
# Hepatitis C Treatment for the Poor and Imprisoned: A Call to Action

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# Hepatitis C Can be Eliminated in the U.S.

March 28, 2017, Report from the National Academies of Sciences, Engineering, and Medicine (cosponsored by NVHR): *A National Strategy for the Elimination of Hepatitis B and C:*

"This report, which the committee hopes will be a vehicle for…change, lays out a strategy through which morbidity and mortality from viral hepatitis could be reduced by 2030 to the point that neither hepatitis B nor C commands attention as a major public health threat in the United States."

**Conclusion: We can eliminate hepatitis C, but only if specific actions are taken.**

# 13 Recommendations from the Committee

**Two key recommendations:**

Recommendation 5-4
The criminal justice system should screen, vaccinate, and treat hepatitis B and C in correctional facilities according to national clinical practice guidelines.

Recommendation 6-1
The federal government, on behalf of HHS, should purchase the rights to a direct-acting antiviral for use in neglected market segments, such as Medicaid, the Indian Health Service, and prisons. This could be done through the licensing or assigning of a patent in a voluntary transaction with an innovator pharmaceutical company.

# Why These Two Recommendations?

In the United States…

*Who depends on Medicaid for their health care?*
Poor people

*Who gets arrested and charged with a crime?*
Mostly poor people (approximately 80 percent)

*Who gets sent to prisons and jails?*
Mostly poor people

- One study: in 2014 dollars, incarcerated people had a median annual income of $19,185 before their incarceration, which is 41% less than non-incarcerated people of similar ages

*What percentage of inmates is infected with hepatitis C?*
About 30 percent (likely underestimated because opt-out testing is not routine)

*Who is not receiving treatment for hepatitis C?*
Poor (and middle-income?) people, inmates

# Why Treat People in Prisons?

The public health answer…

If treatment is completed within 12 weeks of an inmate's stay, the disease will not spread upon that inmate's release

- At least 10 million people per year cycle in and out of prisons/jails
- More than 90 percent of convicted prisoners released within a few years

The legal answer…

- State correctional agencies' "deliberate indifference" to the serious medical needs of prisoners may constitute cruel and unusual punishment under the Eighth Amendment (Estelle v. Gamble)

- "Deliberate indifference" to circumstances "sure or very likely to cause" illness or suffering could violate the Eighth Amendment (Helling v. McKinney)
  - Bolsters the argument for early treatment of hepatitis C

# The Moral Answer

**Elmo Augustus Reid, aged 60**
Current residence: Buckingham Correctional Center, Virginia

**1988**: Diagnosed with hepatitis B (not long after incarceration)
**2013**: Diagnosed with hepatitis C, stage 4 cirrhosis of the liver
**2014**: Treated with interferon, no improvement

**June 2015**: Denied treatment because prison said he was not sick enough

- *Liver function test was 0.467; prison protocol requires a score of 0.5*

**August 2016**: Denied treatment because of parole hearing scheduled in 6 months
**September 7, 2016**: Appeal is rejected because he was "about to parole"
**September 16, 2016**: Second appeal rejected because "you must have at least 9 months remaining on your sentence"
**Third appeal**: VDOC chief physician says grievance is "founded"
**April 2017**: Still no treatment; VDOC protocol "under revision"

# Recommendation 5-4

The criminal justice system should screen, vaccinate, and treat hepatitis B and C in correctional facilities *according to national clinical practice guidelines*.

# What Are Those Guidelines?

AASLD/IDSA guidelines:

- ❑ Screen everyone who has ever been incarcerated
- ❑ Treat everyone who has chronic hepatitis C

Federal Bureau of Prisons (BOP) guidelines:

- ❑ Opt-out screening of all sentenced inmates; those with a history of high-risk behavior; or upon inmate request
- ❑ Treatment is based on disease severity: *high priority* (advanced fibrosis or cirrhosis); *intermediate priority* (F2); and *low priority* (F0 to F1)
- ❑ Inmates with ongoing high-risk behaviors may be excluded
- ❑ Apply only to federal prisons (only 13 percent of incarcerated people)

State prison guidelines: Vary by state

# What Is The Reality?

## Most state prisoners are *not* tested and *not* treated

*Health Affairs* study (October 2016):

32 of 41 states reporting data (65 percent) do not perform routine opt-out testing of inmates
- Main criteria for testing: abnormal labs, HIV, or reported substance use

Only 17 of 41 states reporting data (35 percent) perform routine opt-out testing

10 percent of state prisoners were *known* to have hepatitis C (949 of 106,266 prisoners in 41 states)

Less than one percent (0.89 percent) of those known to have hepatitis C were receiving some type of treatment

States reporting data spent a median $76,085 on Solvadi and a median $63,509 on Harvoni

# Why Won't the Prisons Screen the Prisoners?

- No incentive to test when you cannot afford to treat
- Understaffed
- Untrained and poorly paid staff
- Privatized health care in prisons (cost savings)
- Culture of violence and neglect

# Why Can't State Prisons Buy the Drugs?

## Options for obtaining drug discounts are scarce…

BOP receives at least a 24 percent discount on HCV drugs (not an option for state prisons)

State prisons not eligible for discounts under the Federal 340B Drug Pricing Program (20 to 50 percent off of average wholesale price)

Other current avenues for obtaining lower prices:

- Direct negotiations with pharmaceutical companies – 66 percent (29/44) of states were attempting this method
- Partnering with FQHCs, which are eligible for 340B, to provide health care to prisoners at reduced costs – 36 percent of states were pursuing discounts via this method
- Pooled procurement with other state correctional agencies to buy in bulk for a lower price – 30 percent of states were attempting this method (*Health Affairs*)

# What About When People Are Released?

Investigation by The Marshall Project and Kaiser Health News, Dec. 6, 2016:

19 states have no formal procedure to enroll prisoners in Medicaid before they reenter the community

Of the 31 states that opted into the Medicaid expansion, most have not created large-scale enrollment programs (or operate smaller programs that cover only certain categories of prisoners)

*Example*: Minnesota is an expansion state, but will provide assistance only to prisoners eligible for special release planning programs
*Result*: fewer than 1,000 of the 6,800 inmates released last year applied for Medicaid

*Example*: Indiana's Medicaid agency considers ex-prisoners in work release programs to be incarcerated, thus does not cover them
*And yet*: Indiana's DOC considers these ex-prisoners free, thus making them ineligible for prison health care

# Recommendation 6-1

The federal government, on behalf of HHS, should purchase the rights to a direct-acting antiviral for use in neglected market segments, such as Medicaid, the Indian Health Service, and prisons. This could be done through the *licensing or assigning of a patent* in a *voluntary transaction* with an innovator pharmaceutical company.

# Why Implement Recommendation 6-1?

More patients treated (estimated 460,000 more people; *see report*)

More infections prevented

Lower costs for federal and state governments

- Status quo: state/fed governments split about $10 bil over next 12 years to treat about 240,000 Medicaid beneficiaries and prisoners
- Rec 6-1: fed government spends $2 bil upfront, $70 million for generic drugs; state governments spend about $70 million for generic drugs

Pharmaceutical companies profit by reaching neglected markets (where they currently receive no profit)

Voluntary nature of transaction (not invoking “eminent domain” under 28 USC 1498)

# Read the Report

"There are times when the government is obliged to act in correction of market failures."

Available at: www.nas.edu/HepatitisElimination

Also available at: www.nvhr.org

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# Thank you!


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