Hepatitis C and Incarceration: Policy Proposals and Challenges

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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).

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

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.

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.

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.

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

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*

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?