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ACLU settles lawsuit over New Mexico prison medical contract records

The New Mexico Corrections Department has agreed to pay the American Civil Liberties Union of New Mexico \$37,500 to settle a lawsuit over the agency's alleged failure to release public records related to its multimillion-dollar contract with the company that provides medical care to prison inmates. The department also will provide unredacted versions of the records requested, which previously had been heavily redacted, ACLU-NM staff attorney Lalita Moskowitz said Thursday. The state agency agreed to settle the case Monday, three days before it was scheduled to go to trial after two years of litigation. "We certainly should not have had to go to court to get documents [regarding] private corporations our state is giving money to, and that's essentially what happened here," Moskowitz said. "A private corporation was allowed to decide what constitutes public records under our public records laws, which flies in the face of everything the Inspection of Public Records Act is supposed to do." Moskowitz said the department let the vendor, Pittsburgh-based Wexford Health Sources, decide what would be redacted and backed the vendor in court at the expense of taxpayers. A spokeswoman for the Corrections Department wrote in an email Thursday the agency maintains its records custodian acted reasonably and in accordance with state law in handling the records request, adding the requested documents were "protected from public inspection by the procurement code." "This case was set for trial and an agreement in principle was reached in advance to resolve plaintiff's outstanding attorney's fees after the requested unredacted documents were produced under seal to plaintiffs solely for litigation purposes and without the Court ruling they were in fact public records," spokeswoman Karen Cann wrote in the email. The settlement resolves a lawsuit ACLU-NM filed in March 2020, which alleged the department had failed to comply with the Inspection of Public Records Act in responding to a request from the civil rights group for records relating to a four-year, \$246 million inmate medical care contract the state had awarded to Wexford Health in 2019. Wexford did not respond to a request for comment on the settlement. A spokesman for the General Services Department said in an email Friday the state has spent \$12,374 fighting the case "to date" but that more bills could be outstanding in the recently settled case. The state had fired Wexford in 2007 and rejected the company's bid for the contract in 2016 after Wexford faced more than 50 lawsuits from inmates between 2004 and 2007. The company was awarded a new contract, however, in 2019. Asked why Wexford had been selected, a Corrections Department spokeswoman said only that the company had submitted the winning bid. Corizon Health, contracted to provide inmate medical care between 2007 and 2016, was sued more than 150 times in those nine years. Centurion LLC, which won the contract in 2016, was the subject of more than 65 lawsuits. The ACLU-NM suit was one of many legal filings regarding the lack of transparency surrounding private prison contractors. In a separate case involving The New Mexican, state District Judge Raymond Ortiz ruled in 2016 records produced by Corizon Health were public and must be released. The New Mexico Court of Appeals affirmed his ruling in September. The state Supreme Court declined to review the ruling in 2019, resulting in the release of some records. But private prison operators and medical care providers have continued to insist their records aren't subject to the state's public records law. When the Corrections Department awarded Wexford's new contract, it did not include a transparency provision. According to ACLU lawsuit, the organization had requested copies of all records related to the state's most recent selection of a health care provider, and the state provided substantial records related to a bid submitted by a losing vendor but redacted or withheld the majority of records related to Wexford's bid. The documents obscured or not produced included the company's insurance certificates, staffing plan, job descriptions, employee benefit packages and samples of audit tools that would be used to measure the quality of services Wexford would provide under the contract, according to the lawsuit. "In total, more of Wexford's ... proposal to NMDC had been redacted than produced," the complaint said.