

Hepatitis C and Incarceration: Policy Proposals and Challenges

Elizabeth Paukstis, M.A., J.D.

Public Policy Director

National Viral Hepatitis Roundtable

April 2018

The National Viral Hepatitis Roundtable is a national coalition working together to eliminate hepatitis B and C in the United States. NVHR's vision is a healthier world without hepatitis B and C.

www.nvhr.org

HCV and Incarceration

A disproportionate number of incarcerated people have HCV.

- Approximately 1 in 3 individuals in U.S. jails and prisons has HCV.
- In state prisons, which house about 90 percent of all incarcerated people, an estimated 17 percent of inmates are infected (compared to about 1 percent of the non-incarcerated population).

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2004-2014. Updated Sept. 2015; Beckman, et al. New Hepatitis C Drugs Are Very Costly And Unavailable To Many State Prisoners. HEALTH AFF 2016;35:893-1901.

Lack of treatment

Very few incarcerated people with HCV receive treatment.

Health Affairs study (October 2016):

- 32 states (65 percent) do not perform routine opt-out testing of inmates
 - Main criteria for testing: abnormal labs, HIV, or reported substance use
- Only 17 states (35 percent) perform routine opt-out testing
- In 41 states reporting data, 106,266 of their inmates were known to have HCV on or about January 1, 2015
- **Less than one percent (0.89 percent) of those known to have HCV were receiving some type of treatment**
- States reporting financial data spent a median \$76,085 on Solvadi and a median \$63,509 on Harvoni

Source: Beckman, et al. New Hepatitis C Drugs Are Very Costly And Unavailable To Many State Prisoners. *HEALTH AFF* 2016;35:893-1901.

Some states with ongoing HCV prison litigation

Alabama

Braggs v. Dunn

California

*Bayse et al v. California Dept of
Corrections and Rehabilitation et al*

Colorado

Aragon v. Raemisch

Florida

Hoffer v. Jones

Massachusetts

Paszko v. O'Brien

Minnesota

Ligons v. Minnesota Dept of Corrections

Missouri

Postawko v. Missouri Dept of Corrections

Pennsylvania

Chimenti v. Pennsylvania Dept of Corrections

Tennessee

Graham v. Parker

Virginia

Reid v. Clarke

Riggleman v. Clarke

Why won't the prisons perform HCV testing?

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

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)
- The Medicaid “best price” rule: state prisons cannot negotiate below the “best price” offered to state Medicaid programs
- State prisons not eligible for discounts under the Federal 340B Drug Pricing Program (20 to 50 percent off of average wholesale price)

Other avenues are difficult

- Direct negotiations with pharmaceutical companies
 - Must convince pharma companies that state prisons are “an untapped market”
- Partnering with FQHCs, which are eligible for 340B, to provide health care to prisoners at reduced costs
- Pooled procurement with other state correctional agencies to buy in bulk for a lower price

MISSISSIPPI: A CASE STUDY

Mississippi by the numbers

- Estimated number of people living with HCV antibodies (2010): 35,200
- Number of deaths related to HCV (2014): 171
- Estimated number of HCV-infected people on Medicaid or in prison (2016): 3,000
- Estimated number of HCV-infected inmates (2013): 406
- Number of syringe service programs (SSPs): 0
- *Note:* Mississippi is one of several states that does not consistently report HCV data to the CDC.

Sources: HepVu (www.hepvu.org). Emory University, Rollins School of Public Health, in partnership with Gilead Sciences, Inc.; Jimmie E. Gates, The Clarion-Ledger, "Mississippi Has 300 Inmates with Hepatitis C," May 26, 2016; The Council of State Governments, 2013 Corrections Comparative Data Report, <https://www.scribd.com/document/274299046/2013-Corrections-Comparative-Data-Report>; amfAR Opioid & Health Indicators Database, Mississippi Opioid Epidemic, www.opioid.amfAR.org.

Syringe exchange

“In the United States, where most new HCV infections are associated with injection drug use, syringe exchange programs have particular promise to interrupt transmission.” – National Academies of Science, Engineering, and Medicine (2017)

But...

- In Mississippi, anyone who uses or possesses a syringe is guilty of a misdemeanor and may be incarcerated for up to 6 months, or fined up to \$500, or both.

Sources: The National Academies of Sciences, Engineering, and Medicine, Committee on a National Strategy for the Elimination of Hepatitis B and C, A National Strategy for the Elimination of Hepatitis B and C: Phase II Report (March 2017), <http://www.nationalacademies.org/hmd/Activities/PublicHealth/NationalStrategyfortheEliminationofHepatitisBandC.aspx>; Miss. Code Ann. § 41-29-139 (2017).

Criminalization of HCV

Once incarcerated, HCV-infected people run the risk of being charged with “endangerment by bodily substance.”

- An HCV-infected person who “attempts to cause or knowingly causes a corrections employee, a visitor to a correctional facility or another prisoner or offender to come into contact with blood, seminal fluid, urine, feces or saliva” is guilty of a **felony**.
- Mandatory minimum: 3 years in prison
- Can be imprisoned for up to 10 years, fined \$10,000, or both.
- *Note:* Contact with seminal fluid, urine, feces, or saliva does not transmit HCV.

Source: Miss. Code Ann. § 97-27-14 (2017).

Imprisoned and untreated

Mississippi has...

- At least 400 incarcerated people with HCV
- No opt-out testing (so number of infected is likely higher)
- Fewer than 1 percent of known HCV-infected inmates (0.14 – 0.45%) receiving curative treatment

Sources: The National Academies of Sciences, Engineering, and Medicine, Committee on a National Strategy for the Elimination of Hepatitis B and C, A National Strategy for the Elimination of Hepatitis B and C: Phase II Report (March 2017),

<http://www.nationalacademies.org/hmd/Activities/PublicHealth/NationalStrategyfortheEliminationofHepatitisBandC.aspx>; Miss. Code Ann. § 41-29-139 (2017).

Abysmal prison conditions

The East Mississippi Correctional Facility (EMCF):

- Approximately 1200 inmates, 80% diagnosed with mental illness
- Privately operated by Management & Training Corporation
- Security staff earn less than \$12 per hour
- Defendant in an ACLU lawsuit since 2013

“It’s more than inattention, it’s just outrageous neglect and callousness. They can’t get light bulbs. They cannot get cleaning material. The damage from the fires is not removed. The trash is not picked up. They get almost no services. They can’t even get the attention of the officers.” – *testimony of expert witness Terry Kupers*

Sources: “Mississippi Inmates’ Lawsuit Describes Violence and Neglect in a Private Prison,” *Mother Jones*, April 2018; “Inside a Private Prison: Blood, Suicide and Poorly Paid Guards,” *New York Times*, April 2018.

What can we do?

- Advocate changes to the Medicaid “best price” rule
 - State prisons should be added as exemptions
- Oppose legislation that exploits the opioid crisis to reignite the War on Drugs and imprison more people
- Support the Reverse Mass Incarceration Act and the Sentencing Reform and Corrections Act
- Urge pharma companies to negotiate discounts with state prisons
- VOTE
 - We got the Prison Rape Elimination Act under GWB
 - Could we get the Prison Hepatitis Elimination Act under the right leadership?

NVHR

National Viral Hepatitis Roundtable

