Hepatitis C Emerges as Major Health Threat in U.S. Prisons

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It is a sad coincidence that, at the same time effective treatments have turned HIV infection into a chronic disease rather than an automatic death sentence, another infectious disease is rampant in U.S. prisons and jails. Hepatitis C (also known as HCV) infection is even more disproportionately concentrated in prison populations than is infection with HIV and is ten times more common in prison than in the general population. Now that relatively effective but expensive treatments are available for HCV and the Centers for Disease Control plan to issue guidelines for treatment of HCV in correctional facilities at the end of 2002, the question is whether Departments of Corrections will fulfill their duty to provide these treatments to eligible patients.

Infection with HCV is the most common blood-borne chronic infection in the United States, affecting about four million people. About 60 percent of new cases result from intravenous drug use, about 20 percent from sexual transmission, and the remainder from a variety of causes. Eighty percent of intravenous drug users are HCV-positive.

Approximately 80 percent of persons with acute HCV infection will develop chronic infection and about 20 percent of those will develop cirrhosis of the liver and experience an increased risk of development of cancer of the liver. Present information suggests that 4 percent of those with HCV will develop life-threatening complications or die of the disease. Death rates are much higher among those who are also infected with HIV. In fact, end-stage liver disease is now emerging as a leading cause of death among persons with HIV.

Until recently, treatment of HCV was a difficult risk/benefit calculation. Only a minority of persons with HCV responded to the original standard treatment with interferon, which often produced substantial side effects. However, the newest treatment with pegylated interferon 2B and ribavarin, combined with optimum treatment of side-effects, has resulted in reported rates of response of 72 percent. Included are good response rates for types of HCV infection that were previously considered to be unlikely to benefit from treatment.[1]

The typical cost of a course of treatment for patients for the older form of combination interferon-ribavarin treatment has been roughly $12,000-$25,000. For many corrections systems, if all prisoners with HCV were treated, the cost would total more than the Department's current budget for all health care.[2] As a result, most prison systems across the country either do not routinely test for HCV infection, or use restrictive criteria to bar from treatment prisoners who would be treated in the community.

The Centers for Disease Control are expected to release guidelines for HCV treatment in correctional facilities this year. These guidelines will likely advise more treatment for more patients than most Departments of Corrections currently provide and, consequently, should rapidly change the legal landscape. Up to now, most of the cases challenging a failure to provide treatment for HCV have been lost because the courts held that it was not a violation of constitutional rights to deny treatment. These cases are unlikely to remain good law because the facts have changed: treatment is much more likely to be successful now and the side effects are more controllable.

There is already one excellent, but unpublished, decision[3] granting a preliminary injunction to a Kentucky prisoner who had advanced liver disease and a 50 percent chance of dying before the end of his five-year sentence if denied treatment. At the time, Kentucky had 22 criteria that a prisoner had to meet to have HCV treatment provided, but not a single prisoner had been treated under those criteria. Indeed, the Magistrate Judge found that treatment was denied, not because of a medical judgment, but because of an unwritten policy that no prisoner would be treated for HCV. The judge also found that the criteria represented such a departure from accepted medical judgment as to suggest that no such judgment was exercised.

Because the ACLU's National Prison Project is concerned that prison systems will continue to deny care for HCV after the CDC guidelines are released, we intend to monitor the policies and practices of departments around the country. If necessary, the NPP will file litigation to challenge continued failures to deny treatment when those failures openly or covertly result from financial concerns rather than medical judgment.

1. Anne S. De Groot, MD, HCV: The Correctional Conundrum, HEPP NEWS April 2001, 1. HEPP NEWS, a publication of the Brown Medical School Office of Continuing Medical Education and the Brown University AIDS Program, is an excellent source of information about HCV in prison.

2. In fact, even under appropriate treatment guidelines, not all patients with HCV infection would be eligible for treatment. Until Departments of Corrections survey infected patients applying correct criteria, it is impossible to estimate the actual cost of treatment.

3. *Michael K. Pauley v. Commonwealth of Kentucky*, No. 3:99-CV-00549-H (W.D. Ky.).