responses. To obtain information on the potential impacts of COVID-19 in correctional settings, we reviewed work published by the Congressional Research Service,

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<sup>27</sup>Using a list of pregnant women in BOP custody from 2017 through 2019, we also requested a copy of any complaints submitted by those pregnant women in BOP custody through the Administrative Remedy Program. However, during the course of our review, many BOP staff who oversaw the data related to our requests were deployed to various prisons as a result of the COVID-19 pandemic and were unable to provide the data. While we were not able to obtain complaints submitted specifically by the pregnant women identified in objective one, we believe our analysis of Administrative Remedy data using the pregnancy-related code is sufficient for providing information on what is known about the treatment and care of pregnant women.

<sup>28</sup>Department of Justice Office of the Inspector General, *Pandemic Response Report, COVID-19 Challenges for the U.S. Department of Justice, 20-72*, (Washington, DC: June 2020).

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Centers for Disease Control and Prevention, and the *New England Journal of Medicine* on the topic.<sup>29</sup>

To address all three questions, we interviewed USMS and BOP officials from headquarters and selected field locations and nongovernmental organizations to obtain their perspectives on the care of pregnant women in USMS and BOP custody. Specifically, we met with USMS headquarters officials from the Office of Professional Responsibility; the Prisoner Operations Division, to include the Office of Medical Operations; and the Office of Congressional and Public Affairs. We met with BOP Central Office officials from the Women and Special Populations Branch; the Health Services Division, the Information, Policy, and Public Affairs Division; and the Program Review Division.

We conducted site visits and met with field officials in California, Texas, and West Virginia at three BOP facilities and two MINT facilities. We selected these field locations to reflect the BOP facilities with the greatest number of pregnant women in their custody during calendar years 2017 through September 2019, and to ensure the facilities represented a range of BOP medical care levels and facility types and were in close proximity to MINT facilities. During these visits, we observed facility operations and conducted semi-structured interviews with officials responsible for the management and operations of the facility and the treatment and care of prisoners, to include pregnant women.

Furthermore, during our site visits to BOP facilities, we interviewed 16 women who were pregnant or had given birth while serving prison sentences for federal offenses in a BOP facility or MINT program about their perspectives on their treatment and care while in custody. For additional information on how we selected these women and analyzed their responses, see appendix IX.

We also conducted site visits to three USMS District offices in California, Texas, and West Virginia, four IGA facilities, and two contract facilities. We selected these districts and facilities based on whether the facility had an agreement with USMS to hold female prisoners as well as their proximity to the BOP facilities listed above. During each of these visits, we met with USMS district officials responsible for oversight of the facilities in their district and the treatment and care of prisoners while in

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<sup>29</sup>Matthew J. Akiyama, Anne C. Spaulding, and Josiah D. Rich, "Flattening the Curve for Incarcerated Populations—Covid-19 in Jails and Prisoners", *New England Journal of Medicine* (May 2020).

USMS holding cells and during transportation. We also observed facility operations at IGA and contract facilities, and conducted semi-structured interviews with officials responsible for the management and operations of the facility and the treatment and care of prisoners, to include pregnant women.

Moreover, we met with officials from three national nongovernmental organizations—the American College of Obstetricians and Gynecologists, NCCHC, and American Correctional Association—to obtain their perspectives on the care of pregnant women in USMS and BOP custody. We selected them based on their healthcare expertise and publication of recommended guidance for the care of incarcerated pregnant women. We also met with officials from two advocacy groups and an Assistant Federal Public Defender, selected based on their research on issues relevant to incarcerated pregnant women and experience working with such women. While these site visits and interviews with field officials, women, and groups are not generalizable and may not be indicative of the care provided to all pregnant women in USMS and BOP custody, they provided us contextual information on some treatment and care topics.

We conducted this performance audit from July 2019 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: U.S. Marshals Service and Bureau of Prisons Facilities for Female Prisoners

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Pregnant women in U.S. Marshals Service (USMS) or Bureau of Prisons (BOP) custody may be held in facilities designated for female prisoners.

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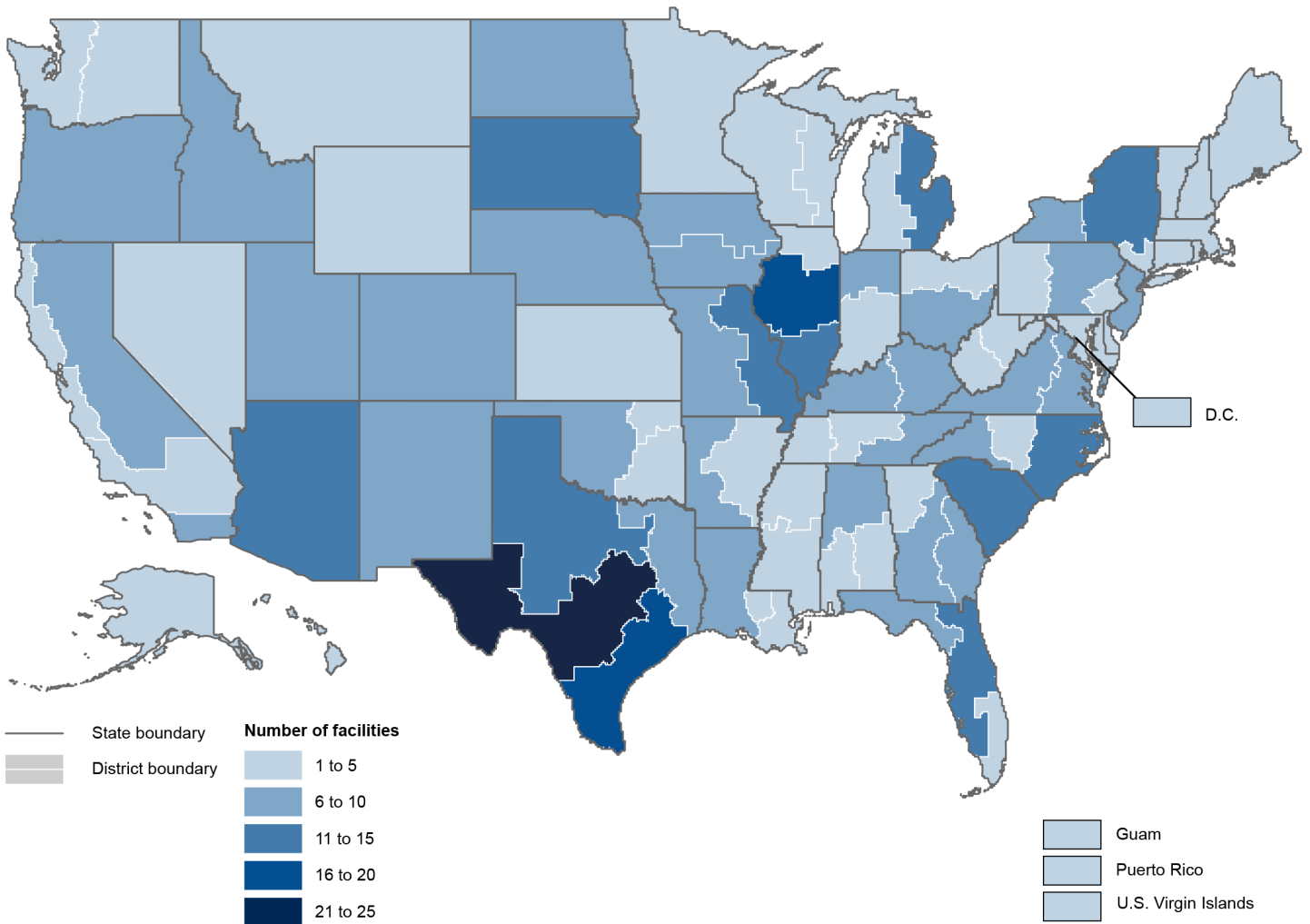
## USMS Facilities for Female Prisoners

USMS does not own or operate its own facilities. Its multi-missioned operations are located within 94 geographical districts, which align with federal judicial districts throughout the United States. Within these districts, USMS acquires bed space for prisoners through

1. the use of reserved beds at BOP facilities, for which USMS does not pay;
2. intergovernmental agreements with state and local governments that have excess prison or jail bed capacity and with which USMS negotiates a daily rate for the use of a bed, and;
3. privately-owned and operated facilities with which USMS enters a fixed-price contract based on a minimum number of prisoners it guarantees to hold at a facility.

However, not all facilities with USMS-reserved bed space hold female prisoners. See Figure 6 for the 94 USMS districts and the number of facilities within every district that held USMS female prisoners from 2017 through 2019 during one or more calendar years.

**Figure 6: Number of U.S. Marshals Service (USMS) Facilities by District that held Female Prisoners During One or More Calendar Years from 2017 through 2019**



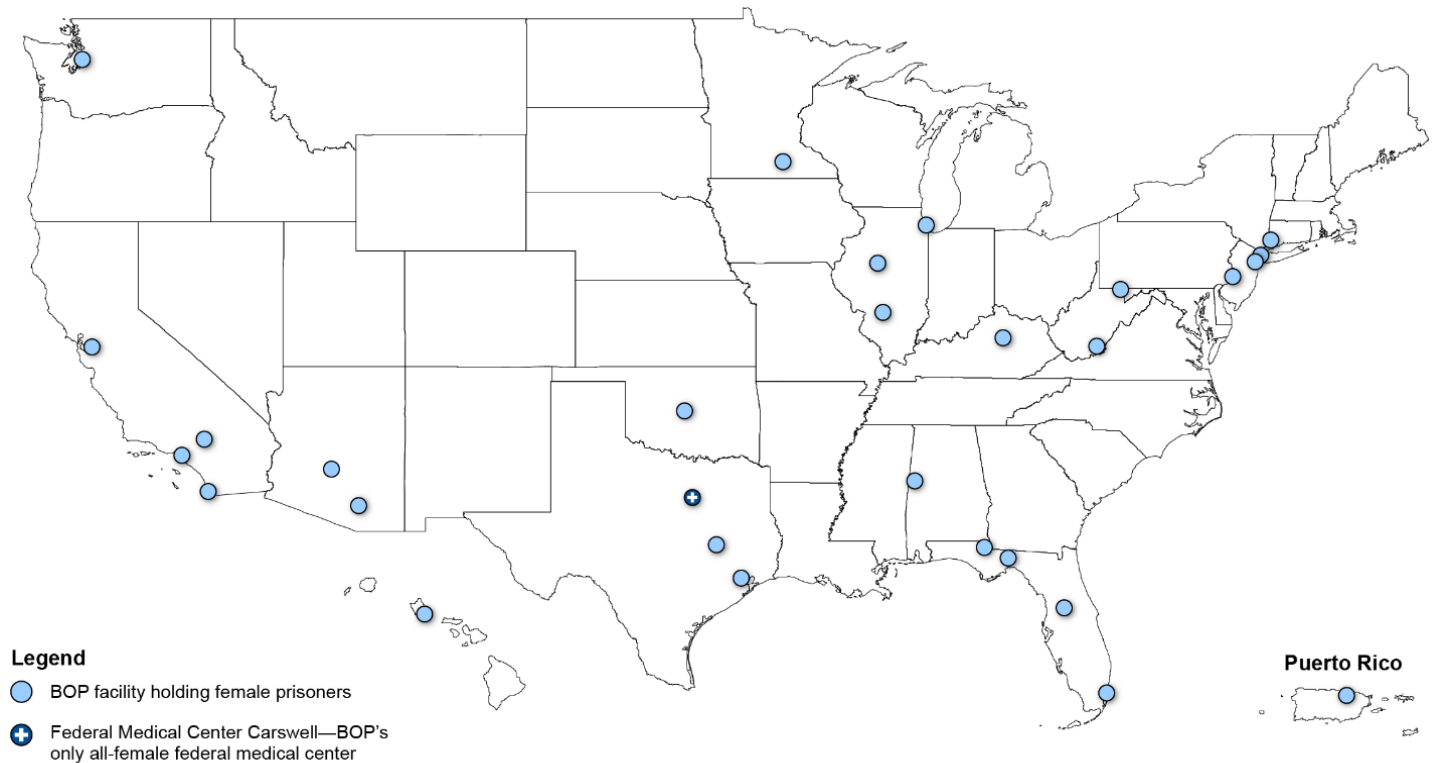
Source: Administrative Office of the U.S. Courts; MapInfo (map). | GAO-21-147

Notes: USMS does not own or operate its own facilities within these districts. The number of facilities depicted in this graphic includes Bureau of Prisons facilities, facilities with which USMS has intergovernmental agreements with state and local governments to hold its prisoners, and privately-owned and operated facilities with which USMS has a contract. In addition, USMS classifies two of the facilities depicted in this map as medical facilities, which provide locked medical facilities within or separate from the primary facility.

## BOP Facilities for Female Prisoners

While BOP operates 122 prisons nationwide, BOP holds female prisoners, including pregnant women, in 29 of these prisons.<sup>1</sup> See Figure 7 for a map of these 29 facilities.

Figure 7: Bureau of Prisons (BOP) Facilities for Female Prisoners



Source: GAO analysis of BOP data; U.S. Census Bureau (map). | GAO-21-147

<sup>1</sup>In addition to its 122 prisons, BOP has contracts with corporations to operate 12 additional facilities, but BOP does not hold female prisoners at these contract prisons.



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# Appendix III: Medical Costs Covered by U.S. Marshals Service and Bureau of Prisons

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U.S. Marshals Service (USMS) and Bureau of Prisons (BOP) both have policies on what medical services the agencies will cover—to include pregnancy-related care—with some differences. USMS is required to pay for medically necessary care for prisoners in its custody and has discretion to pay for other clinical services. According to the Department of Justice (DOJ) Office of the Inspector General (OIG), because USMS prisoners are held for shorter, less predictable periods of time, the time available for treatment of chronic conditions may be limited.<sup>1</sup> USMS policy states that in some instances, medically appropriate non-urgent health care services can be deferred until the prisoner is released from USMS custody, as long as there is no significant health risk to the prisoner. According to the DOJ OIG, BOP’s policy encompasses more than acute care because of the longer stays of its prisoner population. Thus, BOP will pay for an extensive range of medical care, focusing primarily on medically necessary acute or non-acute care, and certain elective care that is not medically necessary but would improve a prisoner’s quality of life.<sup>2</sup>

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## Medical Costs, to Include Pregnancy-Related Care, Covered by USMS and BOP

USMS does not own or operate its own facilities and holds prisoners remanded to its custody at BOP facilities, state and local facilities with which the agency has an intergovernmental agreement (IGA), or private facilities with which the agency has a contract. For USMS prisoners held in IGA and contract facilities, USMS relies on the facilities to provide medical care inside the facility. Similarly, BOP is responsible for the cost of care for prisoners who are remanded to USMS custody and held in BOP facilities. USMS IGAs and contracts cover medical care that facilities provide to USMS prisoners inside the facility; however, facilities must submit a request to a USMS district before taking a prisoner outside of the facility to receive medical care.<sup>3</sup>

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<sup>1</sup>Department of Justice Office of the Inspector General, *The Federal Bureau of Prisons’ Reimbursement Rates for Outside Medical Care, Evaluations and Inspections Division 16-04* (Washington, DC: June 2016).

<sup>2</sup>Examples of acute care include treatment for a heart attack; examples of medically necessary non-acute care include treatment for diabetes and heart disease; examples of elective care include joint replacement.

<sup>3</sup>According to the USMS Federal Performance Based Detention Standards, a responsible physician determines when a USMS prisoner’s required health care is beyond the capacity of the facility. See *Federal Performance Based Detention Standards*, November 2017 Rev 9.

To comply with annual DOJ appropriations restrictions, USMS will only assume the cost of an abortion procedure if the life of the mother would be endangered if the fetus is carried to term, or if the pregnancy is the result of rape or incest.<sup>4</sup> USMS will reimburse the hospital for costs directly related to the delivery of a woman's infant, but will not reimburse the hospital for any costs directly related to the care of the infant, including the first newborn and routine screening. Additionally, USMS does not authorize any other procedures at the time of delivery.<sup>5</sup>

BOP provides most medical care inside its facilities. If medically necessary care is unavailable in-house, a community provider will provide the care, and BOP will cover the cost.<sup>6</sup> If care is not medically necessary, BOP has discretion to authorize it.<sup>7</sup>

Similar to USMS, in compliance with annual DOJ appropriations restrictions, BOP will only assume the cost of an abortion procedure if the life of the mother would be endangered if the fetus is carried to term, or if the pregnancy is the result of rape or incest.<sup>8</sup> Regarding infant care, BOP will cover the medical care of an infant born to a prisoner for the first 3 days after a vaginal birth and up to 7 days after a Caesarean delivery.

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## USMS and BOP Contracts for the Provision of Medical Care

As stated above, USMS IGAs and contracts cover medical care that facilities provide to USMS prisoners inside the facility.<sup>9</sup> For medical care provided to prisoners outside of the facility, USMS has a National

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<sup>4</sup>See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019).

<sup>5</sup>For example, voluntary sterilizations at the time of delivery are unauthorized.

<sup>6</sup>Services available within the facility vary and may include contracted health care professionals and medical imaging services, such as ultrasounds.

<sup>7</sup>BOP determines whether a request is clinically indicated, and therefore covered by the agency, through the Utilization Review Process. Every BOP facility has a Utilization Review Committee chaired by the Clinical Director that reviews medical care requests, such as requests for specialist evaluations. Medically necessary care that is acute or emergent does not require committee review prior to the treatment being provided.

<sup>8</sup>See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019).

<sup>9</sup>According to USMS officials, there are some exceptions to this, such as bloodwork done by LabCorp at the facility and charged to USMS. USMS reported that they spent \$2,393 per prisoner in fiscal year 2019 for health care costs, which includes the provision of services by medical practitioners and medical guard services.

Managed Care Contract that maintains a preferred provider network, among other things.<sup>10</sup> We previously recommended that USMS develop reliable methods for estimating cost savings; USMS concurred, and has since implemented our recommendation by issuing guidance directing the Prisoner Operations Division to use cost estimate practices to report savings that align with Office of Management and Budget guidelines for conducting benefit-cost analyses.<sup>11</sup>

BOP provides most medical care inside its facilities with BOP-employed health services staff.<sup>12</sup> To obtain outside care, the agency solicits and awards a comprehensive medical services contract for each BOP facility. We previously reported that BOP lacks data on health care services it provides to prisoners—health care utilization data—which is important to understand and control health care costs. We recommended, among other actions, that BOP conduct a cost-effectiveness analysis of potential solutions, and take steps toward implementation of the most effective solution to better understand the available opportunities for collecting prisoner health care utilization data. As of November 2020, BOP has taken steps to address this recommendation but has not fully implemented it.<sup>13</sup>

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## USMS and BOP Prisoner Co-payments

IGA facilities may charge co-payment fees except in certain circumstances, such as prenatal care. However, if an IGA charges a co-

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<sup>10</sup>In its intergovernmental agreements, USMS instructs facilities to arrange for medical providers outside the facility to bill USMS directly; USMS prefers that facilities use outside medical providers that are covered by the USMS National Managed Care Contract. Obstetrics is a provider specialty that USMS requires be included in the preferred provider network.

<sup>11</sup>See GAO, *Prisoner Operations: United States Marshals Service Could Better Estimate Cost Savings and Monitor Efforts to Increase Efficiencies*, [GAO-16-472](#) (Washington, D.C.: May 23, 2016).

<sup>12</sup>According to BOP, the agency has about 3,000 health care positions as of June 2020, including approximately 750 Public Health Service Commissioned Officers detailed from the Department of Health and Human Service. BOP-employed medical professionals include physicians, dentists, nurses, pharmacists, and mid-level practitioners. We previously found that BOP obligated more than \$1.3 billion for prisoner health care in fiscal year 2016, which was \$8,602 per prisoner. See GAO, *Bureau of Prisons: Better Planning and Evaluation Needed to Understand and Control Rising Inmate Health Care Costs*, [GAO-17-379](#) (Washington, D.C.: June 29, 2017).

<sup>13</sup>See [GAO-17-379](#).

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**Appendix III: Medical Costs Covered by U.S.  
Marshals Service and Bureau of Prisons**

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payment fee, USMS officials stated the agency cannot deny a prisoner medical care if the prisoner is indigent.

Any prisoner incarcerated in a facility under BOP's jurisdiction must pay a \$2.00 fee for health care visits if they request the visit; however, BOP does not charge a co-payment fee for prenatal care.<sup>14</sup> Additionally, BOP will charge the prisoner co-payment fees for non-emergency medical evaluations that non-clinical staff request. BOP will not charge indigent prisoners with co-payment fees. BOP considers prisoners indigent if they have not had a balance of \$6.00 in their trust fund account for the past 30 days.<sup>15</sup>

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<sup>14</sup>According to one woman we interviewed, BOP staff informed her she had to purchase medication for a pregnancy-related symptom, and could not qualify for free medication because she was not indigent. For additional information on our interviews with pregnant women, see appendix IX. We did not independently verify statements made by the women we interviewed.

<sup>15</sup>A trust fund account refers to a bank-type account for prisoner monies while they are incarcerated.

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# Appendix IV: Mothers and Infants Together and Residential Parenting Program

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The Bureau of Prisons (BOP) has two voluntary residential programs available for eligible pregnant women to participate during the end of their pregnancy and live with their infant after giving birth, the Mothers and Infants Together (MINT) program and Residential Parenting Program (RPP). Women may be transported directly to MINT after sentencing, or they may undergo an application and approval process at their designated BOP facility. Following their participation, women return to their designated BOP facility to complete their sentence or may be released directly from the program.

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## Mothers and Infants Together

BOP contracts with five Residential Reentry Centers nationwide to hold pregnant and postpartum women while they participate in MINT, a program that promotes mother-infant bonding skills.<sup>1</sup> BOP policy allows eligible women to enter MINT during the last 2 months of their pregnancy and stay at least 3 additional months after giving birth, although policy recommends a minimum of 6 months. The five Residential Reentry Centers offering MINT are located in Phoenix, Arizona; Tallahassee, Florida; Springfield, Illinois; Fort Worth, Texas; and Hillsboro, West Virginia.

We visited two MINT programs, one in Hillsboro, West Virginia and one in Fort Worth, Texas. The Hillsboro MINT program is a standalone organization that intends to promote maternal bonding and parenting skills in a home-like environment. There is no medical care provided onsite; however, mental health providers offer onsite services twice weekly and women are taken outside of the facility for prenatal care. The program has ten staff and can hold up to 20 women at one time. The program staff estimated that they have approximately 10 participants at any given time, and they have approximately 20 participants annually. Staff stated that women typically stay 6 months postpartum and BOP officials noted that women may request an additional 6 month extension from BOP.

The Fort Worth MINT program is part of a larger organization that also administers a Residential Reentry Center for men. According to MINT program staff, the program goals are to reduce recidivism and the stigma for children born to incarcerated parents, enhance the bond between the mother and infant, and teach the women how to care for their infants and be better citizens. Women have a weekly check-in with a nurse and are

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<sup>1</sup>BOP contracts with Residential Reentry Centers, also known as halfway houses, which are designed to supervise prisoners in a community setting to facilitate their reentry into society.

taken outside of the facility for prenatal care. The program has four staff and can hold up to six women at one time. According to staff, they usually have approximately two or three participants at any given time, and have approximately 10 participants annually. Staff stated that women typically stay 3 months postpartum.

During our visits to the Hillsboro and Fort Worth MINT programs, we interviewed five pregnant or postpartum women currently participating in the programs. The women stated that they received regular medical care, including any specialty care that was needed, and any special accommodations that they requested. For example, one woman stated that she appreciated the welcome basket she received upon arriving at the Hillsboro MINT program of donated items such as toiletries for the woman, as well as infant clothing and accessories. Another woman stated that she had received everything she needed related to her pregnancy while in the program, including assistance from the MINT staff watching her infant during the woman's medical appointments. In addition, according to the five women we spoke with, none had filed a complaint about the treatment and care they received while in the MINT program. See Figure 8 for photos of the MINT facilities in West Virginia and Texas.

Appendix IV: Mothers and Infants Together  
and Residential Parenting Program

Figure 8: Selected Photos of Mothers and Infants Together (MINT) Facilities in West Virginia and Texas

Hillsboro, WV MINT program



Common room



Participant bedroom

Fort Worth, TX MINT program



Common room

Source: GAO. | GAO-21-147



Participant bedroom

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Residential Parenting  
Program

The goal of RPP is to provide a safe residential setting that will allow infants and their incarcerated mothers to remain united; ensure a secure, healthy mother-infant bond; maximize infants' healthy growth and development; and educate mothers in parenting skills and self-sufficiency.

BOP has an intergovernmental agreement with the Washington State Department of Corrections to place qualified, interested pregnant women in custody at the Washington Correctional Center for Females in Gig Harbor, Washington. The RPP is a voluntary program in which women reside with their infant for 30 months after giving birth. The women may be eligible to receive a variety of services, including mental health, medical care, and vocational training. RPP has the capacity to hold up to 20 women, including BOP and state prisoners, with their infants at one time.

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Utilization of MINT and  
RPP

In September 2018, the Department of Justice (DOJ) Office of the Inspector General (OIG) reviewed BOP's management of its female prisoner population, to include BOP's management and utilization of the MINT and RPP pregnancy programs.<sup>2</sup> The OIG found that pregnant women are not always informed of these programs, and that sometimes BOP staff are unaware of RPP in particular.<sup>3</sup> Additionally, they found that BOP facility staff may apply eligibility criteria more restrictively than intended by Central Office.

With regard to these findings, the DOJ OIG recommended that BOP (1) improve data tracking to allow the agency to more easily identify prisoners who are aware of, interested in, eligible for, or participating in pregnancy programs, as well as to assess barriers to participation, and (2) improve the communication of its program availability and eligibility

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<sup>2</sup>Department of Justice Office of the Inspector General, *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population*, Evaluations and Inspections Division 18-05 (Washington, DC: September 2018).

<sup>3</sup>We spoke with an Assistant Federal Public Defender, who said that the lack of information and communication about the MINT program for pregnant women facing prison time is problematic. Specifically, the public defender said it is problematic because as pregnant women await sentencing, they do not have a sense of what to expect or decisions they need to make in terms of medical care or custody of their infant. Additionally, the defender stated that BOP was not forthcoming with any substantive information about how to initiate the approval process for MINT participation while the defender's pregnant client awaited sentencing, despite their and the judge's efforts to contact BOP and MINT programs. The views expressed by the defender are their own and do not represent the views of the Administrative Office of the U.S. Courts or the federal judiciary.



criteria to relevant staff and pregnant prisoners to ensure consistent understanding across BOP institutions. BOP has since taken actions to implement the recommendations and they are closed as of October 2020.

During our interviews with pregnant and postpartum women in BOP custody, all 15 women had either received written materials about MINT and RPP or a BOP official had informed them about the programs. Four of the women who had experience with the MINT application process stated that the approval process was difficult or confusing.<sup>4</sup>

The House Appropriations Committee report accompanying DOJ's fiscal year 2020 appropriation, expressed concern about the underutilization of the MINT and RPP pregnancy programs. The report directed BOP to issue guidance to better communicate the programs and collect data to assess women's interest and participation in the programs. The committee also urged BOP to adhere to its policy in the Female Offender Manual and allow women to participate in the MINT program for at least six months.<sup>5</sup>

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<sup>4</sup>For additional information on our interviews with pregnant and postpartum women, see appendix IX.

<sup>5</sup>See H.R. Rep. No. 116-101, at 63 (2019). According to BOP officials, they revised the Female Offender Manual to allow women to participate in MINT for at least 6 months. The current policy recommends but does not require participation for 6 months. As of October 2020, the revisions to the Female Offender Manual had not yet been finalized.

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# Appendix V: U.S. Marshals Service and Bureau of Prisons Policies Related to Coronavirus Disease 2019

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The spread of Coronavirus Disease 2019 (COVID-19), caused by a new coronavirus named Severe Acute Respiratory Syndrome CoV-2, among federal prisoners is concerning because of the confined nature of the prison environment. In particular, per the Centers for Disease Control and Prevention (CDC), pregnant women may be at increased risk for severe illness from COVID-19 and adverse pregnancy outcomes, such as preterm birth.<sup>1</sup> The CDC stated that prison staff and newly arrived prisoners could potentially introduce the disease to the prison population, and the Congressional Research Service noted that COVID-19 could spread quickly in an environment in which hundreds of prisoners and staff are living and working in close proximity that is not conducive to social distancing.<sup>2</sup> Additionally, the Congressional Research Service also stated that prison health units generally do not have resources, such as isolation beds, that could help prevent the spread. Furthermore, prison staff shortages due to illness or quarantine as a result of COVID-19 exposure could also affect care provided to sick prisoners.

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## Agency Policies Related to Managing COVID-19 and Pregnant Women

U.S. Marshals Service (USMS) has issued guidance, last updated in May 2020, for handling USMS prisoners during the COVID-19 pandemic. The guidance, among other things, requires all new prisoners received in the cellblock to wear a USMS-provided disposable surgical mask and includes a COVID-19 screening questionnaire for all new prisoners. In addition, the USMS policy on prisoner airborne pathogen control requires that prisoners symptomatic or diagnosed with an infectious disease should be isolated from other prisoners and staff, whenever possible.<sup>3</sup> According to USMS officials, all decisions concerning prisoner infectious disease treatment—such as the decision to isolate or quarantine prisoners—are made at the facilities that have agreements and contracts with USMS to hold federal prisoners. USMS does not own or operate detention facilities; its prisoners are held in privately-owned or state or local government-owned facilities that have contracts or intergovernmental agreements (IGAs) to hold USMS prisoners. USMS told us that facilities are responsible for providing medical care to USMS prisoners and that the facilities work closely with their state health

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<sup>1</sup>On June 25, 2020, the CDC added pregnancy to its list of underlying medical conditions that might increase the risk of severe illness from COVID-19.

<sup>2</sup>Congressional Research Service, *Federal Prisoners and COVID-19: Background and Authorities to Grant Release*, R46297 (Washington, D.C.: April 23, 2020).

<sup>3</sup>U.S. Marshals Service, *Policy Directive 9.6 Prisoner Airborne Pathogen Control* (Washington, D.C.: July 18, 2010).

departments and the CDC as needed to ensure infectious diseases are promptly identified and treated.

According to USMS officials, the private detention contracts are performance-based and require contractors to develop contingency and emergency response plans to a number of events and circumstances, including pandemics, to reduce and mitigate the risk of infectious diseases within the facility. USMS told us that they expect IGA facilities, in which the majority of USMS prisoners are held, to work closely with state health departments and the CDC, as needed, to ensure that any infectious diseases are promptly identified and treated. USMS officials stated that for both IGA and private detention contracts, U.S. Public Health Service staff have developed COVID-19 screening criteria for prisoners entering and departing detention facilities, as well as guidelines for the safe transport of USMS prisoners to court and to medical appointments in line with CDC guidance. With regard to plans or procedures in place for vulnerable populations, in particular pregnant women, USMS told us that contract and IGA facilities are not required to report the number of isolation or segregation cells available for vulnerable populations or other prisoners requiring segregation.

The Bureau of Prisons (BOP) released its COVID-19 action plan on March 13, 2020 that indicated modified operations for the following 30 days. As of April 1, 2020, BOP suspended prisoner movement to decrease the exposure to spread of the virus. As of October 2020, BOP resumed prisoner movement between USMS and BOP at a rate of about 70 percent compared to the previous year and stated that they have seen no associated increase in COVID-19 positive cases as a result. BOP screens all new prisoners entering its facilities for COVID-19 symptoms and quarantines them for 14 days. According to BOP officials, USMS staff began notifying them prior to transferring a pregnant woman to BOP custody so that BOP can explore community placement options and the referral process before custody transfer takes place.

According to BOP Director Carvajal during his testimony before the Senate Judiciary Committee on June 2, 2020 and BOP's responses to us, BOP is providing additional measures to ensure the safety of pregnant and postpartum women.<sup>4</sup> Since the onset of COVID-19, BOP has reviewed all pregnant women for community placement such as home

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<sup>4</sup>*Examining Best Practices for Incarceration and Detention During COVID-19: Hearing Before the Senate Judiciary Committee, 116th Cong., 2nd sess., June 2, 2020.*

confinement and/or extended placement at the Mothers and Infants Together (MINT) program in compliance with Attorney General Barr's order to prioritize the early release of at-risk prisoners. According to BOP, as of May 18, 2020, 24 pregnant women were released to home confinement, a MINT program, or released from BOP custody. As of May 18, 2020, six pregnant women remained in BOP custody. BOP stated that whenever possible, BOP staff consider pregnant women scheduled to enter BOP custody for alternative placement options, and that they have temporarily eliminated some requirements for MINT and expanded the number of beds available in MINT programs to accommodate more participants. BOP told us that they follow CDC guidance for the management of personnel and prisoners.

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## Challenges that the Agencies Face Managing Coronavirus

The Department of Justice (DOJ) Office of the Inspector General (OIG) reported that the most immediate and pressing challenges that USMS and BOP face managing the COVID-19 crisis are securing personal protective equipment; identifying, accessing, and implementing effective testing protocols; providing access to quality medical care for those in custody; transferring prisoners to and from facilities; and social distancing, screening, quarantining, and otherwise mitigating the risks presented by the pandemic.<sup>5</sup> Additionally, the OIG noted that many individuals in USMS or BOP custody are placed in correctional environments not directly controlled by DOJ. This amplifies the challenge for the agencies to ensure that the prisoners receive adequate medical care and protection from COVID-19, while considering the impact of their decisions on the health and safety of hundreds of communities.

USMS officials said that facilities that hold its prisoners are experiencing the same challenges as other jail and prison systems nationwide, including the inability to effectively social distance and challenges obtaining personal protective equipment and testing supplies and services. BOP officials told us that a challenge specific to managing pregnant women during the pandemic is balancing safety with self-improvement opportunities. In particular, pregnant women who are in quarantine or isolation should also have the opportunity to participate in programming, such as occupational training programs or parenting classes. Additionally, most pregnant women are designated as low security prisoners, meaning they are held in facilities with open bay

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<sup>5</sup>Department of Justice Office of the Inspector General, *Pandemic Response Report, COVID-19 Challenges for the U.S. Department of Justice, 20-72*, (Washington, DC: June 2020).

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layouts, rather than individual cells, making social distancing more difficult.

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### COVID-19 Impact on Federal Prisoners Including Pregnant Women

USMS has not publically reported how many of its prisoners have had positive COVID-19 test results, nor how many prisoners have died of the disease.<sup>6</sup> However, USMS told us that, as of September 2020, a total of 5,294 prisoners in USMS custody have tested positive for COVID-19, including two pregnant prisoners. USMS officials said that 34 prisoners have required hospitalization and 17 have died.

BOP reported that, as of December 1, 2020, 4,677 federal prisoners had confirmed positive test results for COVID-19 nationwide and an additional 20,665 prisoners have recovered from the disease, out of a total 138,749 federal prisoners in BOP-managed and community based facilities; BOP attributed 145 federal prisoner deaths to the disease.<sup>7</sup> BOP told us that as of December 4, 2020, there were four confirmed COVID-19 cases among pregnant women and three confirmed cases among postpartum women.<sup>8</sup> BOP told us that one postpartum woman had died from complications associated with COVID-19.

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<sup>6</sup>A May 15, 2020 House Judiciary Committee letter from Chairman Jerrold Nadler and Chair of the Subcommittee on Crime, Terrorism and Homeland Security, Karen Bass, to the USMS Director expressed concern that news media had reported a number of USMS prisoner COVID-19 cases, but that the USMS official website provides no information about COVID-19 cases within its population.

<sup>7</sup>These numbers indicate that about 18 percent of the BOP prisoner population has had a confirmed positive test result for COVID-19, including both 4,677 (3 percent) active confirmed cases and another 20,665 (13 percent) who previously tested positive and have since recovered. The Congressional Research Service reported that BOP does not publish data on the number of prisoners that may have underlying health conditions that made them more susceptible to serious COVID-19 complications. As of April 18, 2020 about six percent of all BOP prisoners were age 61 or older.

<sup>8</sup>BOP confirmed that data from BOP facilities, residential reentry centers, and MINT programs are incorporated in the BOP data posted publicly on its website, however they do not include any pregnant women who were transferred to the Residential Parenting Program at Washington State Department of Corrections in these data.

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# Appendix VI: National Guidance Recommendations on the Treatment and Care of Pregnant Women

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Numerous professional associations, non-governmental organizations, and federal agencies have issued guidance on care to be provided to incarcerated pregnant and postpartum women. We reviewed and summarized guidance and compared it to U.S. Marshals Service (USMS) and Bureau of Prisons (BOP) policies and standards to determine the extent to which each agency aligned with national guidance recommendations on the treatment and care of pregnant women, as detailed in appendices VII and VIII. Specifically, we reviewed the following:<sup>1</sup>

- American College of Obstetricians and Gynecologists (ACOG):
  - *Committee Opinion: Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females* (2011)
  - *Committee Opinion on Optimizing Postpartum Care* (2018)
- ACOG and American Society of Addiction Medicine, *Committee Opinion on Opioid Use and Opioid Use Disorder in Pregnancy* (2017)
- American Correctional Association and American Society of Addition Medicine, *Joint Policy Statement on Opioid Use Disorder (OUD) Treatment In Justice System* (2018)
- *American Correctional Association Performance-Based Standards and Expected Practices for Adult Correctional Institution*, 5th Edition (2020)
- American Correctional Association, *Public Correctional Policies* (2017)
- American Jail Association, *Resolution on the Use of Restraints on Pregnant Inmates* (2011)
- American Medical Association, *Policy on Health Care while Incarcerated* (2019)

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<sup>1</sup>We identified national guidance from our prior work on pregnant women in Department of Homeland Security detention (see GAO, *Immigration Detention: Care of Pregnant Women in DHS Facilities*, [GAO-20-330](#) (Washington, D.C.: Mar. 24, 2020)). We further refined this list to include other guidance relevant to the justice system. While the First Step Act of 2018 is not a national guidance recommendation from a professional association, we included it in our analysis about the use of restraints because it is a federal law that is directly relevant to the treatment and care of pregnant and postpartum federal prisoners. See Pub. L. No. 115–391, tit. III, § 301(a), 132 Stat. 5194, 5217–5219 (2018) (codified at 18 U.S.C. § 4322).

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**Appendix VI: National Guidance  
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of Pregnant Women**

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- American Public Health Association Task Force on Correctional Health Care Standards, *Standards for Health Services in Correctional Institutions* (2003)
- Association of Women’s Health, *Obstetric and Neonatal Nurses, Position Statement on Shackling Incarcerated Pregnant Women* (2011)
- *Joint Statement on the Federal Role in Restricting the Use of Restraints on Incarcerated Women and Girls during Pregnancy, Labor, and Postpartum Recovery*<sup>2</sup>
- National Commission on Correctional Health Care (NCCHC):
  - *Position Statement: Restraint of Pregnant Inmates* (2015)<sup>3</sup>
  - *Position Statement on Solitary Confinement (Isolation)* (2016)
  - *Position Statement on Breastfeeding in Correctional Settings* (2018) <sup>4</sup>
  - *Position Statement on Substance Use Disorder Treatment for Adults and Adolescents* (2016)
  - *Position Statement on Women’s Health Care in Correctional Settings* (2020)
  - *Standards for Health Services in Jails* (2018)

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<sup>2</sup>The statement was endorsed by the following organizations: ACOG (as of January 2018, all activities of this entity fall under the American College of Obstetricians and Gynecologists), American Jail Association, American Psychological Association, Human Rights Project for Girls, NCCHC, and the National Council of Juvenile and Family Court Judges.

<sup>3</sup>In November 2020, NCCHC updated this position statement, changing the title of the statement to *Nonuse of Restraints for Pregnant and Postpartum Incarcerated Individuals*. According to NCCHC, most of the changes were to clarify the position statement and broaden the areas of concern. For example, NCCHC stated that the new statement makes clear that responsibility for ensuring the safety of pregnant women belongs to not just the facility administrator but all who care for the women. In addition, NCCHC stated that risks associated with the use of restraints have been made clearer. We determined that while the position statement was updated for clarity, such updates did not materially affect our analysis.

<sup>4</sup>ACOG endorsed this position statement and stated it should be construed as ACOG clinical guidance.

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**Appendix VI: National Guidance  
Recommendations on the Treatment and Care  
of Pregnant Women**

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- Sufrin C., *Pregnancy and Postpartum Care in Correctional Settings*, National Commission on Correctional Health Care, Clinical Resources Series (2014)<sup>5</sup>
  - *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* (2010)
  - U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* (2016)

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<sup>5</sup>ACOG endorsed this position statement.



# Appendix VII: Alignment of U.S. Marshals Service Policy and Detention Standards with National Guidance Related to Pregnancy

As shown in Table 5 below, based on our analysis of U.S. Marshals Service (USMS) policies and Federal Performance Based Detention Standards (Detention Standards) and national recommended guidance on the treatment and care of incarcerated pregnant and postpartum women, USMS policies and Detention Standards fully align with national guidance recommendations on three pregnancy-related care topics, partially on six topics, and do not align on seven topics.<sup>1</sup> For additional information on how we selected and assessed USMS policies, detention standards, and national guidance recommendations, see appendix I and for a list of the national guidance recommendations we included in our analysis, see appendix VI.

**Table 5: Extent of Alignment of U.S. Marshals Service (USMS) Federal Performance Based Detention Standards (Detention Standards) and Policies with National Guidance Recommendations on the Treatment and Care of Pregnant Women<sup>a</sup>**

Care topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Intake health screening involving pregnant women</b>	Pregnant women should be screened for substance use, tuberculosis, and mental illness.	<ul style="list-style-type: none"> <li>● USMS Detention Standards require that everyone in custody receive medical, mental health, tuberculosis, and substance use screenings upon facility admission.</li> </ul>	None.
<b>Record keeping on care</b>	Facility information systems should be able to track the pregnant women in their custody. Prenatal and postpartum care should be documented and medical records provided after the woman's release for continuity of care. Written reports on use of restraint incidents must be submitted within 30 days of the incident.	<ul style="list-style-type: none"> <li>● USMS policy requires districts to notify USMS Headquarters of a woman's pregnancy when confirmed by a health care provider and requires that facilities record entries in the prisoner's health record in a manner that ensures the health record is complete. USMS policy requires the documentation of restraint usage on pregnant women.</li> </ul>	None.

<sup>1</sup>According to USMS officials, USMS policy applies only to USMS personnel and operations. This means that while USMS may have a policy about a given care topic, facilities with contracts or intergovernmental agreements to hold USMS prisoners may not necessarily need to adhere to the policy unless delineated in their contract or agreement with USMS. USMS is not obligated by law, regulation, or policy to adhere to national guidance recommendations.

**Appendix VII: Alignment of U.S. Marshals  
Service Policy and Detention Standards with  
National Guidance Related to Pregnancy**

Care topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Segregation</b>	Pregnant and postpartum women should not be placed in restrictive housing except in rare situations where placement in restrictive housing is a temporary response to behavior that is a serious and immediate risk of physical harm.	● USMS policy recommends that pregnant and postpartum women not be placed in restrictive housing and that senior officials must review and approve of such placements. <sup>b</sup>	None.
<b>Access to abortion</b>	Pregnant women should be able to elect to have an abortion and receive counseling about this decision.	⓪ USMS policy requires that women can elect to have an abortion, in compliance with federal and state law. <sup>c</sup>	USMS policy or Detention Standards do not recommend or require that pregnant women who elect to have abortion are offered counseling about that decision.
<b>Pregnancy testing at intake</b>	All women should be asked if they could be pregnant, had a recent pregnancy, or are breastfeeding, and assessed for pregnancy risk; if appropriate, offered a pregnancy test within 48 hours of arrival. Women who test negative but who are at high risk for pregnancy should be retested. <sup>d</sup> Pregnancy test kits should be available.	⓪ USMS policy and Detention Standards require inquiry into women's pregnancy status during intake.	USMS policy or Detention Standards do not recommend or require that women be assessed for pregnancy risk, offered a urine pregnancy test if high risk within 48 hours of arrival, or retested in two weeks if high risk with a negative initial pregnancy test.
<b>Provision of labor and delivery care</b>	Facilities should have emergency delivery kits available. Pregnant women with labor symptoms should be evaluated quickly by a qualified health care provider, which may necessitate offsite transport. Pregnant women should deliver their babies in licensed hospitals with services for high-risk pregnancies when available. Correctional staff do not need to accompany the woman in the room during labor or delivery unless (1) requested by medical staff, or (2) absence of correctional staff would pose a danger to medical staff or others.	⓪ USMS policy requires that birth take place in a hospital. USMS policy allows districts to approve hospital and delivery care,—48 hours for a vaginal delivery and 72 hours for a Caesarian section—if requested by the facility health care provider.	USMS policy or Detention Standards do not recommend or require that facilities have emergency delivery kits available, that the hospital in which pregnant women give birth have the capacity to care for high risk pregnancies when available, that staff have procedures to ensure pregnant women with labor symptoms are evaluated quickly, or whether staff should be present in the labor and delivery room.
<b>Provision of postpartum care</b>	Postpartum care should be planned before delivery, easily accessible, timely, and regularly provided. Accommodations should be provided to postpartum women recovering from childbirth to allow rest and walking, as needed.	⓪ USMS Detention Standards require that postpartum care be timely and appropriate.	USMS policy or Detention Standards do not specify requirements for postpartum care as recommended by national guidance or that accommodations be made for women recovering from childbirth. For example, USMS policy does not specify that postpartum women should have access to lactation support.

**Appendix VII: Alignment of U.S. Marshals  
Service Policy and Detention Standards with  
National Guidance Related to Pregnancy**

Care topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Provision of prenatal care</b>	Comprehensive prenatal care should begin early in pregnancy, take into account the woman's desires regarding her pregnancy, be easily accessible, timely, and regularly provided, to include identification of high-risk pregnancies, referrals to specialists, and access to 24-hour emergency care, as appropriate.	● USMS Detention Standards require that prenatal care and specialized obstetrical services be timely and appropriate; it also requires that 24-hour emergency medical care be available.	USMS policy or Detention Standards do not recommend or require that prenatal care begin as early in pregnancy as possible, be easily accessible, or regularly provided. USMS policy does not specify requirements for the nature or frequency of medical examinations, identification of high risk pregnancies, or referrals to specialists as recommended by national guidance.
<b>Use of restraints<sup>e</sup></b>	The use of restraints on pregnant and postpartum women is prohibited the prisoner is an immediate and credible flight risk; poses an immediate and serious threat of harm to herself or others; or a healthcare professional determines that restraints are appropriate for the medical safety of the prisoner, in which case the least restrictive restraints necessary to address the situation may be used.	● USMS policy prohibits the restraint of pregnant and postpartum women except under one of three exceptions, for which handcuffs in the front are permitted.	The USMS Detention Standards do not prohibit the use of restraints on pregnant and postpartum women or require that the least restrictive restraints be used.
<b>Human immunodeficiency virus (HIV) care</b>	Pregnant women should be screened for HIV infection with an opt-out option. HIV-positive pregnant women should receive antiretroviral treatment that follows national guidelines and be counseled on maternal-fetal transmission.	○ None.	USMS policy or Detention Standards do not recommend or require that pregnant women be offered HIV testing; that HIV-positive pregnant women be treated according to national guidelines or be counseled on maternal-fetal transmission.
<b>Mental health services and counseling</b>	Comprehensive counseling in accordance with national standards should be available to women about their desire to continue the pregnancy, use adoptive services, or have an abortion. All pregnant women in custody should be screened for mental health and treated appropriately; and after birth, screened for postpartum depression.	○ None.	USMS policy or Detention Standards do not recommend or require comprehensive counseling to women about their desire to continue the pregnancy, use adoptive services, or have an abortion; that all pregnant women be screened for mental health or treated appropriately; or that women be screened for postpartum depression.

**Appendix VII: Alignment of U.S. Marshals Service Policy and Detention Standards with National Guidance Related to Pregnancy**

Care topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Nutrition</b>	Pregnant and postpartum women’s diets may be modified due to their condition, including the nutritional content, preparation, frequency, and amounts of food given. Pregnant women should not eat foods with listeria risk.	○ None.	USMS policy or Detention Standards do not recommend or require that pregnant or postpartum women receive any form of diet modification or refrain from eating foods with listeria risk.
<b>Prenatal vitamins</b>	Pregnant women should receive prenatal vitamins that contain folic acid and iron if indicated.	○ None.	USMS policy or Detention Standards do not recommend or require that pregnant women receive prenatal vitamins iron, or folic acid supplementation.
<b>Special Accommodations</b>	Facilities should provide pregnant and postpartum women special accommodations due to physiologic changes. <sup>f</sup>	○ None.	USMS policy or Detention Standards do not recommend or require that pregnant or postpartum women be offered special accommodations.
<b>Substance use disorder care</b>	Pregnant women with substance use disorder should receive medication-assisted treatment and be counseled about withdrawal risks.	○ None.	USMS policy or Detention Standards do not recommend or require that pregnant women be treated with medication-assisted treatment or counseled about withdrawal risks.
<b>Vaccinations</b>	Pregnant women should receive the influenza and Tdap (tetanus, diphtheria, and pertussis) vaccinations.	○ None.	USMS policy or Detention Standards do not recommend or require that pregnant women be offered influenza or the Tdap vaccinations.

Legend: ● Indicates that USMS Detention Standards or policy fully aligns with national guidance recommendations on this care topic.

◐ Indicates that USMS Detention Standards or policy partially aligns with national guidance recommendations on this care topic.

○ Indicates that USMS Detention Standards or policy does not align with national guidance recommendations on this care topic.

Source: GAO analysis of USMS policies and national guidance recommendations on the treatment and care of pregnant and postpartum women. | GAO-21-147

<sup>a</sup>USMS is not obligated by law, regulation, or policy to adhere to national guidance recommendations.

<sup>b</sup>Three national guidance documents make different recommendations regarding segregation of pregnant women who are incarcerated. Two organizations, the National Commission on Correctional Health Care and the United Nations, recommend that pregnant women never be held in solitary confinement of any duration. The third document, the U.S. Department of Justice (DOJ) *Report and Recommendations Concerning the Use of Restrictive Housing* recommends that pregnant women not be held in restrictive housing, but allows for holding a pregnant woman in restrictive housing as a temporary response to behavior that poses a serious and immediate risk of physical harm. DOJ does not use the term “solitary confinement” because prisons may hold two segregated prisoners together, and thus the prisoners’ segregation is not truly “solitary”. DOJ adopted the synonymous terms “restrictive housing” and “segregation” to avoid this confusion, defined as any type of detention that involves (1) removal from the general prisoner population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more. DOJ notes that this definition leaves substantial room for variation and that it is important to know the details of a prisoner’s placement. Given that DOJ’s definition of restrictive housing includes solitary confinement, holding a pregnant woman in solitary confinement is permitted according to the DOJ Report. While

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**Appendix VII: Alignment of U.S. Marshals  
Service Policy and Detention Standards with  
National Guidance Related to Pregnancy**

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USMS policy does not align with the National Commission on Correctional Health Care and the United Nations, USMS policy follows DOJ's guidance, making the extent of their alignment full.

<sup>c</sup>In terms of federal law, annual appropriations acts prohibit DOJ from funding abortions in most circumstances. See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019). Consistent with these annual appropriations restrictions, USMS policy states that federal funds may be used for an abortion under limited circumstances—specifically, when the pregnancy endangers the woman's life or resulted from rape or incest. Federally funded abortions require review by USMS Prisoner Operations Division, Office of Medical Operations, and Office of General Counsel unless there is a medical emergency. Other than security and reasonable transportation to and from an appropriate facility, USMS will not assist the prisoner in non-federally funded abortions.

<sup>d</sup>According to national guidance, pregnancy assessment risk means determining how likely it is a woman could be pregnant using information about her menstrual history, sexual activity, and contraceptive use.

<sup>e</sup>For the use of restraints topic we considered the restraint policies USMS updated after the First Step Act of 2018, which are applicable to USMS personnel and contract facilities. While the First Step Act is not a national guidance recommendation from a professional association, we included it in our analysis because it is a federal law that is directly relevant to the treatment and care of pregnant and postpartum federal prisoners. See Pub. L. No. 115-391, tit. III, § 301(a), 132 Stat. 5194, 5217-5219 (2018) (codified at 18 U.S.C. § 4322).

<sup>f</sup>National guidance states that for pregnant women, special accommodations may include housing (including lower bunk assignment); work or program assignments; transportation outside the facility; special clothing; adjustments to daily activities. For postpartum women, accommodations may include activity limitations and accommodations to continue lactation.

We considered as part of our analysis the following USMS policies and standards<sup>2</sup>

- *Federal Performance Based Detention Standards*, November 2019 Rev 9
- *Policy Directive (Prisoner Operations) 9.42 Prisoner Tuberculosis Screening* (Washington, D.C.: Jan. 13, 2020)
- *Policy Directive (Prisoner Operations) 9.4 Prisoner Health Care Management* (Washington, D.C.: Jan. 13, 2020)
- *Policy Directive (Prisoner Operations) 9.5 Pregnant Prisoner Care* (Washington, D.C.: Dec. 16, 2019)
- *Policy Directive (Prisoner Operations) 9.6 Prisoner Airborne Pathogen Control* (Washington, D.C.: Jul. 28, 2010)
- *Policy Directive (Prisoner Operations) 9.18 Prisoner Restraints* (Washington, D.C.: Dec. 16, 2019)

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<sup>2</sup>USMS confirmed that these are the policies and standards relevant to the treatment and care of pregnant women in its custody.

# Appendix VIII: Alignment of Bureau of Prisons Policy with National Guidance Related to Pregnancy

As shown in Table 6 below, based on our analysis of Bureau of Prisons (BOP) policies and national recommended guidance on the treatment and care of incarcerated pregnant and postpartum women, BOP policies fully align with national guidance recommendations on eight pregnancy-related care topics, partially on seven topics, and does not align on one topic.<sup>1</sup> For additional information on how we selected and assessed BOP policies and national guidance recommendations, see appendix I and for a list of the national guidance recommendations we included in our analysis, see appendix VI.

**Table 6: Extent of Alignment of Bureau of Prisons (BOP) Policies with National Guidance Recommendations on the Treatment and Care of Pregnant Women<sup>a</sup>**

Care Topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Access to abortion</b>	Pregnant women should be able to elect to have an abortion and receive counseling about this decision.	● BOP policy requires that women be able to elect to have an abortion and receive counseling about this decision, consistent with state and federal law. <sup>b</sup>	None.
<b>Human immunodeficiency virus (HIV) care</b>	Pregnant women should be screened for HIV infection with an opt-out option. HIV-positive pregnant women should receive antiretroviral treatment that follows national guidelines and be counseled on maternal-fetal transmission.	● BOP policy recommends that all pregnant women be offered HIV testing; and that HIV-positive pregnant women be counseled on maternal-fetal transmission and be treated according to national guidelines.	None.
<b>Intake health screening involving pregnant women</b>	Pregnant women should be screened for substance use, tuberculosis, and mental illness.	● BOP policy requires that all prisoners be screened for infectious disease, (which would include tuberculosis), substance use, and mental health at intake.	None.
<b>Prenatal vitamins</b>	Pregnant women should receive prenatal vitamins that contain folic acid and iron if indicated.	● BOP policy recommends that pregnant women receive prescriptions for prenatal vitamins unless otherwise indicated.	None.

<sup>1</sup>BOP is not obligated by law, regulation, or policy to adhere to national guidance recommendations.

**Appendix VIII: Alignment of Bureau of Prisons  
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<b>Care Topic</b>	<b>Summary of key components of national guidance recommendations</b>	<b>Summary of extent of alignment</b>	<b>Summary of extent of non-alignment</b>
<b>Record keeping on care</b>	Facility information systems should be able to track pregnant women in their custody. Prenatal and postpartum care should be documented and medical records provided after the woman's release for continuity of care. Written reports on use of restraint incidents must be submitted within 30 days of the incident.	● BOP policy requires that notification of restraint incidents be submitted to senior agency officials. BOP policy requires pregnant and postpartum women be tracked, and that care should be documented in medical records.	None.
<b>Segregation</b>	Pregnant and postpartum women should not be placed in restrictive housing except in rare situations where placement in restrictive housing is a temporary response to behavior that is a serious and immediate risk of physical harm.	● BOP policy recommends that pregnant and postpartum women not be placed in restrictive housing. <sup>c</sup>	None.
<b>Special Accommodations</b>	Facilities should provide pregnant and postpartum women special accommodations due to physiologic changes. <sup>d</sup>	● BOP policy offers correctional and medical staff discretion to allow a number of accommodations for pregnant and postpartum women.	None.
<b>Vaccinations</b>	Pregnant women should receive the influenza and Tdap (tetanus, diphtheria, and pertussis) vaccinations.	● BOP policy recommends influenza and Tdap vaccines for pregnant prisoners.	None.
<b>Mental health services and counseling</b>	Comprehensive counseling in accordance with national standards should be available to women about their desire to continue the pregnancy, use adoptive services, or have an abortion. All pregnant women in custody should be screened for mental health and treated appropriately; and after birth, screened for postpartum depression.	● BOP policy requires women be offered counseling to assist with the decision about carrying a pregnancy to term or having an abortion, and that postpartum women receive a referral to the social worker to address any concerns after giving birth.	BOP policy does not recommend or require that pregnant or postpartum women be screened specifically for depression. Policy provides for postpartum women's referral to a social worker but the policy does not provide reasonable assurance that women receive mental health screening per national guidance.
<b>Pregnancy testing at intake</b>	All women should be asked if they could be pregnant, had a recent pregnancy, or are breastfeeding, and be assessed for pregnancy risk; if appropriate, offered a pregnancy test within 48 hours of arrival. Women who test negative but who are at high risk for pregnancy should be retested <sup>e</sup> . Pregnancy test kits should be available.	● BOP require that pregnancy testing for women of childbearing age be part of routine physical examination.	BOP policy does not specify a time frame for pregnancy testing upon intake, nor does it specify that BOP officials ask if women had a recent pregnancy or are breastfeeding.

**Appendix VIII: Alignment of Bureau of Prisons  
Policy with National Guidance Related to  
Pregnancy**

Care Topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Provision of labor and delivery care</b>	Facilities should have emergency delivery kits available. Pregnant women with labor symptoms should be evaluated quickly by a qualified health care provider, which may necessitate offsite transport. Pregnant women should deliver their babies in licensed hospitals with services for high-risk pregnancies when available. Correctional staff do not need to accompany the prisoner in the room during labor or delivery unless (1) requested by medical staff, or (2) absence of correctional staff would pose a danger to medical staff or others.	❶ BOP policy requires that arrangements be made for labor and delivery to occur at an offsite hospital.	BOP policy does not recommend or require that facilities have emergency delivery kits available, that the hospital in which pregnant women give birth have the capacity to care for high risk pregnancies when available, that staff have procedures to ensure pregnant women with labor symptoms are evaluated quickly, or whether staff should be present in the labor and delivery room.
<b>Provision of postpartum care</b>	Postpartum care should be planned before delivery, easily accessible, timely, and regularly provided. Accommodations should be provided to postpartum women recovering from childbirth to allow rest and walking, as needed.	❶ BOP policy requires that women received medical and social services related to pregnancy. Policy states that women may have activity limits at the facility after delivering their baby.	BOP policy does not specify requirements for postpartum care as recommended by national guidance. For example, BOP policy does not specify that postpartum women should have access to lactation support.
<b>Provision of prenatal care</b>	Comprehensive prenatal care should begin early in pregnancy, take into account the woman's desires regarding her pregnancy, be easily accessible, timely, and regularly provided, to include identification of high-risk pregnancies, referrals to specialists, and access to 24-hour emergency care, as appropriate.	❶ BOP policy requires the provision of medical and social services related to pregnancy, including emergency care and specialized care for high-risk pregnancies.	BOP policy does not specify that prenatal care begin as early in pregnancy as possible, be easily accessible, or regularly provided. BOP policy does not specify requirements for the nature or frequency of medical examinations, nor does it have a process for the identification of high risk pregnancies as recommended by national guidance.
<b>Substance use disorder care</b>	Pregnant women with substance use disorder should receive medication-assisted treatment and be counseled about withdrawal risks.	❶ BOP policy approves the use of methadone for opiate-addicted pregnant women (a form of medication-assisted treatment), and state that detoxification cannot take place until after the baby is delivered.	BOP policy does not specify per national guidance that pregnant women who receive medication-assisted treatment be counseled about withdrawal risks.



**Appendix VIII: Alignment of Bureau of Prisons Policy with National Guidance Related to Pregnancy**

Care Topic	Summary of key components of national guidance recommendations	Summary of extent of alignment	Summary of extent of non-alignment
<b>Use of restraints<sup>f</sup></b>	The use of restraints on pregnant and postpartum women is prohibited unless the least restrictive restraints are used because the prisoner is an immediate and credible flight risk; poses an immediate and serious threat of harm to herself or others; or a healthcare professional determines that restraints are appropriate for the medical safety of the prisoner.	● BOP policy prohibits the use of restraints on pregnant and postpartum women unless the woman is an immediate and credible flight risk; poses an immediate and serious threat of harm to herself or others; or a healthcare professional determines that restraints are appropriate for the medical safety of the prisoner.	BOP policy does not specify that restraints should be the least restrictive possible, or list the restraints that must never be used.
<b>Nutrition</b>	Pregnant and postpartum women's diets may be modified due to their condition, including the nutritional content, preparation, frequency, and amounts of food given. Pregnant women should not eat foods with listeria risk.	○ None.	BOP policy does not recommend or require that pregnant or postpartum women receive any form of diet modification or refrain from eating foods with listeria risk.

Legend: ● Indicates that BOP policy fully aligns with national guidance recommendations on this care topic.

● Indicates that BOP policy partially aligns with national guidance recommendations on this care topic.

○ Indicates that BOP policy does not align with national guidance recommendations on this care topic.

Source: GAO analysis of BOP policies and national guidance recommendations on the treatment and care of pregnant and postpartum women. | GAO-21-147

<sup>a</sup>BOP is not obligated by law, regulation, or policy to adhere to national guidance recommendations.

<sup>b</sup>In terms of federal law, annual appropriations acts prohibit DOJ from funding abortions in most circumstances. See, e.g., Department of Justice Appropriations Act, 2020, Pub. L. No. 116-93, div. B., tit. II, § 202, 133 Stat. 2317, 2396, 2412 (2019). Consistent with these annual appropriations restrictions, BOP policy states that federal funds may be used for an abortion under limited circumstances—specifically, when the pregnancy endangers the woman's life or resulted from rape or incest.

<sup>c</sup>Three national guidance documents make different recommendations regarding segregation of pregnant women who are incarcerated. Two organizations, the National Commission on Correctional Health Care and the United Nations, recommend that pregnant women never be held in solitary confinement of any duration. The third document, the U.S. Department of Justice (DOJ) *Report and Recommendations Concerning the Use of Restrictive Housing* recommends that pregnant women not be held in restrictive housing, but allows for holding a pregnant woman in restrictive housing as a temporary response to behavior that poses a serious and immediate risk of physical harm. DOJ does not use the term "solitary confinement" because prisons may hold two segregated prisoners together, and thus the prisoners' segregation is not truly "solitary". DOJ adopted the synonymous terms "restrictive housing" and "segregation" to avoid this confusion, defined as any type of detention that involves (1) removal from the general prisoner population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more. DOJ notes that this definition leaves substantial room for variation and that it is important to know the details of a prisoner's placement. Given that DOJ's definition of restrictive housing includes solitary confinement, holding a pregnant woman in solitary confinement is permitted according to the DOJ Report. While BOP policy does not align with the National Commission on Correctional Health Care and the United Nations, BOP policy follows DOJ's guidance, making the extent of their alignment full.

<sup>d</sup>National guidance states that for pregnant women, special accommodations may include housing (including lower bunk assignment); work or program assignments; transportation outside the facility;

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special clothing; adjustments to daily activities. For postpartum women, accommodations may include activity limitations and accommodations to continue lactation.

<sup>e</sup>According to national guidance, pregnancy assessment risk means determining how likely it is a woman could be pregnant using information about her menstrual history, sexual activity, and contraceptive use.

<sup>f</sup>For the use of restraints topic we considered the policies BOP adopted to implement the requirements of the First Step Act of 2018. While the First Step Act is not a national guidance recommendation from a professional association, we included it in our analysis because it is a federal law that is directly relevant to the treatment and care of pregnant and postpartum federal prisoners. See Pub. L. No. 115–391, tit. III, § 301(a), 132 Stat. 5194, 5217-5219 (2018) (codified at 18 U.S.C. § 4322).

We considered as part of our analysis the following BOP policies:<sup>2</sup>

- *Program Statement: Female Offender Manual (5200.02) (2018)*
- *Program Statement: Patient Care (6031.04) (2014)*
- *Program Statement: Escorted Trips (5538.07) (2015)*
- *Memorandum for Regional Directors on the Restraint of Pregnant Inmates (2019)*
- *Memorandum for Regional Directors on Clarification: Restraint of Pregnant Inmates (2019)*
- *Clinical Practice Guidelines on the Management of Tuberculosis (2015)*
- *Clinical Guidance on the Management of HIV Infection (2018)*
- *Clinical Guidance on the Medically Supervised Withdrawal For Inmates With Substance Use Disorders (2020)*
- *Clinical Guidance on the Medical Management Of Exposures: HIV, HBV, HCV, Human Bites, And Sexual Exposures (2017)*
- *Clinical Guidance on the Care Level Classification For Medical And Mental Health Conditions Or Disabilities (2019)*
- *Clinical Guidance on Immunization (2019)*
- *Clinical Practice Guidelines on Management Of Hypertension (2015)*

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<sup>2</sup>For the purposes of this report, we use the term policies when referring to BOP requirements for the treatment and care of pregnant prisoners. However, some of the BOP documents we reviewed included clinical guidance, which are designed to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances. BOP confirmed that these are the policies relevant to the treatment and care of pregnant women in its custody.

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**Appendix VIII: Alignment of Bureau of Prisons  
Policy with National Guidance Related to  
Pregnancy**

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- *Clinical Guidance on Preventive Health Care Screening* (2018)
- *Clinical Guidance on Seasonal Influenza* (2018)
- *Clinical Guidance on Management Of Major Depressive Disorder* (2014)
- *Program Statement: Health Information Management (6090.04)* (2015)
- *Program Statement: Pharmacy Services (P6360.01)* (2005)
- *Program Statement: Special Housing Units (5270.11)* (2016)
- *Change Notice to Program Statement: Use of Force and Application of Restraints (5566.06)* (2014)

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# Appendix IX: Summary of Interviews with Pregnant and Postpartum Women Regarding Their Care in Custody

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We interviewed 16 women who were pregnant or had given birth while serving prison sentences for federal offenses in a Bureau of Prisons (BOP) facility or the Mothers and Infants Together (MINT) program about their perspectives on their treatment and care while in custody.<sup>1</sup> One of these 16 women said she went directly to the MINT program after sentencing and thus did not experience any treatment or care in the custody of a BOP facility. The remaining 15 women discussed their experiences in BOP facilities. Seven out of the 16 women also discussed their experiences in the custody of U.S. Marshals Service (USMS) intergovernmental agreement (IGA) facilities.<sup>2</sup> Out of the 16 women we spoke with, eight were pregnant at the time of the interview, five were in their postpartum recovery period, and three had given birth more than 3 months previously.<sup>3</sup>

The women we interviewed discussed topics such as medical and mental health services, nutrition, restraint usage, segregation, and complaints.

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<sup>1</sup>We did not independently verify statements made by the women we interviewed or assess agency compliance with policies based on these statements. We met with pregnant and postpartum women during our site visits to two BOP facilities and two MINT programs in December 2019 and January 2020 in West Virginia and Texas. With the consent of these women, we conducted semi-structured interviews to obtain insight into the care they received at their respective BOP facility. According to BOP, these were the only adult pregnant or postpartum women available to meet with us at these facilities during the time of our visits. Three out of the 15 women interviewed said they were held in more than one BOP facility at some point during their time in BOP custody. The women participating in the MINT programs also shared their perspectives on their treatment and care in the MINT program, which is discussed in more detail in appendix IV. While the perspectives of the women we interviewed cannot be generalized to all treatment and care provided at the facilities we visited, they provided us with helpful insights on pregnancy-related care.

<sup>2</sup>USMS has IGAs with state and local governments that have excess prison or jail bed capacity and with which USMS negotiates a daily rate for the use of a bed. For the purposes of this analysis, we use the term IGA facilities to refer to the facilities. If a prisoner held at an IGA facility is later convicted and sentenced to prison, USMS transfers them from the IGA facility to serve their sentences at a BOP facility. Facility staff are not USMS personnel, but are state or local personnel employed by the IGA facility. Seven women we interviewed identified the IGA facility where they were held by name and location, and were aware they were in USMS custody. While we verified that USMS had IGAs with the facilities the women we interviewed identified, we did not confirm the women's statements nor did we visit any of the IGA facilities identified by the seven women.

<sup>3</sup>The First Step Act of 2018 defines "postpartum recovery" as the 12-week period, or longer as determined by the healthcare professional responsible for the health and safety of the prisoner, following delivery, that includes the entire period that the prisoner is in the hospital or infirmary. 18 U.S.C. § 4322(g)(1).

Not all of the women discussed all of the topics, so the number of respondents varies for each topic, with a maximum of seven possible responses for women who had experiences in IGA facilities that hold USMS prisoners and 15 maximum responses for women who had experiences in BOP facilities.<sup>4</sup>

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## Perspectives of Seven Women Held in USMS Intergovernmental Agreement Facilities While Pregnant

Of the 16 women we interviewed, seven women recalled their experiences regarding treatment and care in an IGA facility while in USMS custody. According to five of the seven women who recalled their experiences, they were held in an IGA facility while pregnant for a range of 2 to 5 months. The seven women spoke about a variety of experiences related to their treatment and care, which are discussed in more detail in this section.

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## Medical and Mental Health Services

Five of the seven women who said they were held in IGA facilities stated they received a pregnancy test upon arrival, two of whom were already aware of their pregnancy. The two women who said they were not offered a pregnancy test at intake reportedly requested and received a test when they suspected they were pregnant.

Five of the seven women discussed whether they saw a medical provider shortly after pregnancy confirmation; two said they saw a provider in 1 week and three said that they waited 1 month or longer.<sup>5</sup> Four of the seven women spoke about whether they received additional medical care for their pregnancy after their initial intake and medical screening; all four stated that they did receive such care.

Four of the seven women discussed seeing a psychologist or receiving some type of counseling by a social worker while in an IGA facility; three of them did not request such services, and one said she received the

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<sup>4</sup>To analyze our interviews, we reviewed the women's responses and identified topics that multiple women discussed related to their treatment and care while pregnant, such as receiving a pregnancy test at intake or the provision of snacks in addition to meals. We converted these experiences into variables and counted how many women spoke about each topic, and how many women said they did or did not experience it. Additionally, we reviewed the women's responses for details and examples to accompany the counts which provide additional insight into their treatment and care.

<sup>5</sup>For the purposes of our analysis, we defined shortly as 14 days. We asked women if they saw a medical provider within 14 days after their pregnancy confirmation.

mental health services she requested. Three of the seven women spoke about whether they received written materials about pregnancy or medical care services, and all three stated they did not receive any materials.

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### Special Accommodations and Nutrition

Four of the seven women spoke about accommodations the IGA facility made on account of their pregnancy, and all four stated that they received accommodations.<sup>6</sup> Specifically, two women said they were placed on a lower bunk, one said she was placed on a lower bunk with an extra mattress, and one said she received an extra blanket.

Six of the seven women spoke about nutrition, and all six said they received snacks outside of regular meal times, and one of the women said that she received extra portions at meals in addition to snacks. Examples of the snacks included milk, carrots, applesauce, granola bars, and pastries. Five of the seven women talked about prenatal vitamins, and all five said they received prenatal vitamins while in an IGA facility. However, one of these women said it was difficult to refill her prenatal vitamin prescription, and reportedly had a 1 to 2 week gap between refills.

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### Restraints and Segregation

Six of the seven women discussed the topic of restraints, and each of the six reported an instance where IGA facility staff had placed them in restraints.<sup>7</sup> Specifically, three women said they had been restrained with handcuffs only, while the other three women told us they had been restrained with the following types of restraints, respectively: (1) leg shackles only, (2) leg shackles and handcuffs, or (3) hand, leg, and belly restraints. Examples of circumstances under which the women said they

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<sup>6</sup>In our analysis of women's responses, we considered different uniforms, lower bunks, work restrictions, or extra mattresses, blankets, or pillows as special accommodations.

<sup>7</sup>Although we did not independently validate the information reported by the six women, we note earlier in this report that the USMS Detention Standards currently applicable to IGA facilities do not prohibit the use of restraints on pregnant or postpartum women by IGA staff, who are state or local government employees, not USMS personnel. According to USMS officials, the agency has an updated restraint policy, modeled after the First Step Act of 2018, which prohibits U.S. Marshals from restraining pregnant or postpartum prisoners absent an exception. See 18 U.S.C. § 4322(a), (b)(1). USMS officials said that the agency plans to incorporate its updated restraint policy into its IGAs, and in January 2021 they told us that they are in the process of updating their Detention Standards and they are under final review with Prisoner Operations Division leadership. They stated that the updated standards reflect prohibitions on using restraints on pregnant and postpartum women. In the meantime, USMS officials said that USMS district personnel have been directed to communicate the updated restraint requirements to IGA facility staff, and if the IGA facility is unwilling to comply, they are instructed to hold the women at another facility.

were restrained included during transport outside the facility, prenatal medical appointments, and on a commercial flight. Four of these six women told us that USMS officials who saw they were in restraints told the IGA facility staff to remove them.

Of the six women who discussed segregation, four said they had never been placed in segregation in their IGA facility while pregnant, and two said they had been.<sup>8</sup> One of these women provided details of her segregation, stating that she was placed in there for 1 week because of altercations with another woman and had not received food on one of these days.

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## Complaints

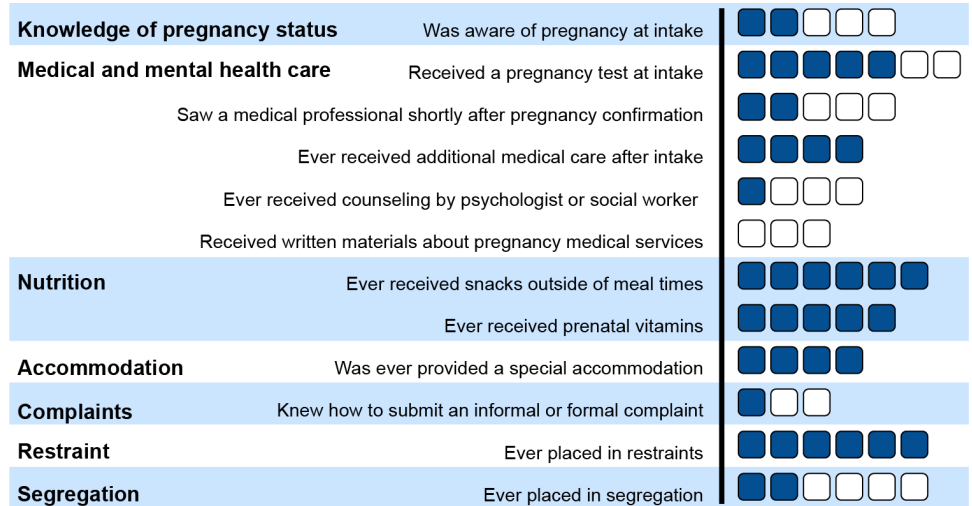
Three of the seven women spoke about the complaint process at an IGA facility. Specifically, two women said they did not know how to file a complaint about their treatment and care. One woman said she knew how to file such a complaint, but did not do so because she believed the process was ineffective. Although they did not use the complaint process, two women raised concerns about conditions at an IGA facility, such as overcrowded bathrooms and sleeping on concrete floors because mats were unavailable.

Figure 9 shows the perspectives of the seven women held in IGA facilities in USMS custody while pregnant.

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<sup>8</sup>The Department of Justice (DOJ) does not use the term “solitary confinement” because prisons may house two segregated prisoners together, and thus the prisoners’ segregation is not truly “solitary”. DOJ adopted the terms “restrictive housing” and “segregation” and treat them as synonyms to avoid this confusion. They are defined as any type of detention that involves (1) removal from the general prisoner population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) the inability to leave the room or cell for the vast majority of the day, typically 22 hours or more. DOJ notes that this definition leaves substantial room for variation and that it is important to know the details of a prisoner’s placement.

**Figure 9: Perspectives of Seven Women Held in Facilities with Intergovernmental Agreements with the U.S. Marshals Service (USMS) While Pregnant**



**Legend**  
 □ Number of women who said no  
 ■ Number of women who said yes

Source: GAO analysis of interviews with pregnant and postpartum women at Bureau of Prisons facilities who had experience in USMS custody. | GAO-21-147

Notes: We did not independently verify statements made by the women we interviewed. The interviews are not generalizable and may not be indicative of the treatment and care provided to all pregnant women in USMS custody held in intergovernmental agreement facilities. However, they provided us with informative perspectives on the care provided to pregnant women. Not all women discussed all topics, thus the number of squares in the graphic represents the number of women who discussed the respective topic.

## Perspectives of Fifteen Women Held in BOP Facilities While Pregnant

Of the 15 women we interviewed in BOP facilities, three women had experienced being pregnant in more than one BOP facility, and spoke about their perspectives on treatment and care in each of these facilities. The 15 women recalled how long they were held in a BOP facility while pregnant, which ranged from 1 week to 7 months.

## Medical and Mental Health Services

Of the 15 women interviewed, one did not know she was pregnant upon arrival at her first BOP facility. Of the 15 women who discussed whether they took a pregnancy test at a BOP facility, eight said they were given a test at intake; five were not offered a test; and two did not recall. According to the five of the eight women who recalled when they took a



pregnancy test, its administration ranged from 1 to 24 days after facility intake.

Fourteen of the 15 women reportedly saw a medical professional after pregnancy confirmation. Nine of these women recalled how long it took to see a medical professional after pregnancy confirmation, and two said they saw a provider the same day, three in 1 week or less, three in 2 weeks or less, and one in 3 weeks.<sup>9</sup> Thirteen of 15 women commented on the medical care they received while in BOP facilities after intake and medical screening, and all 13 said they received additional medical care for their pregnancy after their initial intake and medical screening; of the four we asked, all stated that they received care in line with what a medical professional ordered.

Of the eight women who told us that at some point they had a health concern related to their pregnancy, seven said that staff adequately addressed their concerns. However, when asked if they were ever denied a requested medical, mental health, or counseling service, three out of 13 women said facility staff denied them a service they requested. Examples of denied requests include an alternate brand of prenatal vitamin and assistance due to high blood pressure or lightheadedness.

Of the 13 women who discussed the topic of written materials about pregnancy services, 10 stated they received some type of written material in at least one BOP facility, and three said they did not receive any. Examples of these written materials included information about BOP programs for pregnant women, such as MINT, or adoption services.

All 15 women discussed the topic of mental health services. Nine of the 15 women stated they received some type of counseling by a psychologist or social worker in at least one BOP facility. Five of these women offered more detail on their experience. For example, one commented that a counseling session was automatically scheduled and; another stated that she was offered counseling, but refused it. One woman who was held in more than one BOP facility recalled receiving some type of counseling in one BOP facility, but not the other. Additionally, two women said there were long wait times for mental health services; one of these women said she did not follow-up on her request

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<sup>9</sup>For the purposes of our analysis, we defined shortly as 14 days. We asked women if they saw a medical provider within 14 days after their pregnancy confirmation.

after waiting for a response from staff for a few weeks, and the other said that she waited 2 weeks for requested mental health care.

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## Special Accommodations and Nutrition

All 15 women spoke about whether they were provided some type of special accommodation. Ten of the women told us that they were provided an accommodation, such as a different uniform, lower bunk, and work restrictions. For example, 8 of the 12 women who discussed the ability to switch out uniform items as their pregnancy progressed said the facility allowed them access to new sizes as needed. Five women discussed whether they requested accommodations, and three of them said they were denied the accommodations they requested, such as assistance with mobility around the facility and different uniform items such as undergarments and shoes to accommodate growth and swelling due to pregnancy.<sup>10</sup> In particular, two women also said that they had to buy new clothing at the commissary to accommodate their pregnancy; one bought a larger size uniform, and the other had to buy new undergarments after being denied a larger size by facility staff.<sup>11</sup>

For the 14 women who talked about extra nutrition or snacks, three women said they received extra portions approved by the facility during regular mealtimes; nine women said they did not receive extra portions, and two did not comment. Nine of the 14 women stated they received a snack at least once in at least one BOP facility. Examples of snacks included bread and cheese or bread and peanut butter. One of the nine women stated she requested fruit instead of the usual snack, and was denied by BOP staff; two others said they would have preferred a healthier snack, but did not request one. Three out of the 14 women said that facility staff denied their requests for extra portions or snacks; one of the three women stated that the staff reportedly told her she did not need extra nutrition because pregnancy is not a disability. All 14 of the women who spoke about receiving prenatal vitamins said they received them in at least one BOP facility.

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## Restraints and Segregation

Out of 15 women, one said BOP staff put her in restraints for fighting with another woman and two others were restrained while in transport to a

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<sup>10</sup>BOP facilities, depending on the layout, may require a prisoner to walk for daily activities, such as going to the cafeteria, doing laundry, and participating in programming.

<sup>11</sup>Commissary items for purchase include certain medications, hygiene products, playing cards, food and radios.

BOP facility.<sup>12</sup> Fourteen of the 15 women discussed segregation, 12 of whom said they had not been placed in segregated units, and two reportedly had been.<sup>13</sup> According to both women, they had been placed in segregation units for disciplinary reasons because of altercations with other prisoners, one for 2 weeks and the other for 30 days. One of the women stated that she experienced medical issues related to her pregnancy while in segregation and had difficulty receiving medical attention.

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## Complaints

Ten of the 15 women who spoke about the complaint process stated that they knew how to file a complaint at their BOP facility. Fourteen women spoke about whether they had filed a complaint and three of these women told us that they had filed a complaint, through either an informal or formal process. Additionally, three women had voiced their grievances to facility staff but not filed any complaints.

However, when asked if they would like to share any additional information about their treatment and care in a BOP facility, eight out of the 15 women raised concerns such as health services staff refusing requests for assistance and short prenatal visits.

Figure 10 shows the perspectives of 15 women on their treatment and care while pregnant or postpartum in BOP facilities.

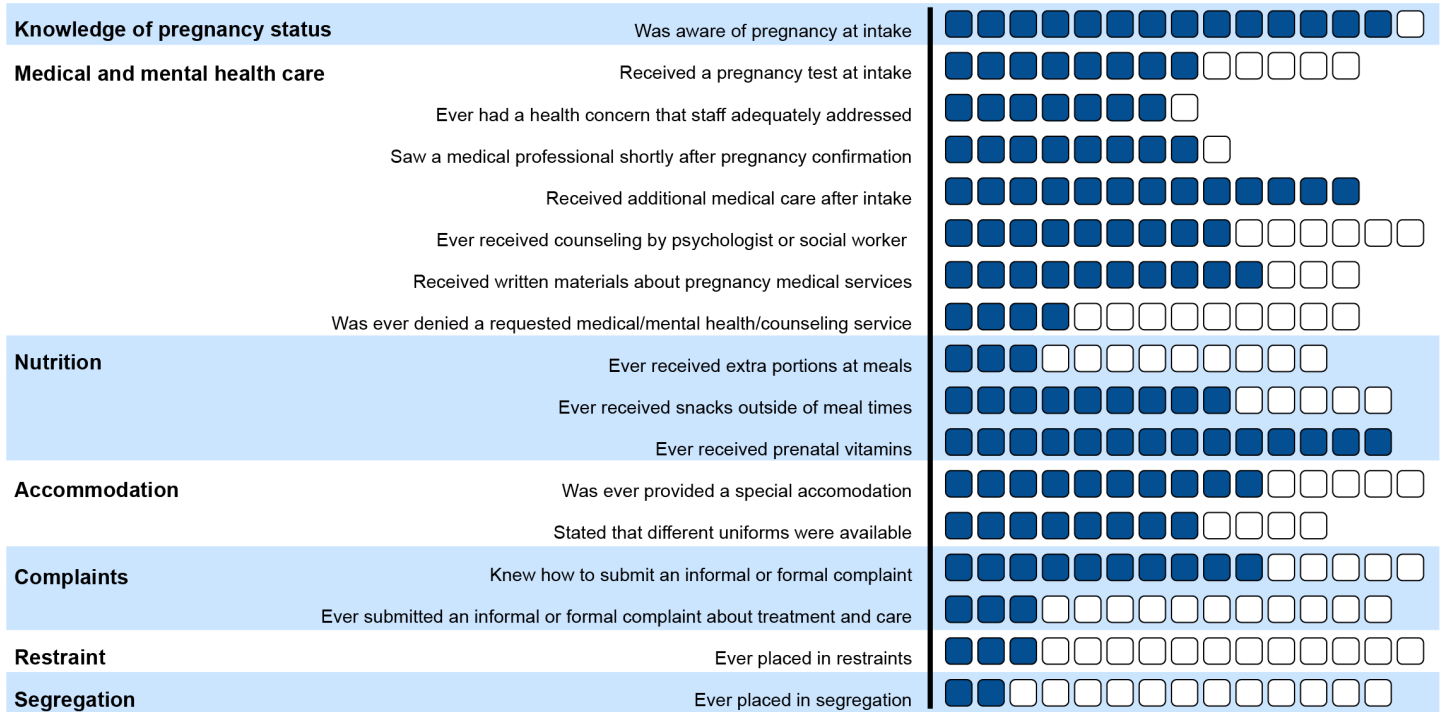
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<sup>12</sup>While these women stated they were restrained in transport while they were in BOP custody, they did not know who restrained them.

<sup>13</sup>DOJ does not use the term “solitary confinement” because prisons may house two segregated prisoners together, and thus the prisoners’ segregation is not truly “solitary”. DOJ adopted the terms “restrictive housing” and “segregation” and treat them as synonymous to avoid this confusion. They are defined as any type of detention that involves (1) removal from the general prisoner population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) the inability to leave the room or cell for the vast majority of the day, typically 22 hours or more. DOJ notes that this definition leaves substantial room for variation and that it is important to know the details of a prisoner’s placement.

**Appendix IX: Summary of Interviews with Pregnant and Postpartum Women Regarding Their Care in Custody**

**Figure 10: Perspectives of 15 Women Held in Bureau of Prisons (BOP) Facilities While Pregnant**



**Legend**  
 Number of women who said no  
 Number of women who said yes

Source: GAO analysis of interviews with pregnant and postpartum women at BOP facilities. | GAO-21-147

Notes: We did not independently verify statements made by the women we interviewed. The interviews are not generalizable and may not be indicative of the treatment and care provided to all pregnant women in BOP custody. However, they provided us with informative perspectives on the care provided to pregnant women. Not all women discussed all topics, thus the number of squares in the graphic represents the number of women who discussed the respective topic.

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# Appendix X: Overview of U.S. Marshals Service and Bureau of Prisons Inspection and Complaint Processes

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The U.S. Marshals Service (USMS) and Bureau of Prisons (BOP) facility inspection and complaint processes offer insight into what is known about the treatment and care of pregnant women in their custody.

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## Facility Inspections

USMS and BOP facilities undergo a variety of inspections from both internal agency entities and external organizations, several of which cover aspects of the treatment and care of pregnant women.

**USMS internal inspections.** USMS has two facility inspections that monitor compliance with the USMS Federal Performance Based Detention Standards. For facilities where USMS has an intergovernmental agreement (IGA) to hold USMS prisoners, facilities are required to undergo an annual Detention Facility Review in which USMS district officials verify that the facility is meeting basic, minimum requirements.<sup>1</sup> If USMS officials identify any issues during the Detention Facility Review, they will obtain the facility's proposal for addressing identified issues and monitor subsequent actions. Contract facilities must undergo an annual Quality Assurance Review. USMS headquarters officials assemble a team of subject matter experts to conduct the review. The team will issue a report of their findings, assign the facility a rating, and provide USMS with a corrective action plan to address any identified deficiencies.

**External inspections of USMS IGA and contract facilities.** In addition, IGA and contract facilities may be subject to additional inspections from external accrediting organizations such as the American Correctional Association or the National Commission on Correctional Health Care (NCCHC), corporate inspections, or inspections from state entities, such as state health departments.<sup>2</sup>

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<sup>1</sup>USMS does not own or operate its own facilities. USMS holds prisoners remanded to its custody at facilities with which USMS has an IGA with a state or local government or privately-owned and operated facilities with which USMS has a contract. USMS may also hold prisoners at BOP facilities.

<sup>2</sup>USMS requires that its contract facilities be accredited by the American Correctional Association and NCCHC, but does not require the same from IGAs. However, according to USMS officials, many IGA facilities have American Correctional Association accreditation because it is an industry standard. The American Correctional Association is a professional organization that develops standards for correctional facilities and conducts inspections to accredit correctional facilities based on those standards. NCCHC develops healthcare standards for correctional facilities and accredits facilities based on those healthcare standards.

**BOP internal inspections.** BOP reviews facilities' operations through an internal program review process led by BOP's Program Review Division. BOP policy states that each program or operation, such as health services, is to be reviewed at each BOP facility on at least a three-year basis, but potentially more frequently, depending on the facility's prior review results. During a review, a team of reviewers with specialized experience visits the facility to assess the facility's programs based on a set of guidelines. Facilities are required to submit a written plan to correct any deficiencies identified during the review.

**External inspections of BOP facilities.** BOP requires all of its facilities to be inspected and accredited by the American Correctional Association. BOP also requires its medical programs to be inspected and accredited by either the Accreditation Association for Ambulatory Health Care or the Joint Commission, depending on the medical care level of the facility.<sup>3</sup>

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## Complaint Processes

Pregnant women and other prisoners in USMS and BOP custody have the option to submit complaints related to their treatment and care. According to USMS officials, prisoners in USMS custody typically use the complaint process available at the facility in which they are held if the complaint is related to their treatment and care at that facility. Prisoners may also make complaints in court, through their defense attorney, or directly to USMS district officials regarding their treatment and care at a facility or by USMS personnel. Prisoners may also submit complaints to USMS headquarters, specifically the Prisoner Operations Division or the Office of Professional Responsibility – Internal Affairs, as well as the Department of Justice (DOJ) Office of the Inspector General (OIG).

BOP facility staff first attempt to work with prisoners directly to address any complaints they may have related to their treatment and care, according to BOP officials. This is typically done through prisoner-to-staff emails, conversations with staff, or informal request forms. If the prisoner's complaint is not addressed by these informal mechanisms, prisoners may use BOP's formal complaint process, the Administrative Remedy Program. Complaints made through the Administrative Remedy Program are first submitted at the facility level for resolution. If they are not resolved at the facility, the prisoner has the option to appeal to BOP's Regional Offices, and then further appeal to the Central Office. Prisoners

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<sup>3</sup>The Accreditation Association for Ambulatory Health Care and the Joint Commission provide accreditation and certification services to healthcare organizations, such as hospitals or surgery centers, including BOP health care units.

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**Appendix X: Overview of U.S. Marshals Service  
and Bureau of Prisons Inspection and  
Complaint Processes**

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in BOP custody may also submit their complaints to the BOP Office of Internal Affairs or the DOJ OIG.

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# Appendix XI: GAO Contact and Staff Acknowledgements

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## GAO Contact

Gretta L. Goodwin at (202) 512-8777 or [GoodwinG@gao.gov](mailto:GoodwinG@gao.gov).

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## Staff Acknowledgement

In addition to the contact named above Dawn Locke (Assistant Director), Natalie Swabb (Analyst-in-Charge), Hiwotte Amare, Tracey Cross, Christine Davis, Elizabeth Dretsch, Ashley Gavin, William Hadley, Eric Hauswirth, Susan Hsu, Anastasia Kouloganes, Ben Nelson, and Adrian Pavia made key contributions to this report.



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