

Viral Hepatitis in Correctional Settings



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)

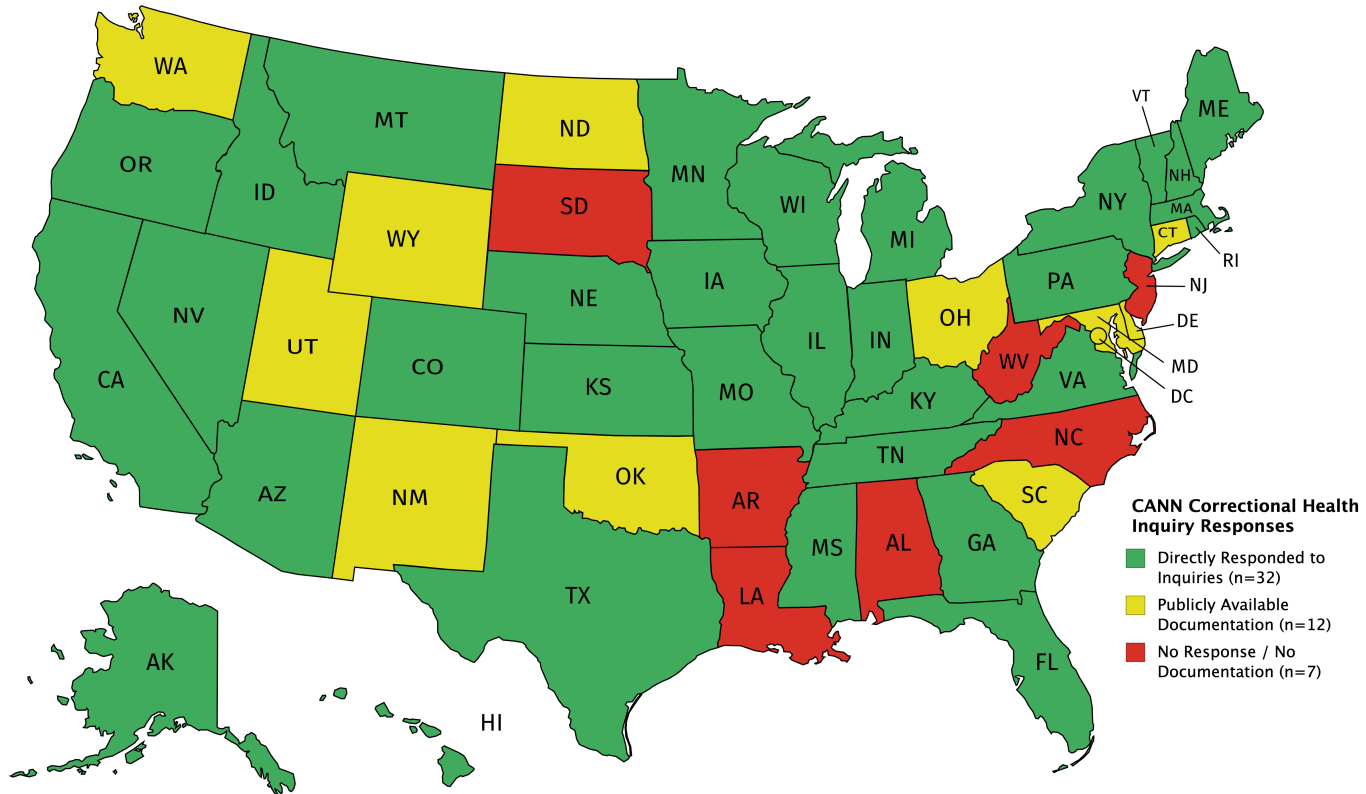
CANN's Correctional Health Research

- Began in 2017
- Focus on HIV, HBV, and HCV Screening/Testing Protocols
- Responses or documentation from 43 DOCs
- 7 states failed to respond/had no publicly published documentation

State Responses to Protocol Inquiry

CANN reached out to all 50 states and the District of Columbia requesting testing protocols for HIV, HBV, and HCV

Figure 1.

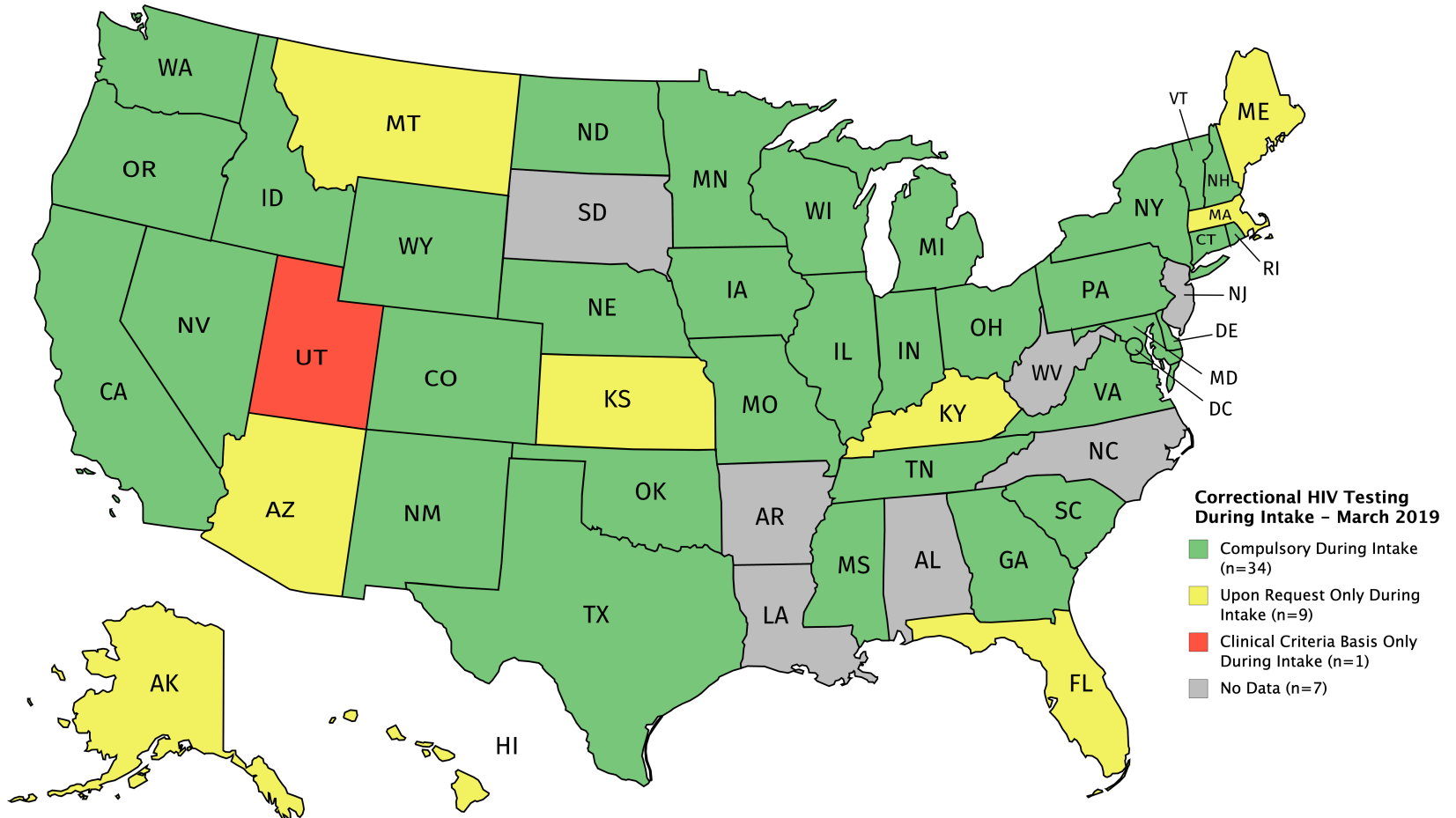


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State Facility Screening/Testing Protocols

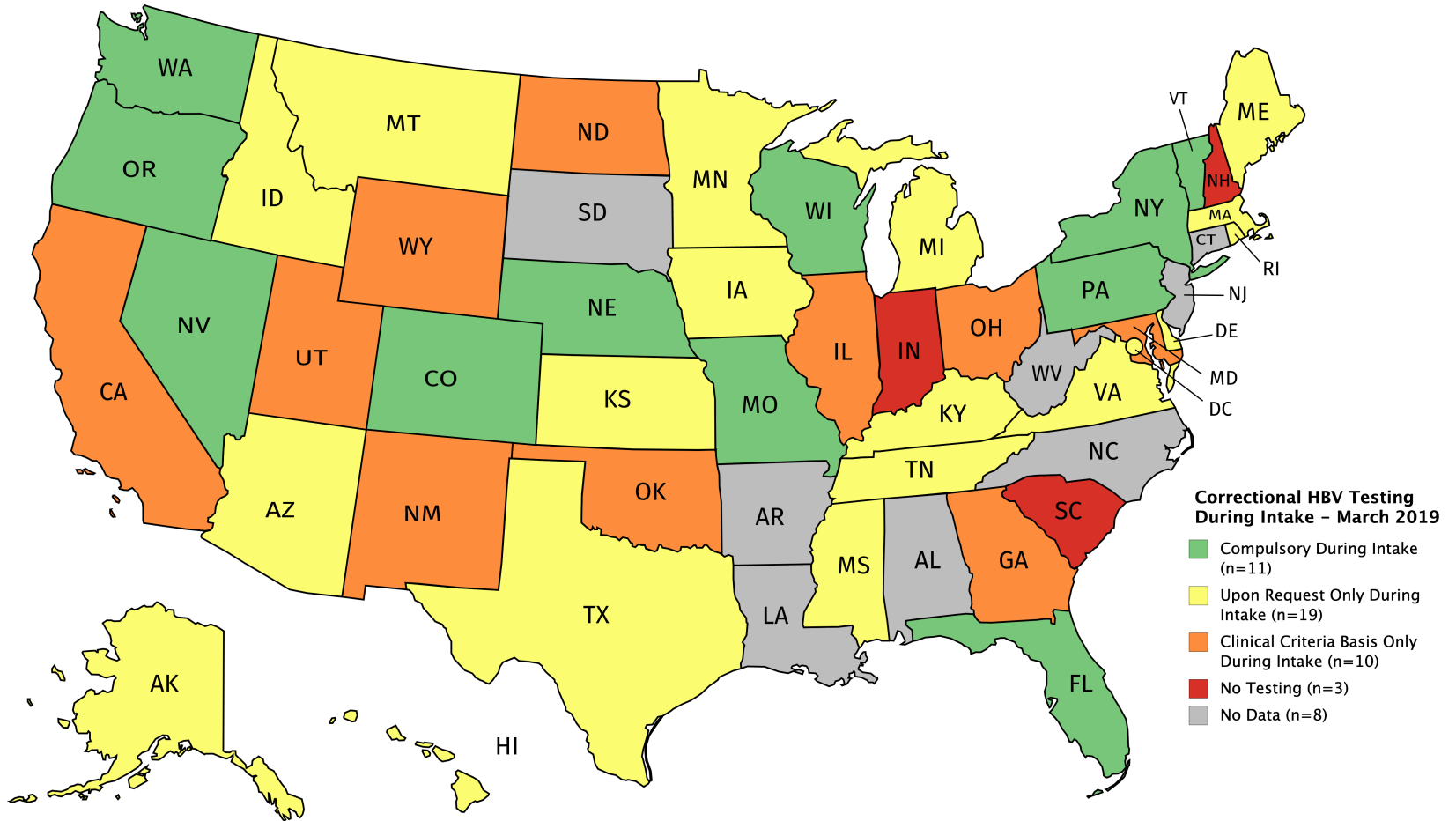
- Only 14 states publicly post specific testing protocols on state Corrections websites
- HIV:
 - 9 states test only upon request
 - 1 state (UT) tests only up clinical criteria
 - FL, LA, & NC all fall within the Top Ten states for rates of new HIV infections
 - Either do not require HIV testing during intake, or no data was available
 - FL tests upon request during entry; compulsory during exit
- HBV:
 - Only 11 states require HBV testing upon entry
 - AL, AK, IN, KY, ME, NC, OH, TN, & WV all fall within the Top Ten states for rates of new HBV infections
 - Most of these states perform intake testing upon request only; Indiana does not test for HBV
 - No data are present for AL, AK, NC, or WV
- HCV:
 - Only 21 states require HCV testing upon entry (with AZ soon to add compulsory testing)
 - DE, KY, ME, MA, MT, NJ, SD, TN, UT, & WV all fall within the Top Ten states for rates of new HCV infections
 - DE, KY, ME, MA, MT, & TN only test for HCV upon request
 - No data are present for NJ, SD, or WV

Figure 2. Correctional HIV Testing During Intake – March 2019



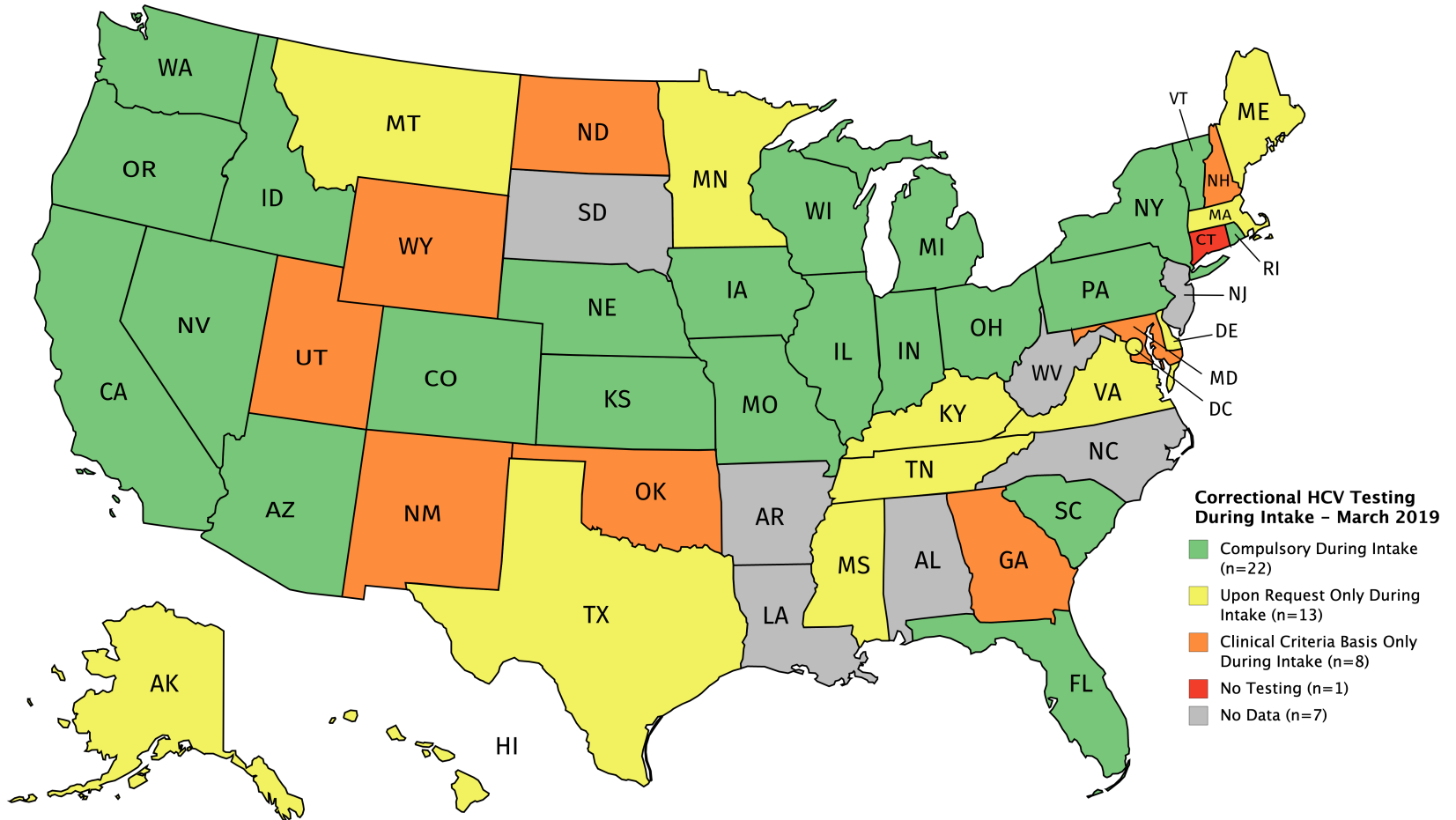
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Figure 3. Correctional HBV Testing During Intake – March 2019



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Figure 4. Correctional HCV Testing During Intake – March 2019



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Falling Cost of Treatment

- Initially High cost of HCV Direct-Acting Antivirals
- Introduction of Authorized Generics
- HCV costs rose an estimated 487% over a period of five years
- 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
- 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

Figure 5. States with HCV-Related Litigation (2017-2019)

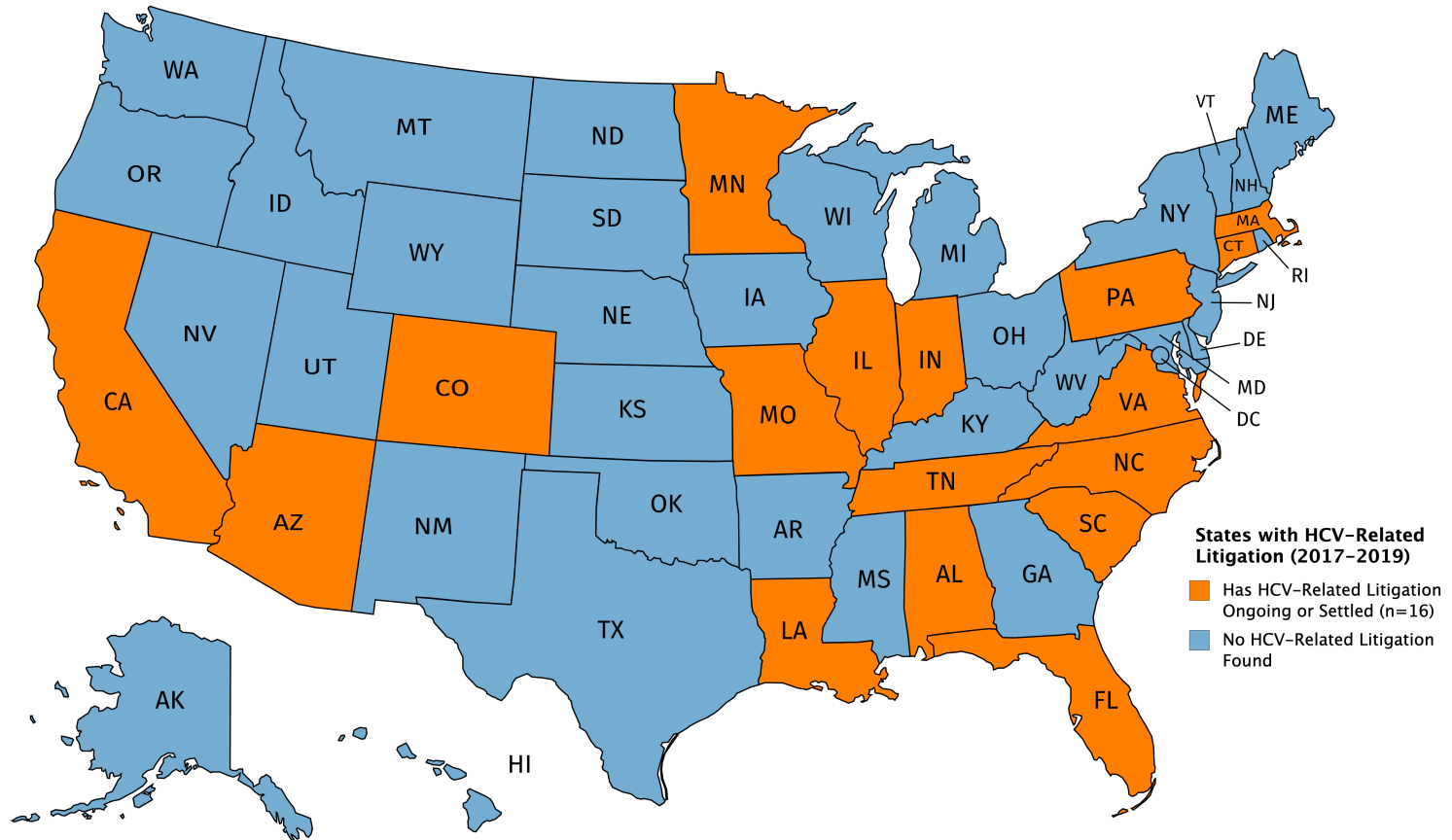


Table 1. HIV Screening/Testing Protocols

State	HIV							
	Compulsory	Request	Clinical Criteria	Intake	Post-Intake	No Refusal	Opt-In	Opt-Out
Alabama - AL								
Alaska - AK		X		X	X		X	
Arizona - AZ		X		X	X		X	
Arkansas - AR								
California - CA	X	X		X	X			X
Colorado - CO	X	X		X	X	X		
Connecticut - CT	X	X	X	X	X		X	
Delaware - DE	X	X	X	X	X		X	
Florida - FL	X - Exit	X - Entry		X			X	
Georgia - GA	X			X		X		
Hawaii - HI		X			X		X	
Idaho - ID	X	X		X	X	X		
Illinois - IL	X	X		X	X		X	
Indiana - IN	X	X	X	X	X	X		
Iowa - IA	X	X		X	X			X
Kansas - KS		X		X	X		X	
Kentucky - KY		X	X	X	X		N/A	N/A
Louisiana - LA								
Maine - ME		X	X	X	X		X	
Maryland - MD	X	X		X	X		X	
Massachusetts - MA		X	X	X	X		X	
Michigan - MI	X			X	X		X	
Minnesota - MN	X	X		X	X			X
Mississippi - MS	X			X		X	X	

Table 1. HIV Screening/Testing Protocols

State	HIV							
	Compulsory	Request	Clinical Criteria	Intake	Post-Intake	No Refusal	Opt-In	Opt-Out
Missouri - MO	X		X	X	X	X	X	X
Montana - MT		X		X	X		N/A	N/A
Nebraska - NE	X	X	X	X	X	X	X	
Nevada - NV	X	X	X	X	X	X	X	
New Hampshire - NH	X			X			X	
New Jersey - NJ								
New Mexico - NM	X	X		X			X	
New York - NY	X			X	X			X
North Carolina - NC								
North Dakota - ND	X			X	X	X		
Ohio - OH	X	X		X	X	X		X
Oklahoma - OK	X	X		X	X	X		X
Oregon - OR	X	X		X	X		X	
Pennsylvania - PA	X	X			X		X	
Rhode Island - RI	X				X	X		
South Carolina - SC	X		X	X	X	X		
South Dakota - SD								
Tennessee - TN	X	X	X	X	X			X
Texas - TX	X	X		X	X	X		
Utah - UT			X	X			X	
Vermont - VT	X	X		X	X			X
Virginia - VA	X	X		X	X			X
Washington - WA	X	X	X	X	X			X
West Virginia - WV								
Wisconsin - WI	X			X			X	
Wyoming - WY	X	X		X	X		X	
District of Columbia	X	X	X	X	X	X		X

Table 2. Hepatitis B Screening/Testing Protocols

State	Hepatitis B								
	Compulsory	Request	Clinical Criteria	Intake	Post-Intake	No Refusal	Opt-In	Opt-Out	
Alabama - AL									
Alaska - AK		X		X	X		X		
Arizona - AZ		X		X	X				
Arkansas - AR									
California - CA			X	X	X		X		
Colorado - CO	X	X		X	X	X			
Connecticut - CT									
Delaware - DE		X	X	X	X		X		
Florida - FL	X	X		X			X		
Georgia - GA			X				X		
Hawaii - HI		X			X		X		
Idaho - ID		X			X		X		
Illinois - IL			X		X		X		
Indiana - IN				None					
Iowa - IA		X			X		X		
Kansas - KS		X		X	X		X		
Kentucky - KY		X	X	X	X		N/A	N/A	
Louisiana - LA									
Maine - ME		X	X	X	X		X		
Maryland - MD			X	X	X		X		
Massachusetts - MA		X	X	X	X		X		
Michigan - MI		X		X	X		X		
Minnesota - MN		X		X	X		X		
Mississippi - MS		X	X	X	X		X		

Table 2. Hepatitis B Screening/Testing Protocols

State	Hepatitis B							
	Compulsory	Request	Clinical Criteria	Intake	Post-Intake	No Refusal	Opt-In	Opt-Out
Missouri - MO	X		X	X	X	X	X	X
Montana - MT		X		X	X		N/A	N/A
Nebraska - NE	X	X	X	X	X	X	X	
Nevada - NV	X	X	X	X	X		X	
New Hampshire - NH	None							
New Jersey - NJ								
New Mexico - NM			X	X	X		X	
New York - NY	X			X	X			X
North Carolina - NC								
North Dakota - ND			X	X	X			
Ohio - OH			X	X	X			X
Oklahoma - OK			X	X	X			X
Oregon - OR	X	X		X	X		X	
Pennsylvania - PA	X	X			X			X
Rhode Island - RI		X	X		X		X	
South Carolina - SC	None							
South Dakota - SD								
Tennessee - TN		X	X	X	X			X
Texas - TX		X	X	X	X		X	
Utah - UT			X	X			X	
Vermont - VT	X	X		X	X		X	
Virginia - VA		X	X		X		X	
Washington - WA	X	X	X	X	X			X
West Virginia - WV								
Wisconsin - WI	X			X				X
Wyoming - WY			X	X	X		X	
District of Columbia		X	X	X	X			X

Table 3. Hepatitis C Screening/Testing Protocols

State	Hepatitis C							
	Compulsory	Request	Clinical Criteria	Intake	Post-Intake	No Refusal	Opt-In	Opt-Out
Alabama - AL			X					
Alaska - AK		X		X	X		X	
Arizona - AZ	Coming	X		X	X			
Arkansas - AR			X					
California - CA	X	X		X	X			X
Colorado - CO	X	X		X	X	X		
Connecticut - CT								
Delaware - DE		X	X	X	X		X	
Florida - FL	X	X		X			X	X
Georgia - GA			X				X	
Hawaii - HI		X			X		X	
Idaho - ID	X	X		X	X	X		
Illinois - IL	X	X		X	X			X
Indiana - IN	X	X	X	X	X	X		
Iowa - IA	X	X		X	X			X
Kansas - KS	X			X	X		X	X
Kentucky - KY		X	X	X	X		N/A	N/A
Louisiana - LA			X					
Maine - ME		X	X	X	X		X	
Maryland - MD			X	X	X		X	
Massachusetts - MA		X	X	X	X			X
Michigan - MI	X			X	X		X	
Minnesota - MN		X		X	X		X	
Mississippi - MS		X	X	X	X		X	

Table 3. Hepatitis C Screening/Testing Protocols

State	Hepatitis C							
	Compulsory	Request	Clinical Criteria	Intake	Post-Intake	No Refusal	Opt-In	Opt-Out
Missouri - MO	X		X	X	X	X	X	X
Montana - MT		X		X	X		N/A	N/A
Nebraska - NE	X	X	X	X	X	X	X	
Nevada - NV	X	X	X	X	X		X	
New Hampshire - NH			X	X			X	X
New Jersey - NJ			X					
New Mexico - NM			X	X	X		X	
New York - NY	X			X	X			X
North Carolina - NC			X					
North Dakota - ND			X	X	X			
Ohio - OH	X		X	X	X	X		X
Oklahoma - OK			X	X	X			X
Oregon - OR	X	X		X	X		X	
Pennsylvania - PA	X	X			X			X
Rhode Island - RI	X	X	X	X				X
South Carolina - SC	X		X	X	X			X
South Dakota - SD				X				X
Tennessee - TN		X	X	X	X			X
Texas - TX		X	X	X	X		X	
Utah - UT			X	X			X	
Vermont - VT	X	X		X	X			X
Virginia - VA		X	X	X	X			X
Washington - WA	X	X	X	X	X			X
West Virginia - WV			X					
Wisconsin - WI	X		X	X	X			X
Wyoming - WY			X	X	X		X	
District of Columbia		X	X	X	X			X

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