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# Large Jail Network Bulletin

Summer 1993

# LARGE JAIL NETWORK

# BULLETIN

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# Introduction

This issue of the *Large Jail Network Bulletin* presents several articles that I think readers will find interesting. From California's Contra Costa and Orange Counties, respectively, we have discussions of health care screening and privatization of jail health services. Perspectives on easing the transition to direct supervision are provided by a University of South Florida contributor. A Fairfax County, Virginia writer outlines that area's recent multi-agency effort to improve minorities' perceptions of the criminal justice system.

A summary of the complex PONI process is provided in an article from Duval County, Florida, and writers from Allegheny County, Pennsylvania describe their mental health services, which emphasize a continuum of care after discharge.

I look forward to meeting with you at the upcoming Large Jail Network meeting in Denver, where we will be discussing issues in privatization, contracting for bedspace, and women offenders' medical and programming needs. Thank you for helping to make the Network an effective information exchange.

*Mike O'Toole*
*Chief, NIC Jails Division*
*Longmont, Colorado*

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# Public or Private Medical Services: Why Not the Best of Both Worlds?

*by Ernest R. Williams, M.D., M.P.H., Medical Director, HCA/Correctional Medical Services, Orange County Jail, Santa Ana, California*

It is now recognized that inmates have a Constitutional right to health care based on the Eighth Amendment prohibition against cruel and unusual punishment. Federal courts began to recognize this right in the early 1970s in response to the increasing number of prisoners' petitions for relief from conditions of their confinement. In *Ramsey v. Caccone*, the court concluded that, having custody of the prisoner's body and control of the prisoner's access to medical treatment, prison authorities have a duty to provide medical attention.[1]

"Cruel and unusual" cannot be defined with specificity, but, generally speaking, punishment that amounts to torture, or that is grossly imposed, or that is inherently unfair, or that is unnecessarily degrading, or that is shocking or disgusting to people of reasonable sensitivity is cruel and unusual punishment.[2]

An example is cited in the case of *Neuman v. Alabama*, where there was evidence of serious shortages of staff, equipment, and supplies. Unsupervised inmate assistants were allowed to administer treatments, dispense medication, and perform suturing and minor surgery. These assistants allowed acute care patients to be left unattended for extended periods of time. A specific example of such neglect was a quadriplegic who endured a maggot-infested wound resulting from unchanged dressings. This was enough to shock the average person's sensitivity and therefore was considered cruel and unusual punishment.[3]

Actionable circumstances result when the level of medical care available to a confined and dependent population is inadequate to meet predictable health care needs because of obvious and sustained deficiencies in professional staff, facilities, and equipment.

Three basic health care rights have emerged from case law:

- the right to access;
- the right to care that is ordered; and
- the right to a professional medical judgment.

These rights must be addressed by correctional health care providers. However, the question of whether it is better to provide these services through public, in-house medical services or through a contract with a private provider has not been definitively answered.

## Personal Observations

When I began to work in corrections in 1978, I worked with a staff that was dedicated to providing the best possible health care to incarcerated persons. My associates planned to finish their careers as health care professionals; it was to be their lifetime work. They enjoyed working in a system that allowed them to provide quality medical services. Although they were conscious of costs, they were not burdened by the need to do more with less. They were instrumental in improving the medical status of individuals who either had no interest in their own health condition or became aware of unmet medical needs after being incarcerated. They interacted with correctional personnel and trained them to recognize urgent and emergency medical and mental health problems. Their services resulted in more rapid medical intervention, which decreased residents' morbidity and mortality and also benefitted the institution and community at large.

It is important to remember that as many residents are discharged from jails as are housed in them. Thus, medical problems that exist in jails simply mirror those that exist in the

community. Incarceration provides health care professionals with the opportunity to make quality health assessments and complete treatment plans, when inmates can be held long enough to address some of their unmet needs.

## Aspects of Privately-Provided Jail Health Care

Privatization is not a new concept. In 1973 Peter Drucker defined privatization as the use of private enterprise rather than government to satisfy the country's social and economic needs. Privatization, or contracted services, would produce an infusion of choice and competition, resulting in cost savings and greater efficiency.[4]

The premise of the private system is that the user can make a choice and the marketplace will determine its success or failure. Although, as I have indicated, merely being incarcerated affords a person the right to health care, an incarcerated consumer no longer has the right to choose a particular system of health care. The factor that leads to competition in the marketplace—choice—is not available to the consumers but to the purchasers of these services: the wardens, sheriffs, and superintendents.

As these officials are not the consumers of services, they often find a lesser package more appealing because it costs less. Private health care providers attempt to bundle health care into neat packages, each having its own price tag. A lesser package may meet the needs of the administration but not the needs of the consumer. Price tag alone is not a guarantee of quality.

In principle, private contractors emphasize prevention, health education, behavior modification, and quality improvement. I am supportive of all these principles, as they prevent the more costly health problems that come with neglect.

However, jails are filled with people who are there only a short time. The health care needs of this population are episodic. Providers of services therefore have little time for prevention and behavior modification. Because there is always an urgent or emergency situation, the system is more akin to an urgent care facility than a long-term, sustained health care system.

Residents of jails are likely to require the use of hospital emergency rooms and skilled health care professionals. As a result, the cost to provide medical services is higher than in the community. It is predictable that, sooner or later, the cost savings experienced in an initial contract year will decrease substantially, as reviews show shortfalls in services or as real needs become more apparent. The bottom line will then approach that of well-run public providers.

In addition, there is often an administrative layer between the provider and the payer. These administrators are responsible for seeing that the system works and that contracted services are received. They are often driven by the profit motive to cut costs where possible. Although they are usually not physicians, they make decisions customarily made by those with medical training. They use computers, computer analysts, accountants, lawyers, and corrections personnel to make health care decisions. They can be quite forceful and can coerce knowledgeable physicians to acquiesce to their wishes for fear of losing their jobs.

## Potential Problems with Publicly Provided Care

The public system of jail health care can also have problems, however. The incarcerated population often needs immediate hospital care. When these services are provided on-site, they are sometimes provided in a poorly equipped medical area that does not meet residents' emergency needs.

**Private sector contract administrators rely on computers, analysts, accountants, lawyers, and corrections personnel when making health care decisions that are customarily made by those with medical training.**

In addition, some facilities' utilization of new, less experienced correctional health care professionals can result in barriers to access for the troublesome patient and a tendency to allow subjective complaints to develop into acute health care problems.

Although the use of mid-level practitioners such as nurse practitioners (NPs) and physicians' assistants (PAs) is a cost-effective way to provide services, this approach requires close supervision by a physician, which is not always possible.

If you have a committed staff that has provided good medical services, but cost reductions are necessary, there may be ways to save money other than contracting for services.

This means that some people are seen only by mid-level practitioners who may interact with the physician supervisor only when complications have developed.

In addition, there is a tendency for mid-level practitioners to become "mini-docs" and assign some of their tasks to registered nurses (RNs) and licensed vocational nurses (LVNs). When this happens, the treatment plan starts in the wrong direction, and residents do not receive the care they need.

## The Importance of Efficiency

These few paragraphs do not allow me to address all the concerns that should be taken into consideration when making a decision about whether to privatize health care in correctional settings. The needs in jails are different from those in prisons, and some for-profit systems can provide quality services because they are mindful of these differences.

I would advise, however, that before making a decision in favor of privatized health care, you take a good look at your present system. If you have a committed staff that has provided good medical services, but cost reductions are necessary, there may be ways to save money other than contracting for services.

For instance, if you are spending an excessive amount on hospital and emergency room costs, it may be because your system does not do adequate intake screening, which means that sicker people are admitted into the jail. You may need to have medical rather than correctional personnel perform the intake screening.

It is also possible to meet with hospital administrators and negotiate a rate that fits your budget. You can do some of these things on your own, rather than having a private contractor do them after you have signed on the bottom line.

The present system of health care in jails is costly not because of the quality of the worker or the leadership but because of the bureaucracy. Existing providers need to look at ways to become more efficient. Private providers are aware of the importance of addressing the areas of budget, automation, linkages with public health agencies, modernization of equipment, health education, and reduction in staff size. These issues are seldom discussed within public organizations.

Budgets could be allocated directly to health care administrators. This would place responsibility and control directly in the hands of individual departments, making them responsible for gains and losses and producing a more efficient operation. Under the current budgeting system, individuals in control of budgets may reject an innovative change because they are not involved in the program.

In this era of automation, it is also inefficient to try to provide jail health care without a computer system. The need for linkages between public health agencies and correctional health providers is inescapable. Jail populations are a reflection of the community; a jail health issue is a public health issue.

## Considering Privatization

To help you make the decision of whether to contract for health services, I recommend that you confer with a consultant who specializes in institutional health care. If you decide to privatize, do not hesitate. Once contracted services are underway, however, make sure your review process looks at what is actually being provided as opposed to what is *said* to be provided.

When considering whether to provide correctional health care services by contracting with a private provider:

- Review your present system. Determine if there are ways that it can be changed to provide the mandated level of care by updating, re-educating, or making other adjustments.
- Obtain the services of an experienced consultant to review your present system and make recommendations for improving it or resolving problems.
- Consider all alternatives.
- Make an informed decision. The final cost should not be the only determinant in your decision. Instead, base the decision on a number of factors, including final cost, the level of services actually provided to residents, and a concern for potential litigation.

If you decide to use a private contractor to provide health care services, negotiate the contract on a two-year renewal basis. This will allow a regular opportunity for review and for change, if it is needed.

Privatization is an alternative way to provide services, but cost should not be the major factor in choosing that alternative. Providers of health care must compete on quality, service, and reliability first, then cost.[5]

Providers of health care must compete on quality, service, and reliability first, then cost

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3. *Ibid.*

4. Randall Fitzgerald, *When Government Goes Private* (New York: Universe Books, 1988), p. 8.

5. Lawrence A. Hamilton, *Quality Improvement Methods: A Simplified Approach* (Westminster, California: Lawrence A. Hamilton Co., 1991), p. 12.