

SPECIAL COMMITTEE ON AIDS

A.4204/S.1840
Mendez
A.3692

M. of A. Gottfried/Senator

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THE BILLS ARE APPROVED

The Special Committee on AIDS of the Association of the Bar of the City of New York submits this memorandum in support of A.4204 (Gottfried) / S.1840 (Mendez) and A.3692 (Gottfried). The first of these bills, A.4204/S.1840, would direct the Department of Health (“DOH”) to perform annual reviews of the Department of Correctional Services’ (“DOCS”) policies and practices regarding human immunodeficiency virus (“HIV”) and hepatitis C virus (“HCV”) care and prevention. Relying on current, generally accepted medical knowledge, these annual DOH reviews would seek to determine whether the quality and adequacy of care and treatment provided at state correctional facilities are consistent with standards of medical practice. As part of the annual review process, DOH would interview inmate-patients and DOCS health services providers as well as seek input from the public, including inmate-patients, their families and patient advocates. Upon completion of each review, the bill would require DOH to prepare a written report either approving DOCS policies and practices or directing DOCS to adopt specific new policies and procedures that conform to current, generally accepted medical standards.

The second bill, A.3692, would amend the definition of “hospital” in Article 28 of the Public Health Law to include correctional health facilities. As such, the legislation would grant to DOH oversight authority over such facilities. The DOH oversight contemplated by both of

these bills would have a significant and positive effect on the health of a large number of inmates, including the approximately 6,000 who are infected with HIV and the 10,000 who are infected with HCV.

At this time, DOCS health care systems are not subject to close public scrutiny. Although DOH has performed limited reviews of DOCS health care facilities in the past, DOH currently asserts that it is limited in its capacity to provide oversight and to regulate DOCS facilities because DOCS facilities are not licensed under Article 28. As a result, no state agency or independent authority with focus and expertise in health care currently oversees inmate health at DOCS facilities.

Perhaps because of this lack of oversight, observers and community members have documented for years that DOCS facilities often provide substandard care for inmates with HIV and HCV. Most recently, the Assembly Health and Corrections Committees convened a joint hearing on November 14, 2003 to address health care in New York State prisons. Testimony and evidence presented at the hearing demonstrated several deficiencies in the current prison health care system, including insufficient staffing, inadequate training for those staff members who care for inmates with HIV and HCV, excessive waiting periods to see physicians, inadequate transitional services for inmates returning to the community, and a general low level of care for people with HIV or HCV. Additionally, witnesses reported that inmates often lack access to Spanish-speaking medical providers and physicians who specialize in HIV and HCV care. Perhaps most notably, the hearing established that DOCS lacks sufficient quality assurance standards and systems to ensure quality care.

To be sure, some inmates with HIV and HCV do receive quality care during incarceration. However, while some facilities provide adequate treatment, the evidence clearly

suggests that many others do not. Because the quality of care varies significantly from facility to facility, the entire system would surely benefit from consistent and systemic review and support. These bills represent significant progress toward higher quality care throughout the correctional system.

Moreover, DOH oversight will improve public health far beyond the prison walls. Ensuring adequate health care in correctional settings is critical both to inmates and to the communities to which they may return. Approximately 29,000 inmates return to the community each year, and it is crucial to the public health that those individuals exit the correctional system in good health and with plans in place that will allow them to continue to receive proper care.

Finally, by working toward uniform quality health care for people with HIV and HCV, the bill could help to remedy possible constitutional infirmities in the state correctional system. The state's continuing failure to provide adequate care may violate the guarantees of the Eighth Amendment to the United States Constitution. As the United States Supreme Court noted in Farmer v. Brennan, 511 U.S. 825, 837 (1994), a state prison official violates the Eighth Amendment when he or she acts with "deliberate indifference to serious medical needs" by "know[ing] of and disregard[ing] an excessive risk to inmate health or safety." This bill proposes prophylactic measures to ensure quality care through systematic oversight, which will help to ensure that treatment of inmates with HIV and HCV does not violate constitutional mandates.

In conclusion, A.4204/S.1840 will clarify DOH's authority to review and oversee DOCS policies regarding the care and treatment of inmates with HIV and HCV. At the same time, A.3692 will clarify DOH's authority to oversee DOCS health care facilities, thus subjecting

DOCS facilities to the same regulation and oversight to which every other licensed health care facility in this State is subject. This independent and expert oversight promises to significantly improve the care of all inmates, including those with HIV and HCV.