



Community Savings, or Community Threat? California Policy for Ill and Elderly Inmates Teaching Note

Case Summary

Caring for elderly prisoners has become an ever more expensive proposition for society. In the early 21st century, the population of over-55 prisoners boomed, due in part to three-strikes laws that put more people than ever behind bars. As prisoners aged and sickened, the cost of treatment fell squarely on corrections systems—and on taxpayers. In many states, efforts began to devise ways to reduce these escalating costs.

This case looks at the state of California. In 2006, the healthcare system for inmates was in such poor shape that a federal judge put the whole medical care system (excluding dental and mental health) under the care of a receiver's office. The first receiver made enormous strides in professionalizing the cadre of doctors working in state prisons. In 2008, Clark Kelso became the second receiver for the California Correctional Health Care Services (CCHCS). One of his goals was to cut costs. In 2011, a new law he supported came into effect. Under Medical Parole (MP), a complement to an existing Compassionate Release (CR) program, inmates deemed non-functional—able to live only with significant assistance and by implication unable to re-offend—could be released into community-based care facilities. The inmates' expense to the state would be dramatically reduced.

In late 2011, one inmate's case came to the attention of Dr. Ricki Barnett, appointed by Kelso to identify prisoners who might qualify for MP. Carl Wade, 65, suffered from both heart and lung disease, and required oxygen fulltime. He had been at the California Medical Facility for male prisoners with health problems since 2003, and incarcerated since 1989. He cost the system \$200,000 a year, even before hospitalizations. But he was mentally alert, and a court had turned him down for CR. Barnett had to decide whether or not to put Wade on her list for medical parole. Barnett did not know his crime, but assumed it was heinous. At stake was the credibility of the program, as well as her own reputation for qualified medical assessments.

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Teaching Objectives

The care of ailing prisoners had been a thorny issue for federal and state corrections systems for many years. Prisoners' bodies typically aged at a rate that exceeded their chronological age by at least 15 years, meaning costly treatments for individuals who were often severely incapacitated. The crisis began to have a critical impact on state budgets in the 21st century as the over-55 inmate population ballooned. Nationally, there were some 125,000 elderly inmates in 2010; in California, the 2011 figure for inmates age 55+ stood at 14,098, a 500 percent increase since 1990 (compared to an overall prison population growth of 85 percent).¹

This case should be used to help students understand the inevitable trade-offs between competing values and priorities in the US healthcare and political systems. On the one hand, US society seeks to punish those who have committed a crime. On the other hand, the constitution guarantees healthcare to all prisoners—the only group to enjoy such a guarantee. If society chooses to make sure a promise, then taxpayers must expect to pay for it. Prison authorities and doctors who work in the penal system often find themselves caught between the two imperatives. To whom does a public health official in the correctional setting have first responsibility—to taxpayers, or to prisoners?

The case gives students an opportunity to discuss a number of provocative public health topics. Ask them to devise an ideal correctional healthcare policy—first, if money is no object; then a second version assuming that cost is central. What specifically constitutes, as Dr. Barnett calls it, “a reasonable, more conservative approach to the crises that inevitably occur”? What, if any, specific differences might there be between healthcare cost containment measures for the civilian population and those for the incarcerated?

In reforming the California prison medical care system, Receiver Robert Sillen chose to focus first on recruiting competent doctors into the prisons; cost containment was not a priority. What options does a reformer have coming into a broken system like the CA prison healthcare world? What is the relationship between the public health community and policymakers? Students should consider how public health officials fit into the larger political landscape. Use the development of the medical parole bill to discuss the legislative process and public health.

None of the doctors at CMF knows his/her patients' criminal history; even in the receiver's office, the medical personnel make no effort to learn about criminal background. Is it correct that prison doctors not know the criminal records of those they treat? Why or why not? Ask students to

¹ Absolute numbers from “Fall 2011 Adult Population Projections, 2012-2017” *California Department of Corrections and Rehabilitation*, pp. 2, 35-36; percentages from “Old Behind Bars: The Aging Prison Population in the United States,” *Human Rights Watch*, p. 22. See: http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

put themselves in Dr. Barnett's shoes, make a decision about Carl Wade—and defend it to a parole board.

Finally, think about the differences between compassionate release and medical parole. What made CP unsuccessful? Will MP address those deficiencies? Do students think MP will result in significant savings to the state?

Class Plan

Use this case in a course about healthcare policy for captive populations; about public health ethics; or about strategic management.

Study question. Help students prepare for discussion by assigning the following question in advance:

- a) Should Dr. Barnett put Carl Wade on the list of inmates eligible for medical parole?

Instructors may find it useful to engage students ahead of class by asking them to post brief responses (no more than 250 words) to the question in an online forum. Writing short comments challenges students to distill their thoughts and express them succinctly. The instructor can use the students' work both to craft talking points ahead of class and to identify particular students to call upon during the discussion.

In-class questions. The homework assignment is a useful starting point for preliminary discussion, after which the instructor could pose any of the following questions in order to promote an 80–90 minute discussion. The choice of questions will be determined by what the instructor would like the students to learn from the class discussion. In general, choosing to discuss three or four questions in some depth is preferable to trying to cover them all.

- a) Doctors in the CA prison medical care system believe they should never know an inmate's criminal history. Do you agree or disagree? Why?
- b) Public health officials work in a political environment. What would an ideal corrections medical care policy look like? What would a realistic one look like?
- c) The medical parole legislation came from the receiver's office. Was this a wise strategy? Is medical parole likely to succeed in saving money where compassionate release did not? What are its advantages/disadvantages?
- d) Legislative Director Joyce Hayhoe and Receiver Clark Kelso made some compromises on the medical parole bill. Were they correct to do so?

- e) What responsibility does a public health officer, whether a medical doctor or not, have to an inmate patient? Does the public health official ultimately answer to the taxpayer, or to the inmate? Does it matter?
- f) Receivers Sillen and Kelso, neither of them public health professionals, both reported to a judge. What do you think of this system for reforming a public health service?
- g) In the trade-off between cost and public safety, why does public safety always win? Take the example of the brain-dead prisoner who masturbates. Why did the skilled care facility return him to a guarded hospital bed?
- h) What does the case tell us about society's attitude toward felons? Should public health officials make it their job to change that attitude?
- i) Would you take a job in a correctional facility? Why/why not?
- j) The *Los Angeles Times* article in March 2011 breaks the logjam in getting CDCR regulations for medical parole. In general, is the media a partner in implementing public health policy, or an adversary?

Suggested Readings

Website for the California Correctional Health Care Services.

SYNOPSIS: The CCHCS website provides excellent background on the California health care receiver's office, its history, organizational chart and mission.

<http://www.cphcs.ca.gov>

Human Rights Watch, *Old Behind Bars; The Aging Prison Population in the United States*. ISBN: 1-56432-859-7. January 2012.

SYNOPSIS: This seminal report, published shortly after the end of the case study, gives a comprehensive picture of aging inmate populations across the United States. Chapter 7 specifically chronicles the history of efforts that corrections facilities have made to find community-based care for inmates who are terminally ill or have lost cognitive function.

http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

Brie Williams et al, "Balancing Punishment and Compassion for Seriously Ill Prisoners," *Annals of Internal Medicine*, May 31, 2011.

SYNOPSIS: This excellent article by medical doctors looks squarely at the trade-offs between punishing inmates for the crimes they have committed, and deciding whether decades later and ill, those individuals are any longer the lawbreakers they were upon committal. The article looks specifically at compassionate release and the flaws in the program, and suggests some improvements.

<http://www.ncbi.nlm.nih.gov/pubmed/21628351>

Pam Belluck, "Life, with Dementia," *New York Times*, February 25, 2012.

SYNOPSIS: This in-depth *New York Times* article looks specifically at the problem of dementia (including Alzheimer's) among prisoners, and describes an innovative California program that trains other inmates to take care of their incapacitated fellows. Is this another promising cost-saving measure for states, or too risky?

http://www.nytimes.com/2012/02/26/health/dealing-with-dementia-among-aging-criminals.html?_r=1