The HIV/HCV Co-Infection Watch is a publication of the Community Access National Network (CANN). It is a patient-centric informational portal serving three primary groups – Patients, Healthcare Providers, and AIDS Service Organizations.

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Law Overview (Reprinted from 2017 Report)

Constitutional Right to Treatment:

– Incarcerated are only population guaranteed the right to medical treatment under 8th Amendment protection from “…cruel and unusual punishment” (Estelle v. Gamble, 1976)

Estelle v. Gamble (1976):

– Established several precedents:
  • Established concept of “deliberate indifference” (Schoenly, n.d.b)
  • If inmates need medical attention, this cannot be denied
  • If care cannot be provided by onsite staff, adequate and timely access must be provided
  • If medical staff determine that treatment is needed and orders treatment or medication, it must be honored
  • Neither security staff, nor internal processes (bureaucracy) can hinder the required treatment
  • Treatment cannot be countermanded
  • Right to professional judgement - decisions should be made based on medical need, rather than on security need or convenience (Schoenly, n.d.a)

Deliberate Indifference:

1. Serious medical need
   a. Diagnosed by physician as requiring treatment
   b. The need is so obvious that even a lay person would know it needed treatment
2. Staff must know about serious need
3. Staff must intentionally and deliberately fail to provide required treatment for that need
4. Failure to treat caused inmate unneeded pain or suffering or similar harm
Estelle v. Gamble and Hepatitis C:

Incoming Prisoner Screening and Assessment

• Standard E-02 – Receiving Screening
  1. Medical Clearance
     a. Should occur as soon as individual is admitted into facility
     b. Quick inspection to determine emergent needs
     c. Unlikely to catch HCV
  2. Structured Screening ASAP
     a. Series of specific questions and standard patient intake protocol to determine existing patient needs
     b. No concrete timeframe; should be completed all at once to ensure compliance

• Standard E-04 – Initial Health Assessment
  1. Full Population Assessment
     a. Performed on 100% of inmates ASAP, but no later than seven days (prisons/juvenile facilities) or 14 days (jails)
     b. Review of E-02 screening results
     c. **REQUIRED** laboratory and/or diagnostic testing for communicable diseases
        i. Testing for STDs required in all cases with one exception: facility may work with local health department to determine whether local prevalence rates warrant routine testing
  2. Individual Assessment When Clinically Indicated
     a. Jails and Prisons Only
     b. Many more requirements than first option
     c. Facility must have on-site health staff coverage 24/7
     d. Requires all inmates to have comprehensive receiving screening in addition to standard E-02
        (National Commission on Correctional Health Care, 2011, 2016)
CANN reached out to all 50 states and the District of Columbia requesting testing protocols for HIV, HBV, and HCV.

**Figure 1.**

Map Key:
- Blue: Responded
- Green: No Response
- Orange: No Response
- No Protocol Posted
State Facility Screening/Testing Protocols

State Hepatitis screening/testing protocols vary by state

- Only 14 states publicly post specific testing protocols on state Corrections websites
- Each state and DC was contacted with request
  - 23 states responded (Figure 1.)
  - 12 states failed to respond, but policies were available on public websites (Figure 1.)
  - 16 states failed to respond and policies were not available on public websites (Figure 1.)
- Most states require or offer testing during intake
  - 25 for HBV (Figure 2.)
  - 32 for HCV (Figure 3.)
  - WI screens for HCV as follows:
    - Intake – Birth Cohort (Opt-Out)
    - Post-Intake – Clinical Criteria (Opt-Out)
- Most states fail to follow recommendations set for Federal Prisons
  - Only 7 states use Opt-Out for HBV (MO, OH, OK, PA, WA, WI, DC)
  - Only 15 states use Opt-Out for HCV (CA, IL, IA, MA, MO, NH, OH, OK, PA, SC, VT, VA, WA, WI, DC)
- Several states require inmates to be tested with no refusal possible
  - 3 states for HBV (CO, MO, & NE)
  - 6 states for HCV (CO, ID, IN, MO, NE, & OH)
- Many test only on inmate request or based on Clinical Criteria
  - 23 for HBV (AK, CA, DE, GA, HI, ID, IL, IA, KY, MD, MA, MI, MN, MT, NM, ND, OH, OK, TX, UT, VA, WY, DC)
  - 17 for HCV (AK, DE, GA, HI, KY, MD, MA, MN, MT, NM, ND, OK, TX, UT, VA, WY, DC)
Figure 2.  
Map Key:  
Blue: Required or Offered  
Orange: Not Required or offered
Figure 3. States Requiring/Offering HCV Testing During Intake

Map Key:
Blue: Required or Offered
Orange: Not Required or Offered
Testing + Diagnosis ≠ Treatment

High cost of HCV Direct-Acting Antivirals

- Departments of Corrections (DOCs) are not eligible for the Federal Medicaid Rebate Program
  - DOCs have to pay more for the same drugs
  - Correctional health spending is almost entirely funded by respective states
- HCV costs have risen an estimated 487% over the last five years
- How prisons deliver inmate healthcare can impact the price of drugs
  - Direct-Provision
    - Contract with pharmacy services provider
    - Purchase through joint purchasing organization (e.g. – Minnesota Multistate Contracting Alliance)
    - Negotiate directly with pharmaceutical companies
  - Contracted-Provision
    - Some negotiate directly
    - Include purchasing, selection, and management in comprehensive rate paid to vendor
    - Vendors make confidential price agreements
    - Must put protections in place against vendor incentives to delay, under-prescribe, or prescribe less effective drugs
Mitigating High Costs

340B Pricing
- 16 DOCs work with eligible hospitals and other health providers to obtain high-cost drugs through 340B
- Contract with specific 340B entity/provider for treatment of specific diseases (e.g. – HIV, HCV)
- Contract with Academic teaching hospitals for provision of care
- Texas DOC has achieved roughly 60% cost savings over five years

Centralized Statewide Purchasing
- Massachusetts uses a State Office of Pharmacy Services (SOPS)
  - Services 50 state/county facilities
  - Bulk purchasing allows SOPS to negotiate larger price reductions
  - MassHealth negotiates on its own (Medicaid Drug Rebate Program)
- Centralizing purchasing across healthcare settings could allow for greater cost savings
- Including DOCs in the purchasing process, rather than allowing them to go it alone

Utilizing Medicaid for High-Cost Treatment
- Possible to use Medicaid funds to cover certain costs, including drugs
- Useful for inmates who are recipients of Medicaid prior to incarceration
- Suspend Medicaid enrollment while incarcerated, but activated when outside of correctional facility
- Upside: Shifts burden of payment from DOC to Medicaid
- Downside: Requires at least monthly inmate movement to/from prison and treatment facility
## States with Ongoing HCV-Related Litigation (2017-2018)

**Figure 4.**

<table>
<thead>
<tr>
<th>State</th>
<th>Year of Filing</th>
<th>Case Name</th>
<th>Type</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama - AL</td>
<td>07/25/14</td>
<td>Bragg v. Dunn, et al.</td>
<td>Class-Action</td>
<td>In Trial</td>
</tr>
<tr>
<td>Arizona - AZ</td>
<td>03/22/12</td>
<td>Parsons v. Ryan</td>
<td>Class-Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td>California - CA</td>
<td>02/12/18</td>
<td>Bayse, et al. v. California Department of Corrections and Rehabilitation</td>
<td>Class-Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Indiana - IN</td>
<td>01/27/17</td>
<td>Stafford, et al. v. Indiana Department of Corrections, et al.</td>
<td>Class-Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Massachusetts - MA</td>
<td>06/10/15</td>
<td>Paszko, et al. v. O'Brien</td>
<td>Class-Action</td>
<td>Ongoing - Settlement Agreement Reached - Pending Approval</td>
</tr>
<tr>
<td>Minnestoa - MN</td>
<td>06/03/15</td>
<td>Ligons, et al. v. Minnesota Department of Corrections</td>
<td>Class-Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Missouri - MO</td>
<td>12/15/16</td>
<td>Postawko, et al. v. Missouin Department of Corrections</td>
<td>Class-Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td></td>
<td>01/03/17</td>
<td>Abu-Jamal v. Wetzel</td>
<td>Civil Rights Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Virginia - VA</td>
<td>11/21/16</td>
<td>Reid v. Clarke, et al.</td>
<td>Civil Rights Action</td>
<td>Ongoing</td>
</tr>
<tr>
<td></td>
<td>06/26/17</td>
<td>Riggleman v. Clarke &amp; Amonette</td>
<td>Civil Action - Jury Trial Demanded</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>
State/Federal HCV-Related Lawsuits Involving Prisons (2017-2018)

At least 15 Class-Action and Civil Rights Action lawsuits were ongoing in 13 states between 2017-2018. (This graphic may not represent every suit filed at all levels)

Figure 5.
Map Key:
Blue: No Lawsuits in Timeframe
Orange: Lawsuit(s) in Timeframe

n=18 total lawsuits
Recent Cases of Note

**Parsons v. Ryan.** (Class-Action – Arizona):
- Initially filed in 2012, settlement was reached in 2015
- Required Arizona DOC (ADC) to meet 100 healthcare performance measures
- In October 2017, the court, citing “pervasive and intractable failures to comply” with the settlement, ordered the ADC defendants to show cause why they should not be held in contempt and fined $1,000 for each prisoner who did not receive healthcare services (ACLU, 2017)
- Further evidence suggests ADC employees and administrators not only failed to comply with the terms of the settlement, but retaliated against the plaintiffs within days of their testimonies (Weill, 2017)
- Lawyers compiled report detailing “2,127 separate incidents” prior to July 2017 hearing that resulted in court’s October 2017 demand for cause (Weill)

**Hoffer v. Jones, et al.** (Class-Action – Florida):
- Initially filed in 2017, Class-Action statute granted November 2017
- Alleges Florida DOC (FDC) was treating just 5 of the 5,000 inmates diagnosed with HCV (Iannelli, 2017)
- Alleges FDC has allowed 160 Florida inmates to die of liver problems; suggests HCV is likeliest cause (Iannelli)
- November 2017 ruling by U.S. District Judge Mark Walker ordered FDC to update its HCV treatment policy “with alacrity,” and that “this court will not tolerate further foot dragging” (Kim, 2017)
- Walker ordered FDC to being treating inmates immediately (Gilna, 2017)
- Walker also wrote that “cost should be no excuse” for not providing the treatment (Kim)
- Could have far-reaching impact on other Class-Action suits

**Paszko, et al. v. O’Brien.** (Class-Action – Massachusetts)
- Initially filed in 2015, a settlement agreement was reached in in March 2018 and is awaiting preliminary approval (Conti, 2018)
- Settlement requires Mass. DOC (MDC) to start implementing new treatment system upon prelim. approval (Conti)
- Settlement requires MDC to treat serious HCV within 12 months; less serious within 18 months (Schoenberg, 2018)
- Settlement would do away with exclusion that allowed MDC to deny treatment based on remaining sentence time (Conti)
References


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Marcus J. Hopkins is a West Virginia native currently living in his familial hometown of Morgantown, WV. In 2005, Marcus was diagnosed HIV-positive.

After thirty years of involvement in the performing arts (vocal and instrumental music, color guard, and Drum Corps International), he currently spends most of his time dedicated to bringing attention, clarity, and comprehensive education to the world of Patient-Centric HIV and Hepatitis C research and reporting. Marcus presently serves as the Project Director for the HIV/HCV Co-Infection Watch and the Medicaid Watch which are publications of the Community Access National Network (CANN). He also blogs for CANN’s “Hepatitis: Education, Advocacy & Leadership” (HEAL) coalition.

In his spare time, he’s a video game-addicted, cat-loving insomniac who leaves audiobooks playing in the background at all times.