

California State Auditor

B U R E A U O F S T A T E A U D I T S

U.S. Border Patrol:

**Its Policies Cause San Diego County Health
Care Providers To Incur Millions of Dollars
in Unreimbursed Medical Care**



October 1997
96117

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October 16, 1997

96117

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the financial impact to San Diego County health care providers of unreimbursed emergency medical care involving unauthorized immigrants and the United States Border Patrol (Border Patrol). This report concludes that San Diego County health care providers incurred unreimbursed charges for emergency medical treatment to unauthorized immigrants as a result of the Border Patrol's policy to pay medical charges only for injured suspects in its custody. Specifically, for incidents we identified occurring between January 1996 and May 1997, and where we noted that Border Patrol agents either arrived at the scene of the injury at the time, or soon after the injury was discovered, we estimate that unreimbursed health care charges totaled over \$2.9 million. In addition, we believe that additional incidents could exist, and that emergency medical charges related to the additional cases could total between \$2.0 million and \$5.2 million. Finally, we found that the Border Patrol's policies may allow some unauthorized immigrants to avoid custody as a result of their injuries.

Respectfully submitted,

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Table of Contents

<i>Summary</i>	<i>S-1</i>
<i>Introduction</i>	<i>1</i>
<i>Analysis</i>	
San Diego County Health Care Providers Incur Unreimbursed Charges Because of Border Patrol Policies	7
<i>Recommendation</i>	<i>20</i>
<i>Appendix A</i>	
Methodology To Select Incidents	21
<i>Appendix B</i>	
Methodology To Calculate Additional Incidents	23

Summary

Results in Brief




Audit Highlights . . .

San Diego County health care providers are adversely affected by the Border Patrol's policy to pay the emergency care charges only for those unauthorized immigrants already in its custody at the time of treatment. Specifically:

- ☑ We estimate that for 199 cases we identified with Border Patrol involvement, health care providers incurred at least \$2.9 million in unreimbursed charges.*
- ☑ Additional incidents are likely to exist, and charges related to those could total between \$2.0 million and \$5.2 million.*

Moreover, the Border Patrol's policies may allow some unauthorized immigrants to avoid custody as a result of their injuries, which are often temporary.



Our review focused on the financial impact to San Diego County health care providers of unreimbursed emergency medical care involving unauthorized immigrants and United States Border Patrol (Border Patrol) agents. We found that health care providers are adversely affected by the Border Patrol's policy to pay the emergency care charges only for those unauthorized immigrants already in its custody at the time of treatment.

We identified 199 incidents between January 1996 and May 1997 involving injured unauthorized immigrants and Border Patrol agents who either arrived at the scene of the injuries at the time, or soon after the injuries were discovered. In all cases, Border Patrol agents had an opportunity to assess whether the injured were unauthorized immigrants and whether to take them into custody—either immediately or following medical treatment. We estimate the total charges in these incidents at approximately \$3.1 million, of which the Border Patrol paid approximately \$153,100. After deducting these reimbursements plus \$8,600 paid from other sources, we estimate that at least \$2.9 million went unreimbursed.

Because the Border Patrol would not provide us with a list of incidents requiring medical care, we could not judge the true number of these incidents, although we believe it to be significantly higher than the 199 cases we identified. We estimate the medical charges for these additional incidents could total between \$2.0 million and \$5.2 million.

Despite its mission to prevent unauthorized immigrants from entering the United States, we found that the Border Patrol's policies may also allow some injured unauthorized immigrants to avoid custody. Because of the Border Patrol's policy that generally provides that it not take the injured into custody, it appears that some individuals—who would likely have been taken into custody immediately had they not been injured—avoid custody as a result of their injuries.

A law effective January 1, 1997, authorizes the federal government to pay for emergency medical services for unauthorized immigrants, whether or not they are in custody at the time of injury. Congress provided \$25 million for such payments beginning October 1, 1997. However, the State Department of Health Services did not know, as of September 24, 1997, the portion of the \$25 million that California will receive or how much, if any, of that portion it would make available to San Diego County health care providers.

Recommendation

The California Legislature should memorialize to the United States Congress to require the federal government to pay the full costs of emergency medical services when unauthorized immigrants are injured and would have been taken into custody by the Border Patrol were it not for their injuries. Further, if the \$25 million allocated by Congress is insufficient to assure California is fully reimbursed for its costs, Congress should increase the appropriation.

Introduction

Background

The United States Immigration and Naturalization Service (INS), an agency of the United States Department of Justice, is responsible for enforcing the laws regulating the admission of non-citizens (i.e., aliens) to the United States. The primary mission of the INS is to prevent aliens from entering the country without permission and to find and remove those who are living or working in the country illegally.¹ Within the INS, the United States Border Patrol (Border Patrol) is responsible for maintaining control of the United States borders by preventing illegal crossings between ports of entry. The Border Patrol is a highly mobile force of uniformed agents that spends most of its time patrolling the areas along the 8,000 miles of international boundaries, including approximately 140 miles along the border between California and Mexico. In recent years, Border Patrol agents have apprehended over 400,000 unauthorized immigrants per year in the San Diego area.

Federal law establishes that it is illegal for an alien to enter or attempt entry into the United States at any place other than those designated by the INS. In addition, it is illegal to elude examination or inspection by the INS, or to enter or attempt entry using false or misleading representations. Border Patrol agents are authorized to interrogate any suspected unauthorized immigrants as to their rights to be in the United States. Agents also have the authority to arrest, without warrant, any person in the United States if the agent suspects he or she is in the United States illegally and is likely to escape before an arrest warrant can be obtained.

To better understand the Border Patrol's custody policies for unauthorized immigrants in the San Diego area, we contacted officials from the San Diego Sector office. According to the assistant chief patrol agent, two conditions must exist before a Border Patrol agent will take a suspect into custody. First, the agent must establish probable cause that the individual has committed an illegal act or is in the country illegally. Second, the agent must establish, based on the immediate facts, that the suspect is a flight risk. Once suspects are taken into custody, they generally either agree to return across the United States

¹ Throughout this report, we will refer to aliens who have entered the country illegally as "unauthorized immigrants."

border without formal deportation or are subject to legal proceedings to determine their right to remain in the United States.

Sometimes agents encounter injured people who may be unauthorized immigrants. When this occurs, the extent of these injuries will determine the immediate action the agent takes, according to the chief patrol agent. Generally, the injured are not taken into custody if deemed “unlikely to escape.” Instead, the agent will act as a “Good Samaritan” and summon emergency medical providers who, in turn, assess whether to transport the injured person to a hospital. If, however, the injuries are not discovered until, or occur after, the person is taken into custody, the Border Patrol’s policy is to pay for medical services.

We also sought to understand what, if any, follow-up the Border Patrol performs when the injured are referred for medical treatment but not taken into immediate custody. We anticipated that each injured person not already in custody would have been taken into custody following discharge from the hospital. However, according to the assistant chief patrol agent, in most cases the Border Patrol does not take custody of injured people following medical care. An exception would be if the injured are suspected of smuggling others across the border, or if they might possibly provide testimony against a suspected smuggler. The Border Patrol would not, however, provide us with a written policy describing the circumstances under which it would take custody of a suspect following discharge from a hospital.

Hospitals in San Diego County

According to figures reported to the Office of Statewide Health Planning and Development, the 21 hospitals² in San Diego County that provide emergency room services had gross patient revenues of approximately \$4 billion in fiscal year 1994-95. Of these revenues, approximately \$141 million (3.5 percent) was deducted for unreimbursed services (charity and bad debt). This 3.5 percent rate is slightly higher than the statewide rate of 3.1 percent for all hospitals.

²Two additional hospitals, Kaiser and the United States Navy Hospital-Balboa, provide emergency room services to specialized population groups. We have excluded their revenues because they do not report their revenues to the Office of Statewide Health Planning and Development.

Hospitals are funded from public sources such as federal, state, and county, as well as private sources, which include private insurance and payments by individuals. When hospitals are not paid for services they provide, the charges are considered “bad debt” or “charity,” and are deducted from revenues. Unlike other businesses, which can refuse to serve people unlikely to pay, hospitals that operate emergency departments are required by law to provide services to anyone who requests care for serious or life-threatening illness or injury without regard to a person’s ability to pay.

Unauthorized immigrants who have not established residency in California do not qualify for public funding, whether federal, state, or county. As a result, unless paid by the patients, hospitals do not receive payment when they treat them.

The San Diego County Emergency Medical System

The San Diego County Department of Health Services, through its Division of Emergency Medical Services (County EMS), is responsible for planning and implementing the county’s emergency medical system. There are three primary components to the emergency medical system: communications, transportation, and medical facilities. The communications system provides a link between 9-1-1 telephone systems, first responders such as paramedics or fire departments, and medical facilities. The transportation system includes paramedics, ambulance services, and air transportation services. The medical facilities consist of hospitals that provide emergency room services, including six trauma centers.

The County EMS maintains a computer database of the county’s paramedic, air transportation, and ambulance service activities. It uses this database to monitor response times as well as collect medical and health information. Included within this database are the observations made by paramedics and ambulance staff on the circumstances surrounding a patient’s injuries.

Scope and Methodology

At the request of the Joint Legislative Audit Committee, we conducted an audit to measure the financial impact of the Border Patrol’s activities regarding unauthorized immigrants needing emergency medical care in San Diego County. We did not measure the broader impact of providing emergency

medical treatment to all unauthorized immigrants in San Diego County or the even wider impact of statewide health care costs for these individuals.

To perform our audit, we reviewed pertinent federal and state laws and regulations. We met with Border Patrol officials to discuss the policies and procedures agents use when they encounter injured unauthorized immigrants. We also identified the emergency medical treatment providers in San Diego County. In addition, we identified specific cases in which individuals who received emergency medical care appeared to have had either direct or indirect contact with the Border Patrol, including those in custody. Finally, we evaluated these cases to determine the degree of Border Patrol involvement and to estimate the charges for medical treatment.

To identify the health care providers offering emergency medical treatment, we obtained information from the County EMS. We also contacted the Office of Statewide Health Planning and Development and the Hospital Council of San Diego and Imperial Counties.

To identify specific incidents in which some contact with a Border Patrol agent was evident prior to emergency treatment, we considered several sources, including the Border Patrol, hospitals, and the County EMS. We believe that the most complete and accurate source would have been the Border Patrol itself, which maintains an automated dispatch system. However, because the Border Patrol denied us access to sufficient detailed information, we relied on other sources. The following is a description of the sources we used.

Border Patrol

According to Border Patrol staff we interviewed, their radio dispatch records, which would reflect requests for medical assistance, are retained for only six weeks before they are stored in archives in an abbreviated format. We requested copies of the available dispatch records, along with other information related to this audit. Our request, however, was subjected to an INS "Freedom of Information Act" review process, which turned out to be lengthy. We did not receive any information until more than 90 days after our initial request, and then only after repeated phone calls and written requests. In the end, the information we did receive—copies of certain purchase orders for hospital and ambulance services—did not include the dispatch records we requested and was therefore of limited value. Because we had no assurance that we would ever

receive information from the Border Patrol, during the planning phase of the audit we considered other sources of data, such as hospitals, to identify incidents.

Hospitals

We contacted various San Diego County hospitals, which told us that they do not determine a patient's immigrant status when they provide medical treatment. In addition, the hospitals told us that they do not always record whether the Border Patrol was involved in the events leading to the patient's injuries. Finally, they told us that they do not have an effective method to search their medical records for indicators of Border Patrol involvement. As a result, although we did obtain a few cases directly from hospitals, we did not use the San Diego County hospitals' medical records as a primary source to identify potential cases. Next, we contacted the County EMS.

County EMS

The County EMS oversees San Diego County emergency medical services including ground and air ambulance services. It maintains a computer database that includes information for certain incidents requiring an ambulance. Each database incident contains detailed information about the patient, injury, and treatment. At our request, staff at the County EMS searched this database, using certain key words. We used the results of their search as our primary source for incidents. In addition, we supplemented these cases with cases we identified from other sources. See Appendix A for the methodology used to select incidents.

Other Sources

We contacted various San Diego County emergency dispatch and fire protection agencies as well as two San Diego County ambulance companies that serve the border area. We also searched newspaper articles published in San Diego and Los Angeles for stories about incidents involving unauthorized immigrants and the Border Patrol. Using these sources, we identified additional incidents.

While collectively these sources provided us with numerous incidents, some cases are likely to have been excluded from our search. For example, because our search methods focused on ambulance companies and emergency dispatch organizations, it is unlikely that we identified incidents where the injured were taken to the hospital in a nonemergency vehicle. This would include walk-in patients, patients who were transported by friends or family, or patients transported to the hospital in a Border Patrol vehicle. Also, we relied on emergency workers' (paramedics, physicians, and nurses) recorded observations of the nature of Border Patrol involvement and the possible cause of injury. Such observations could be incomplete if, for example, a patient did not disclose the cause of their injury or Border Patrol involvement. As a result of these limitations, we believe that a significant number of incidents, beyond those we identified, exist.

Once we identified the incidents, we evaluated them to determine the degree of Border Patrol involvement. To do this, we obtained emergency medical treatment information from the County EMS as well as medical records from both public and private hospitals. For those with Border Patrol involvement, we primarily used information from the hospitals to estimate the financial impact to San Diego County health care providers. The hospitals supplied us with medical treatment charges for each injured person. Additionally, certain ground and air transportation providers supplied us with actual and estimated charges.

We provided Border Patrol officials written excerpts from this report and solicited their comments. We considered their comments during final preparation of this report and made changes where appropriate.

Analysis

San Diego County Health Care Providers Incur Unreimbursed Charges Because of Border Patrol Policies

Summary

The United States Border Patrol's (Border Patrol) policy is to pay health care providers for emergency medical treatment provided only to unauthorized immigrants in its custody. However, its policy is generally not to take custody of those needing emergency medical treatment. As a result of these policies, San Diego County health care providers incur unreimbursed medical charges. We believe that when the Border Patrol is on the scene where an injury is discovered, it has an opportunity to assess—either immediately or following medical treatment—whether an injured person is an unauthorized immigrant, and, if so, to take that person into custody. By not taking custody of injured unauthorized immigrants, the Border Patrol is apparently able to avoid financial responsibility for the medical care.



Although we could not identify the full extent of related incidents, we identified 199 cases between January 1996 and May 1997, in which there was either a direct relationship between an unauthorized immigrant's injuries and the Border Patrol's activities, or in which the Border Patrol was at the scene where the injuries were discovered. These incidents resulted in over \$2.9 million in unreimbursed charges for San Diego County hospitals and other health care providers. According to hospital records, the Border Patrol paid some or all of the hospital charges in only 33 of these incidents.

Although we did identify 199 cases, we believe there could be significantly more that we did not find because there were some inherent limitations in our selection methodology. Specifically, we estimate that up to 875 additional incidents may exist beyond our original 199 cases and the charges related to the additional cases range from \$2.0 million to \$5.2 million.

In addition, although in 60 of the original 199 cases the hospital records indicate that patients were discharged to the Border Patrol, it appears that the remaining 139 patients were not taken into custody following treatment. The Border Patrol did not provide us with its written policy; however,

during an interview, the assistant chief patrol agent told us that maintaining agents along the border is a higher priority and, thus, agents generally do not take custody of the injured following medical care. As a result, to the extent that these injured patients are unauthorized immigrants, their injuries may have assisted them to avoid Border Patrol custody.

***Unreimbursed Medical Care
Estimated to be in the
Millions of Dollars***


*The 199 incidents
resulted in \$2.9 million in
hospital and medical
charges absorbed by
San Diego County health
care providers.*


Based on our review, we determined that San Diego County health care providers supplied medical treatment to at least 199 suspected unauthorized immigrants whose medical records indicated some level of involvement with the Border Patrol. From January 1996 through May 1997, these 199 incidents resulted in \$2.26 million in medical charges by San Diego County hospitals as well as an estimated \$834,800 incurred by other health care providers such as paramedics, physicians, surgeons, and laboratories. Of these amounts totaling \$3.1 million, \$2.9 million was unreimbursed and thus absorbed by the health care providers.

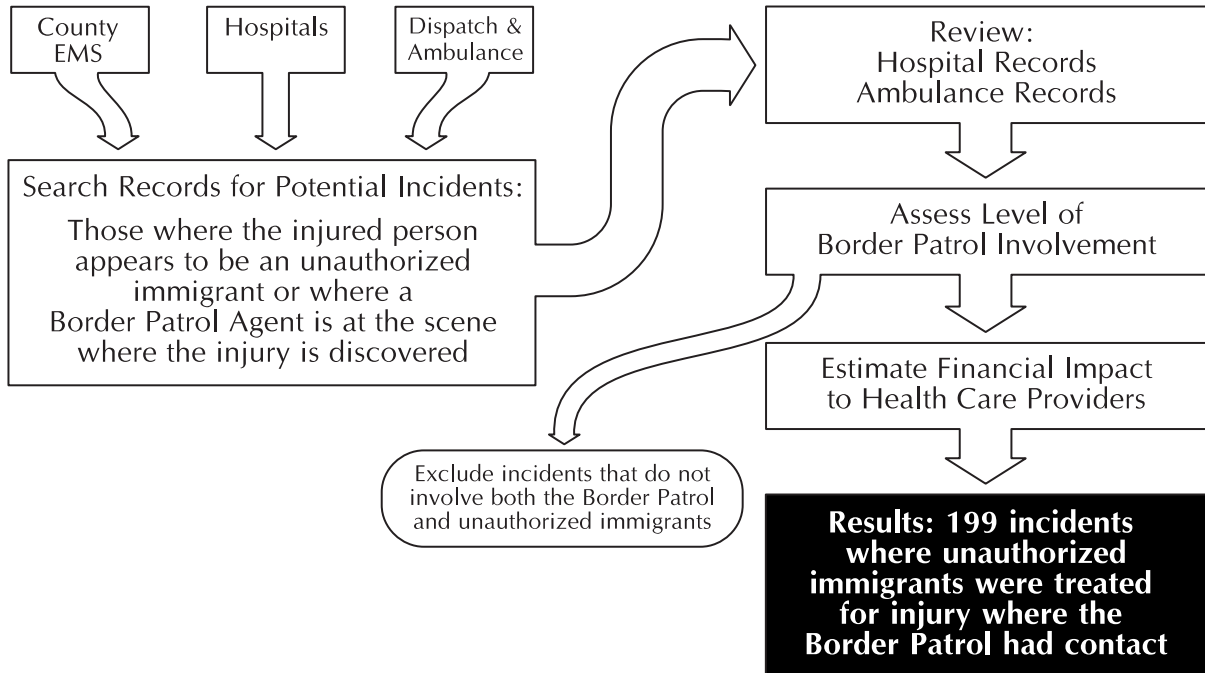
Because the Border Patrol would not provide a list (see the Scope and Methodology) we used various sources, but primarily the county's Division of Emergency Medical Services (County EMS), to identify these incidents.³ For each case, we evaluated the circumstances surrounding the patient's injuries, the nature of the Border Patrol's involvement, and the financial impact of the patient's care. We also evaluated the evidence indicating that the injured person was an unauthorized immigrant and excluded cases when the person appeared to be a California resident. Figure 1 displays the basic process we used to identify the incidents.

Although we believe we used the best sources available to us to identify these incidents, some cases may have been excluded from our search. For example, because the method we used to identify incidents focused on ambulance companies and emergency dispatch organizations, it is unlikely we identified cases in which the injured were transported to the hospital in a nonemergency vehicle. This would include walk-in patients, patients who were transported by friends or family, or patients transported to the hospital in a Border Patrol vehicle.

³ See Appendix A for an explanation of how we selected potential incidents and how we determined whether a person was an unauthorized immigrant.

Figure 1

Process Used to Identify Incidents That Occurred Between January 1996 and May 1997



Also, we relied on emergency workers' recorded observations of the nature of Border Patrol involvement and the possible cause of injury. Such observations could be incomplete if, for example, patients did not disclose the cause of injury or Border Patrol involvement. As a result, we estimate that there could be a significant number beyond the 199 we identified. The potential impact of additional cases is discussed later.


Analysis Identifies Border Patrol-Related Incidents

We estimate that health care charges⁴ for emergency medical care for the incidents we identified totaled \$3.1 million over 17 months. This includes \$2.26 million for hospitals and an estimated \$834,800 for other health care professionals such as paramedics, air transportation providers, physicians, surgeons,


⁴When used in this report, "charges" represent the invoice, or retail price for medical services, not the actual expense to provide the services. Because the actual expenses to provide these services vary from hospital to hospital and between departments within each hospital, we could not calculate the expenses for the 199 incidents we identified and, thus, display charges instead.

and laboratories. After being adjusted for payments received from the Border Patrol and others, the total unreimbursed amount is \$2.9 million.

Using financial records provided by the hospitals, we calculated the hospital charges on an individual basis. To estimate the charges for paramedics and air transportation providers, we used financial information they provided. Finally, using hospital estimates, we calculated charges for physicians, surgeons, and laboratories to be a minimum of 25 percent of hospital charges.



We divided incidents into two groups. In the first group, there was a direct relationship between a patient's injuries and the Border Patrol's actions whereas in the second group there was not.



During our analysis, we divided the incidents into two groups. The first group included cases with a direct relationship between a patient's injuries and the Border Patrol's actions. For example, if records indicated that the patient's injuries resulted from "running from the Border Patrol" or "a motor vehicle accident while evading Border Patrol agents," we included the incident in the first group. We also included cases where the injuries occurred immediately following apprehension by a Border Patrol agent. For example, in one case, after being apprehended by an agent, a suspect injured herself after slipping on a rock while walking through rugged terrain.

In contrast, if the records indicated that the Border Patrol was involved, but we found no evidence of a direct relationship between a patient's injuries and the Border Patrol's actions, we included the incident in the second group. For example, when an injured person was found or transported by an agent, we included the case in the second group. Also, when the injured person was in Border Patrol custody but we found no evidence that the injury was related to an agent's actions, we included the case in this group. Finally, we included cases where the agent arrived on the scene shortly after the injuries were discovered.

For cases in the first group, it appears that most people injured themselves while attempting to evade agents. Specifically, most injuries resulted from running, falling, or motor vehicle crashes. The types of injuries varied, although many individuals incurred arm or leg injuries, lacerations, or head injuries. About 25 percent of the cases involved multiple-passenger motor vehicle crashes. For the second group, we noted similar injuries, as well as a variety of others, such as cold- and heat-related injury, seizures, and abdominal pain. In the second group, about 18 percent of the injuries resulted from multiple-passenger motor vehicle crashes.

As shown in Table 1, we found that 85 of the incidents (43 percent) involved a direct relationship between the actions of the Border Patrol and the patient's injuries and thus were included in the first group.

Table 1

Unreimbursed Hospital Charges for 199 Incidents

Description of Relationship Between Patient Injuries and the Border Patrol's Activities	Amounts Incurred by Hospitals	Amounts Paid By:		Amounts Unreimbursed
		Border Patrol	Others ^a	
Group 1 (85 patients):				
Evidence of a direct relationship between the patient's injuries and the activities of the Border Patrol.	\$1,185,000	\$64,300 (14 patients)	\$ 900	\$1,119,800
Group 2 (114 patients):				
The Border Patrol was at the scene at the time, or shortly after the injury was discovered, but the evidence showed no direct relationship between its actions and the patient's injury.	\$1,074,200	\$32,200 (19 patients)	\$7,700	\$1,034,300
Totals	\$2,259,200	\$96,500	\$8,600	\$2,154,100

^aOthers include payments by the sheriff, injured patients, and private insurance.

Hospital charges for the 199 incidents totaled nearly \$2.26 million. Individual patient charges, as recorded in the hospital records, ranged from \$75 to \$315,200, and averaged \$11,400. For 33 incidents, we noted that the Border Patrol paid some or all of the hospital charges. In these cases, the patients had hospital charges ranging from \$90 to \$22,600, and totaled \$129,300. According to the hospital records, Border Patrol payments ranged from \$48 to \$13,000, and totaled \$96,500. After deducting payments made by the Border Patrol and others, unreimbursed hospital charges totaled over \$2.15 million, and averaged \$13,200 for Group 1 and \$9,100 for Group 2.

In addition to the hospital charges, other nonhospital health care professionals provided treatment to the injured discussed above. Such services include laboratory, ground and air transportation (such as paramedics and ambulances), and special physicians and surgeons. Using figures provided us by paramedic, ambulance, and air transportation services, we estimate that transportation costs for the incidents totaled

\$270,000. In addition, according to hospital officials, charges for nonhospital professional services, such as laboratories, physicians, and surgeons, range from 25 percent to 100 percent of hospital charges. To be conservative, we used the 25 percent rate and estimated that nonhospital charges totaled approximately \$564,800. When combined with the transportation costs, nonhospital charges totaled \$834,800.

The Border Patrol would not provide us detailed information on its payments to nonhospital health care providers.

The Border Patrol would not provide us detailed information on how much it paid to nonhospital health care providers for the incidents we identified. Because we could not obtain detailed records, we developed an estimate for the amount of nonhospital charges the Border Patrol paid. As indicated in Table 1, according to hospital records, the Border Patrol paid hospitals \$96,500 for 33 incidents that totaled \$129,300 in hospital charges. This represents a 75 percent payment rate. When we applied this rate to the nonhospital charges for the 33 incidents, which we calculated to be \$75,500, we estimated that the Border Patrol paid \$56,600 to the nonhospital providers. Table 2 summarizes our calculations for nonhospital charges.

Table 2
Unreimbursed Nonhospital Charges

Description	Method of Calculation	Estimated Charges
Ground and Air Transportation Charges	Estimate based on figures supplied by service providers.	\$270,000
Other Services (Laboratories, Physicians, Surgeons)	Estimate using 25 percent of hospital charges.	564,800
Subtotal		\$834,800
Amount Reimbursed by Border Patrol	Estimate based on the 75 percent payment rate for hospital charges.	(56,600)
Total Unreimbursed Charges		\$778,200


As reflected in Tables 1 and 2, for the incidents we identified, we estimate that the Border Patrol paid hospital providers \$96,500 and nonhospital providers \$56,600 or \$153,100 in total for 33 incidents. (This figure is less than the \$306,000 that the Border Patrol told us it paid all health care providers during the same period we reviewed. We did not use the figure supplied by the Border Patrol because, although the Border Patrol told us that the \$306,000 involved 179 incidents, it

would not provide detailed information that would permit us to determine the specific amounts related to the incidents we identified.)


In summary, for the 199 cases we identified, San Diego County health care providers incurred unreimbursed charges of at least \$2.9 million. This includes unreimbursed hospital charges totaling \$2.15 million and unreimbursed nonhospital charges of at least \$778,200.

There Are Likely More Charges for Incidents That We Did Not Identify

We believe that there are more emergency medical treatment charges related to additional incidents. This condition exists because, rather than getting information directly from the Border Patrol, we had to use other less complete sources to identify incidents. Specifically, we estimate that up to 875 additional cases may exist and that the charges related to these range between \$2.0 million and \$5.2 million. To calculate these amounts, we first estimated the number of additional incidents and next calculated a “high” and “low” estimate of charges.



We estimate that up to 875 additional cases may exist and charges related to these range between \$2.0 million and \$5.2 million.



We estimate that up to 875 additional incidents exist beyond the 199 that we identified. We calculated this 875 figure by using the number of incidents we identified (199), the number of those for which hospital records indicated the Border Patrol paid medical charges (33), and the number of incidents for which the Border Patrol told us it paid medical charges (179). Specifically, we determined that the ratio of cases we identified (199) divided by the number of incidents where hospital records indicated a Border Patrol payment (33) is approximately 6 to 1. Applying this same ratio to the number of total incidents that the Border Patrol told us it paid, 179, we calculate that there could be a total of 1,074 cases. After deducting the 199 we already identified, we find that there could be up to 875 additional cases. Next, we calculated a high and low estimate of charges related to these as shown in Table 3.

Table 3***Estimate of Charges for Additional Incidents***

Description	Method of Calculation	Estimate
Number of Additional Incidents	Estimate based on the rate of Border Patrol payments reported by the hospitals applied to total payments reported by the Border Patrol.	875 Incidents
High Estimate of Charges:		
Hospital Charges	Charges per incident as determined in Table 1. ^a	\$3,237,500
Nonhospital Charges (Physicians, Surgeons, Laboratories)	Estimate based on 25 percent of Hospital Charges. ^b	809,400
Nonhospital Charges (Air and Ground Transportation)	Estimate based on estimated average incident rate of \$1,360.	1,190,000
Total High Estimate		\$5,236,900
Low Estimate of Charges	Estimate based on average payments made by the Border Patrol (875 x \$2,280). ^c	\$1,995,000

^aAverage charge for incidents with charges less than \$25,000.



^bHospital officials estimated that nonhospital charges could range between 25 percent and 100 percent of hospital charges. We used 25 percent to be most conservative and avoid overstating our estimate: \$3,237,500 x .25 = \$809,400.

^cBased on average payment of \$1,710 per incident; increased to \$2,280 to reflect all hospital charges.

To develop estimated charges for these additional incidents, we used two different sources to present a range of charges. We believe that using a range to present our estimate best reflects the imprecise nature of calculating these charges. We used figures supplied primarily by the hospitals to calculate the high estimate of \$5.2 million, and figures supplied by the Border Patrol to calculate the low estimate of \$2.0 million. Appendix B describes the methodology used to calculate the two estimates.

Border Patrol Policies Limit Medical Payments and May Allow Some Injured Unauthorized Immigrants To Avoid Custody

According to information the Border Patrol provided to us, its policy is not to pay for any medical expenses unless the injured were in its custody at the time of the injury. Further, because of the Border Patrol's policy not to take injured suspects into custody if they are unlikely to escape, and because it takes only certain people, such as those who smuggle others across the border, into custody following medical treatment, it appears that some unauthorized immigrants may avoid custody as a result of their injuries.


The Border Patrol pays medical expenses only for individuals in its custody. However, its policy is not to take injured suspects into custody if they are unlikely to escape.



As mentioned previously, we found that the Border Patrol paid for some or all of the hospital charges in 33 of 199 incidents. According to staff in its San Diego Sector procurement office, such payment would be made only if the person had been in custody prior to medical treatment. Moreover, according to a statement made by the chief patrol agent, the Border Patrol "has no financial responsibility for injured illegal aliens who have not been placed in Border Patrol custody."

The chief patrol agent provided us with a statement to clarify the arrest (or custody) policy in San Diego. He explained: "In determining whether to take an injured alien into custody, Border Patrol agents are bound by [Immigration and Naturalization Service] policy, which generally provides that agents shall not take into custody any injured alien who is not likely to escape." He also stated: "Where an alien's injured condition precludes our determination of alienage and deportability, or where an alien's injured condition renders the alien unlikely to escape, we cannot and do not take custody at the scene. Border Patrol agents nationwide are bound by these rules and may not deviate at the local level."


However, we believe that when it is on the scene where an injury is discovered, the Border Patrol has an opportunity to assess—either immediately or following medical treatment—whether the injured are unauthorized immigrants and, if so, to take them into custody. If the injured are unconscious and thus their immigrant status cannot be determined, the Border Patrol should consider assessing this later, such as when the injured are discharged from the hospital. Moreover, by simply not "taking into custody" injured unauthorized immigrants, the Border Patrol is able to avoid financial responsibility for their medical treatment. It is

important to note that if the same individual had not been injured, he likely would have been immediately placed into custody.

The chief patrol agent in San Diego cited federal contract law as the reason the Border Patrol does not pay for such medical expenses. Specifically, he cited a United States Court of Appeals (Court) case, *City of El Centro vs. United States*. This 1990 case relates to a specific instance where an El Centro hospital treated 14 people injured after their vehicle crashed following pursuit by Border Patrol agents. The Court overturned an earlier Claims Court decision, finding that because injured unauthorized immigrants were not detained by the Border Patrol, the government did not form an "implied contract," and thus could not be held financially responsible to pay the hospital. In its decision, however, the Court suggested that Congress could determine a method of relieving hospitals for such medical expenses.



The United States Court of Appeals stated: "As a matter of equity, there is good argument that these costs should be assessed against all the taxpayers of the United States."





Specifically, in its decision, the Court stated: "As a matter of equity, there is good argument that these costs should be assessed against all the taxpayers of the United States. The question before the court, however, is whether, as a matter of law, the United States is obligated to pay these costs." Moreover, the Court noted: "If there is to be a special program of relief for a hospital that provides services under the circumstances of this case, the Congress is in the best position to determine the nature of such a program, and its boundaries."

Although the Court decision provides a legal basis for the Border Patrol to limit its payments to hospitals to only those cases where injured people were in its custody, it does not address an inherent inequity caused by the Border Patrol's policies. Specifically, its policy to only pay medical charges when the injured are in custody combined with its policy to only take into custody the uninjured results in health care providers incurring significant unreimbursed charges.

Congress has the ability to address this inequity by passing a law requiring the federal government to pay for the costs to provide emergency medical services when unauthorized immigrants are injured and would have been taken into custody by the Border Patrol were it not for their injuries.

In fact, a recent federal law authorizes the federal government to pay for emergency medical treatment for unauthorized immigrants, whether or not they are in custody at the time of injury. Effective January 1, 1997, states are eligible for payment from the federal government for emergency medical services provided by hospitals to unauthorized immigrants. Specifically,

Title 8 of the United States Code, Section 1369 states that: "Subject to such amounts as are provided in advance in appropriation acts, each state or political subdivision of a state that provides medical assistance for care and treatment of an emergency condition through a public hospital or other public facility or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the federal government of its costs of providing services, but only to the extent that such costs are not otherwise reimbursed through any other federal program and cannot be recovered from the alien or another person."


Recent federal legislation provides funding for these medical expenses, but it is not known how much, if any, San Diego County health care providers would receive.


While recent federal legislation provides funding for these medical expenses, it is not known how much, if any, funding health care providers in San Diego County would receive. Specifically, on August 5, 1997, the president approved the federal Balanced Budget Act of 1997, which includes \$25 million per year for four years beginning October 1, 1997, to fund emergency health services for unauthorized immigrants. These funds would be allocated to the 12 states with the highest number of unauthorized immigrants. Currently, the State Department of Health Services is preparing regulations that will make it possible for California to receive the federal funds. However, it did not know, as of September 24, 1997, the portion of the \$25 million that California will receive or how much, if any, of that portion it would make available to San Diego County health care providers.

Some Individuals May Avoid Border Patrol Custody as a Result of Their Injuries


In addition to avoiding financial responsibility, it appears that the Border Patrol's policy to not take injured suspects into custody if they are unlikely to escape may allow some of the injured to avoid custody as a result of their injuries. As noted earlier, according to the chief patrol agent, Border Patrol agents generally do not take into custody any injured suspect who is not likely to escape. Though on the surface this appears consistent with federal law requiring an arrest warrant when a suspect is deemed "unlikely to escape," we question whether it achieves the intended result of preventing illegal entry into the United States, given that for many of the injured, their status as "unlikely to escape" seems temporary.

The United States Code, Title 8, Section 1357, permits Border Patrol agents to interrogate and arrest unauthorized immigrants, without an arrest warrant, under certain conditions. Specifically, a Border Patrol agent may interrogate a suspect as

to that person's right to be or remain in the United States. In addition, Section 1357 permits the agent to arrest, without warrant, any suspect in the United States if the agent believes that individual entered the United States illegally and is likely to escape before an arrest warrant can be obtained.

The chief patrol agent's statements, as discussed previously, did not describe the circumstances under which a Border Patrol agent would take custody later, including after a suspect received emergency care. We did, however, obtain verbal information from the assistant chief patrol agent and also found a June 15, 1996, *North County Times* newspaper article that quoted a Border Patrol spokesman.

According to the article, a Border Patrol spokesman stated that the Border Patrol does not generally make spot inspections of the immigration status of hospital patients. He stated: "If it's a Border Patrol-related incident, we'll come and check. If the patients had not been in Border Patrol custody or not under suspicion by agents (such as people fleeing in a vehicle that crashes), then the Border Patrol generally does not make hospital calls."


The Border Patrol told us that in most cases it does not take custody of an injured person following medical treatment.

This practice is consistent with information we obtained during an interview with the assistant chief patrol agent in the San Diego Sector. He told us that in most cases the Border Patrol does not take custody of an injured person following medical treatment. He added that an exception would be if the injured person was suspected of smuggling others across the border, or if the person might possibly provide testimony against a suspected smuggler. Otherwise, according to the assistant chief patrol agent, pulling an agent from patrolling the border to investigate one suspect at a hospital would probably allow many other unauthorized immigrants to enter the country.

This practice of making follow-up visits to hospitals only under certain situations appears consistent with the results from our review. We found that, in some cases, the Border Patrol appears to have contacted at least some of the injured suspects following their medical treatment. Specifically, we found that for 60 of the 199 incidents, the hospital records indicated the patient was discharged to the Border Patrol following treatment. We were unable, however, to verify that the Border Patrol actually took custody of any of these 60 patients, because the Border Patrol stated it could not provide us with such a list.

For the remaining 139 incidents, there was no evidence in the hospital records that the Border Patrol contacted the people following their discharge. As a result, it appears that the Border Patrol may not have interrogated them as to their right to be in the United States. Thus, to the extent that these people are unauthorized immigrants, their injuries may have assisted them to avoid Border Patrol custody. It is important to note that we could not determine whether the injured intended for their injuries to assist them to avoid Border Patrol custody.

—◆—
Given that over 70 percent of the suspects were treated as outpatients, the Border Patrol should promptly follow up to reconsider custody.

—◆—
We also question whether the Border Patrol's practices are logical when taken as a whole. Although injured suspects may be deemed "unlikely to escape" and thus avoid immediate apprehension, this status appears temporary in most instances. Given that in over 70 percent of the incidents we analyzed the suspects were treated on an outpatient basis, it seems logical to have some form of prompt follow-up contact to reconsider custody. Instead, according to a spokesperson, the Border Patrol "generally does not make hospital calls" unless the patient was already in custody or "under suspicion." We believe that if suspects' injuries were the only reason they were not taken into immediate custody, then all such people should be considered "under suspicion."

Conclusion

The Border Patrol states that its policy is to pay medical charges for injured suspects only when they are in Border Patrol custody. However, its policy is generally not to take custody of injured people who need emergency care, thus avoiding responsibility for medical charges. This resulted in San Diego County health care providers incurring unreimbursed charges for emergency medical treatment to unauthorized immigrants who also had contact with the Border Patrol. For incidents we identified occurring between January 1996 and May 1997, and where we noted Border Patrol contact, we estimate that hospital and nonhospital charges totaled \$3.1 million. Based on available records, we estimate that the Border Patrol paid only \$153,100 of this for 33 incidents. Thus, the unreimbursed amount totaled over \$2.9 million.

In addition, we believe that up to 875 additional incidents could exist, and that emergency medical care charges for those cases could total between \$2.0 million and \$5.2 million. Finally, because of the Border Patrol's policy not to take injured suspects into custody, it appears that some may avoid custody as a result of their injuries.

Recommendation

The California Legislature should memorialize to the United States Congress to require the federal government to pay the full costs of emergency medical services when unauthorized immigrants are injured and would have been taken into custody by the Border Patrol were it not for their injuries. Further, if the \$25 million allocated in the federal Balanced Budget Act of 1997 is insufficient to assure California is fully reimbursed for its costs, Congress should increase the appropriation.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: October 16, 1997

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Appendix A

Methodology To Select Incidents

For this report, we define an unauthorized immigrant as an individual who has entered the United States illegally. We acknowledge that the United States Immigration and Naturalization Service (INS) is the only government agency entitled to conclude whether an individual entered the United States legally. Our assertion that the individuals discussed in this report are unauthorized immigrants is not a legal conclusion. Rather, it is our conclusion based on available evidence.

The following describes the methodology we used to select incidents in which the injured were unauthorized immigrants and United States Border Patrol (Border Patrol) agents were at the scene where injuries were discovered:

As discussed in the Introduction, our primary source to identify incidents was the San Diego County Division of Emergency Medical Services (County EMS) database. From January 1996 through May 1997, there were approximately 153,000 incidents recorded in the County EMS database. Staff at the County EMS searched these incidents to identify those in which a Border Patrol agent may have been at the scene where the injuries were discovered or might have had some contact that contributed to the injuries. Specifically, the staff used certain key words, such as "border," "patrol," "USBP," or "alien," and searched areas most likely to contain the key words. Their computer search identified 990 incidents in which at least one of these key words appeared in the record.

In addition to those incidents identified through the County EMS database, we also identified cases using information provided by ambulance companies, hospitals, emergency dispatch and fire protection agencies, and newspapers. While some incidents identified through these sources duplicated those we found through the County EMS, others were unique and were included in our more detailed review.

After we identified potential incidents, we performed a detailed review of available records and excluded certain cases. Specifically, we excluded incidents when we found evidence that the injured were California residents. We also excluded incidents if we found no evidence of Border Patrol involvement. We additionally excluded cases if we found evidence that the

injured person refused or did not need medical treatment. We did not, however, exclude cases where the injured were in Border Patrol custody because we wanted to obtain a complete understanding of the situations when the Border Patrol paid health care providers. Our review indicated that 95 percent of the patients involved in the incidents either were treated in one of San Diego County's three largest hospital systems, or refused or did not need medical treatment. (The remaining 5 percent were treated at other San Diego area hospitals.) As a result, we limited our review to those patients served at these three hospital systems (Scripps, Sharp, and University of California, San Diego).

We next contacted the three hospital systems and requested patient medical and financial records. Based on the information we provided, they identified the patients involved in the incidents and supplied us with the financial information for each injured patient they could identify. The hospitals additionally provided us access to each patient's medical record, which we reviewed to determine the cause of the injuries and to see if the Border Patrol had contact with the patient in the hospital. Finally, we contacted the ground and air transportation providers who transported most of the patients. They provided certain actual and estimated charges that we in turn used to estimate the charges for transporting the patients.

Upon completing our review of hospital records, we determined that 199 incidents required medical treatment and involved the Border Patrol. In all incidents, we found no evidence that the injured were not unauthorized immigrants.

Appendix B

Methodology To Calculate Additional Incidents

Although we did identify 199 cases, we believe that there are more emergency medical treatment charges related to additional incidents. This condition exists because, rather than getting information directly from the United States Border Patrol (Border Patrol), we had to use other less complete sources to identify cases. We estimate that up to 875 additional cases may exist and that charges related to these range between \$2.0 million and \$5.2 million.

We calculated this 875 figure by dividing the number of incidents we identified (199) by the number of those for which hospital records indicated the Border Patrol paid for medical charges (33). Applying this ratio (6 to 1) to the number of total incidents that the Border Patrol told us it paid (179), we calculate that there could be a total of 1,074 cases. After deducting the 199 we already identified, we find that there could be up to 875 additional, unidentified cases. Next, we calculated a high and low estimate of charges related to these.

The high estimate presented in Table 3 is composed of three separate calculations: hospital charges; nonhospital charges for physicians, surgeons, and laboratories; and nonhospital charges for air and ground transportation. To calculate our estimate for hospital charges, we used the charges related to the incidents in Table 1 after eliminating those 16 with charges greater than \$25,000. We did this to eliminate unique, high-profile incidents, such as major trauma, that might not reoccur within the larger group of 875 cases. The average hospital charge for the remaining incidents was \$3,700 per case. When applied to the larger group of 875, we estimate hospital charges to be \$3.24 million.

To calculate nonhospital charges for physicians, surgeons, and laboratories, we used the same 25 percent rate that we used in Table 2. Although hospital officials estimated that such nonhospital charges could range between 25 percent and 100 percent of hospital charges, we used 25 percent to be most conservative and avoid overstating our estimate. Thus, our estimate for nonhospital charges for physicians, surgeons, and laboratories is \$809,400.

Finally, to estimate nonhospital charges for air and ground transportation, we used an average, per-incident charge. Specifically, based on information in Table 2, we calculated that the average transportation charge was \$1,360. Applying this rate to the 875 incidents, we estimate that nonhospital charges for air and ground transportation are \$1.19 million. When combined, our high estimate for the 875 additional incidents totaled \$5.2 million.

We calculated the low estimate using figures the Border Patrol provided. According to its figures, the Border Patrol paid a total of \$306,000, or \$1,710 per incident, for 179 cases that occurred during the period we reviewed. To reflect 100 percent of the charges, we increased this figure to \$2,280 because, as discussed earlier, we found that the Border Patrol paid only 75 percent of hospital charges. Applying this figure to the 875 incidents, we calculated our low estimate as \$2.0 million.

The above figures represent total charges rather than unreimbursed charges for emergency medical treatment. We did not deduct any payments the Border Patrol made because it would not provide us with a detailed list of its payments. It is likely that the Border Patrol paid some of the estimated charges listed above. As discussed previously, the Border Patrol told us it paid \$306,000 for these 179 incidents. Furthermore, as indicated in Tables 1 and 2, we estimate that the Border Patrol paid \$96,500 for hospital charges and \$56,600 for nonhospital charges for the 199 incidents we analyzed.

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