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# How To Do Time: Part 1

By **Alan Ellis and J. Michael Henderson** (February 7, 2018, 11:10 AM EST)

Alan Ellis

Most lawyers are understandably unable to advise a first-time federal inmate as to what it will be like in prison. Rarely do they ever get beyond an attorney visiting room. In a four-part series of articles, we, the co-authors of "Federal Prison Guidebook," with the help of Philip S. Wise, retired Bureau of Prisons assistant director of heath services, offer answers to many questions attorneys, their clients, and their clients' family and friends may have.

**Initial Placement**

**Alan Ellis**: ***How does the U.S. Bureau of Prisons decide where to place a sentenced federal defendant?***

J. Michael Henderson

J. Michael Henderson: Initial placement of an offender is based upon an initial classification of the individual by the Bureau of Prisons, which is a calculation of the required security considerations, an individual's medical needs, consideration of how crowded some institutions are, the offender's specialized program needs if any, legal residence, and court recommendations. Classification information is obtained from the presentence investigation report (PSR), and so it is essential for the attorney and client to ensure that the information is both accurate and complete as to offenses conduct, prior record, open or pending cases, legal residence, physical and mental health, verifiable education level, and substance abuse, particularly if the offender wants to qualify for the bureau's comprehensive Residential Drug Abuse Program.

Each offender is assigned a security level: minimum, low, medium or high security, based on offense characteristics, sentence length, and any prior criminal history. Each offender is also assigned a medical care level (I, II, III or IV) based on current or anticipated medical requirements, and a mental health care level, (1, 2, 3 or 4). The facility nearest the offender's legal residence as reflected in the PSR, that meets the security, medical and mental health requirements, and that has bed space available, is generally designated for service of sentence. So, if the offender would like to be placed in a minimum-security camp that houses offenders who are considered medically and mentally stable, for example, but is classified by the Bureau of Prisons as low, medium or high security, then the offender would not be initially assigned to a camp.

Similarly, even if an offender qualifies for a minimum-security camp, but has significant medical and mental health issues, he would not initially be assigned to a camp without the resources to provide for the necessary medical care. Similarly, if an offender knows of a federal prison near their home, the offender will not likely be assigned there if his or her initial security level classification or medical care level determined by the Bureau of Prisons are not the same as the security level and care level of the institution. Finally, every new offender should know that the Bureau of Prisons currently houses a very large number of inmates, and sometimes has extremely limited bed space at some institutions, which can result in an offender's initial placement further from their homes than either they or the Bureau of Prisons would actually prefer. In such cases, a future transfer is a reasonable possibility after 18 months of clear conduct; i.e., no disciplinary infractions, good work evaluations, and participation in the Inmate Financial Responsibility Program (if required).

**What to Bring**

***Q: If an offender is granted self-surrender by the court, what should they take to prison?***

A: It is usually best to arrive at a federal prison with as few personal possessions as possible because the offender is leaving his or her regular life and lifestyle for a while. Also, minimizing what one brings will lessen the possibility of confiscation by prison staff of unauthorized items, and reduce the amount of personal belongings that are returned or mailed back to the next of kin. That said, the individual should bring no single item worth over $100, meaning no expensive jewelry or wristwatch. A wedding band, if married, is fine, as well as a relatively inexpensive wristwatch and religious medal, if worn. The personal clothing the offender wears when reporting will be returned to the family or friends or attorney.

I recommend that the offender report with only a relatively modest amount of money, no more than $320. Such an amount will permit some discretionary spending at the institution commissary and establishing a TRUFONE account to call home, thereby freeing the new inmate from having to rely on, or falling into debt to, other inmates. Caution should always be the watchword, should the new inmate encounter another "more experienced" inmate who "offers" to help purchase or buy something for the new inmate before the new inmate can shop at the commissary or buy something the new inmate cannot otherwise afford. Similarly, the new inmate should shun any offer to use another inmate's access to outside telephone calls before the new inmate's account and telephone list have been set up. Such offers can have illicit payment return terms that the new inmate is not prepared for, and besides being prohibited by prison rules can be dangerous! Similarly, if a new inmate arrives with a lot of money, other curious inmates can quickly become aware of it, which may result in the new inmate becoming a "target" by other inmates who would like little more than to get some of the new inmate's money.

We recommend that an offender take a one-month supply of any prescription medication. In all probability, the Bureau of Prisons will have the necessary medications on hand, and your supply will not be required, but if you take a medicine that is not currently routinely used or authorized by the Bureau of Prisons, your supply may be authorized in some cases to get necessary approvals and/or pharmacy stock. Understand that any medications you take with you will likely be held for you in the health services department, and dispensed from the pharmacy at "pill line."

***Q: Many new offenders ask about how much money they will be able to have in their prison accounts, how much they can spend, and how they can receive money and other materials from their friends and families while they are confined. What is your response and/or advice?***

A: The money new inmates bring with them to prison, as referenced above, will be used to open an

inmate trust fund (commissary) account for them, from which they will be required to pay for their personal telephone calls, postage stamps and items from the commissary (personal hygiene items, snacks, etc.) that they might want to purchase. This really is the only preliminary information that a new offender needs prior to entering prison. Immediately after their arrival, as noted in the intake process remarks, inmates will have all of the answers governing procedural regulations given them in the prison's "Admission and Orientation Inmate Manual." Also, as noted in the remarks about orientation, the new inmate will receive all pertinent information directly from a staff member from the institution business office and/or commissary. Once armed with not only written information but information from a correctional counselor and prison staff members who run the inmate trust fund accounts, the new inmate, within only one week or so after arriving, will have all the information needed regarding receiving funds, how they can be spent, and what restrictions and approvals are in place regarding receipt of anything from family or friends.

***Q: How about medications?***

A: The Bureau of Prisons typically prescribes medication via its formulary, which can be accessed via its website. New inmates can bring prescription (not over-the counter) medicine when reporting to serve a sentence, though it should be understood that all medication will be checked by institution medical staff and confiscated. If a particular medication is in the formulary, new medication will likely be issued to replace it. If medication is not in the formulary, it will be confiscated, and the new inmate will have to see medical staff concerning whether a substitute medication can or will be prescribed. To minimize the risk of disruption in receiving necessary medications, it is highly recommended that individuals with conditions managed by medication, particularly opiate-based medications, which the BOP is generally disinclined to prescribe, provide a copy of the BOP formulary to their prescribing physician(s) well in advance of sentencing to assess the suitability of substituting formulary medications for their existing medications. To the extent a medication can be substituted, it should be before an individual is placed in BOP custody. Similarly, where a formulary medication is not suitable substitution (e.g., due to side effects, interaction with other medications), a letter should be obtained from the prescribing physician, attesting to that fact and efforts that were taken. It is important that an individual's PSR contain accurate information concerning name, purpose and dosage amounts of prescribed medications. In addition to prescription medication, the institution commissary is required to carry a minimum of 25 over-the-counter medical products for inmate purchase.

**Arrival**

***Q: What can a new inmate expect from staff upon arrival at a federal prison?***

A: Upon arrival, the offender will be met by either a correctional officer or member of the receiving and discharge department (R & D). A strip search, issue of institutional clothing, photograph, fingerprinting, and inventory of personal property will subsequently be performed in the R & D department. If the offender arrives after normal working hours or when the R & D department is not staffed, he or she will be taken to an area where a strip search will be conducted, issued institutional clothing, and likely placed in a secure cell until being processed for intake through R & D.

This process, as well as the R & D process, will be conducted in a very business-like manner, which for new inmates can seem impersonal. However, this is a good time for the new inmate to simply watch, listen, and learn about the staff and what they do.

**Intake and Orientation**

***Q: Who are these staff, and what do they do during the intake process?***

A: The R & D staff are those who perform the search, fingerprinting, and personal property inventory of the new arrival. A correctional counselor or a case manager will conduct a brief private interview. A medical staff member, usually a physician's assistant, will conduct a medical screening, primarily to screen for communicable diseases, but at which time the new inmate should report any and all health-related issues or concerns for the record, to better ensure proper future treatment if needed while incarcerated.

***Q: What is most important for the inmate at this initial intake phase?***

A: It is important for the inmate to understand that this is the business of incarceration, and to understand that prison staff members are not trying to be demeaning, but rather are performing very routine duties. It is also wise for the new arrival to listen carefully to any and all questions that the staff members ask, and to answer those questions honestly. If the new inmate does not understand a question, it is entirely appropriate to ask for clarification or meaning. Similarly, the new inmate should read and fully understand any and all forms that are provided, some for the inmate's signature. A failure in this early communication process could lead to potential difficulties at some future point of incarceration. Forms and information relative to telephone use, mail correspondence and visiting are provided.

***Q: Will the new inmate receive written rules and guidance before being placed in the general inmate population?***

A: Yes. Upon arrival, each new inmate is given an admission and orientation handbook, for which they must sign. I cannot overstate the importance of this document and the inmate's receipt of it with signature, because from that moment forward, the inmate will be held responsible for knowing and complying with all of the Bureau of Prisons' institutional rules outlined in it. The handbook is thorough and describes the various institutional departments and staff, schedules for the inmate to follow within the institution, and visiting and correspondence information. The smartest action that a new inmate can take with respect to the handbook is to read it, cover to cover, as soon as possible, and to keep it at hand for future reference.

***Q: When does a new arrival enter the general inmate population?***

A: Upon successful completion of the intake process. Successful completion means that the institution has received all necessary official documentation from the sentencing court, and from the respective U.S. marshals and U.S. probation offices. Such documentation includes the judgment order, the presentence investigation report, and appropriate U.S. marshals documents. If such documentation is lacking or incomplete, it may not be possible for staff to allow the inmate to enter the general inmate population. The attorney and/or client should contact the inmate systems management department (records office) at the facility designated prior to arrival to determine if the necessary documentation has been received. Similarly, if during the intake screening process some interviewing staff members identify a potential concern for the new inmate's health or safety, then the individual may not be put in the general inmate population. Finally, in situations where bed space at an institution to which an individual has been designated is very limited, there have been instances requiring that a new arrival be temporarily housed in administrative detention status, in the restricted special housing unit of the institution, until bed space in the open inmate population becomes available.

***Q: What is important for the inmate to know if not placed in the general inmate population, and what, if anything, will they be told?***

A: It is important that the new arrival understand that most federal prisons do not lock their general inmate population up in isolated cells 24 hours per day, which means simply that inmates in that population are moving about. Given that fact, Bureau of Prisons' staff who are charged with ensuring an inmate's safety cannot and should not place a new arrival in the open inmate population, unless and until they have complete case documentation that, in conjunction with the intake interviews, provides reasonable assurance that the new inmate will not encounter an identifiable and undue risk if housed with the other inmates.

Also, the new arrival's health can be a concern. If, during the intake screening process, medical staff determine that the inmate may have a contagious disease, such as measles, chicken pox or tuberculosis, that individual will likely be placed in medical isolation until necessary steps to protect him and the other inmates and staff have been completed.

If the new arrival cannot be placed in the institution's general inmate population because of insufficient or unreceived documentation, or for health reasons, he or she will be so informed. If a potential security risk to his or her safety or to the safety of others is identified by staff during the intake process, the new arrival may be given only limited information because such information cannot divulge sensitive or investigative details that the staff has or which the staff may need to pursue.

Part two of this article will cover solving problems and information for family and friends.

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*J. Michael Henderson, a federal prison consultant to the Law Offices of Alan Ellis, has over 23 years of experience working with the Bureau of Prisons. He served as the regional designator for the western region of the United States in the early '90s and again from 1997 until his retirement in 2000. Awards include an annual award from the inmate branch of the NAACP at FPC Allenwood, Pennsylvania, and the Bureau of Prisons' National Stanford Bates Award for outstanding contributions to improved Case Management. He is the co-author of "Federal Prison Guidebook" and "The U.S. Bureau of Prisons' Pre-Release Program: Getting Out Early."*

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# How To Do Time: Part 2

By **Alan Ellis and J. Michael Henderson** (February 28, 2018, 1:23 PM EST)

Alan Ellis

Most lawyers are understandably unable to advise a first-time federal inmate as to what it will be like in prison. Rarely do they ever get beyond an attorney visiting room. In this four-part series of articles, we, the co-authors of "Federal Prison Guidebook," with the help of Philip S. Wise, retired Bureau of Prisons assistant director of heath services, offer answers to many questions attorneys, their clients, and their clients' family and friends may have.

In this installment we cover solving problems, and information for family and friends.

**Solving Problems**

J. Michael Henderson

**Alan Ellis:** ***What if a staff member seems unwilling to be helpful, is less than responsive to a problem, or does not seem open or straightforward in communicating with the inmate?***

J. Michael Henderson: The inmate almost always has a case manager, correctional counselor, and unit manager available to them for assistance. In addition, every day the inmate goes to eat a meal, there are almost always staff members from all institutional departments, including upper management of the institution (associate wardens and the warden) available to them in the dining area. The availability of a wide range of staff members is important because Bureau of Prisons' staff members are human beings, meaning that some will be more effective communicators than others and some will be more thorough and patient than others. So, if an inmate is experiencing difficulty in dealing with a particular staff member, there are multiple other staff members who can address a problem.

***Q: So, what if an inmate follows all of the rules and regulations but encounters a situation or has a problem that none of the institution staff, including the warden, can or will resolve?***

A: This is likely to be a rare scenario. Just because an inmate may not receive an answer to a question, or receive a response that is personally favorable, does not mean that staff have not responded and acted within the scope of Bureau of Prisons' policy. Sometimes, inmates mistakenly believe that because they do not receive action or a response they want, somehow the institution staff has mistreated them. This

usually stems from incomplete or inefficient communication, lack of understanding of Bureau of Prisons' policies and procedures, and inmates not speaking to all appropriate institution staff who could resolve a given dispute. That said, there is a procedure that is available to inmates, known as the administrative remedy procedures, by which an inmate can request reconsideration of staff decisions and/or formal reviews of staff decisions at levels higher than the level at which the decision was made.

***Q: What do the administrative remedy procedures involve?***

A: First, the inmate is required to make a meaningful attempt at informal resolution of a dispute. Then, if unsuccessful, the inmate can file an administrative remedy form, BP-9, to the warden. If this step fails to resolve the issue for the inmate, the inmate can then file an administrative remedy form BP-10, to the regional office for the region in which the inmate is confined. If that process is unsatisfactory, the inmate may then file an administrative remedy form BP-11, to the Bureau of Prisons Central Office in Washington, D.C., for the highest level of formal review. One of the most important things an inmate should consider, both in filing an administrative remedy complaint and reasonably expecting a positive result from the filing, is whether the staff action or decision which is being appealed was made within the authority and parameters of Bureau of Prisons' policies. If it was, there is little a formal review will accomplish, regardless of what other inmates may say. Conversely, review of appeals can involve careful scrutiny by Bureau of Prisons' legal staff as well. So, if a complaint involves a staff decision or action that was not made within the parameters of policy, the action or decision will be rectified for the inmate.

***Q: What can an inmate anticipate in terms of maintaining clear conduct and open communication with staff, as you have stressed?***

A: An inmate who conducts himself in an above-board manner at all times, in terms of both staff interaction and interactions with other inmates with whom they associate, generally will not attract extra scrutiny or suspicion. The inmate likely will receive favorable consideration for security and custody level reductions when eligible, which can result in placement in a less secure setting with less intense staff supervision and participation in community activities, if eligible. Earlier, I referenced that an offender who is initially assigned to a prison farther from their home than might be preferred could receive a future transfer to an institution closer to their home. It must be stressed that clear conduct is required in order for an inmate to receive such a transfer. Disciplinary action, on the other hand, can result in placement in a more restrictive setting, an upgrade in security level and custodial supervision, loss of good time, greater restrictions on visiting, unfavorable consideration for transfer to a prison closer to the inmate's home, not to mention loss of preferred quarters assignment and loss of eligibility for certain programs.

***Q: What about problems with other inmates?***

A: If there is a situational conflict or personality clash that is unlikely in the immediate short term to escalate into a physical altercation, then avoidance is always the best practice. For example, if the conflict is with a bunkmate, roommate or co-worker, the inmate should tell the other person that he will request a bed, room or work assignment change, which he can do through the correctional counselor or a work supervisor. It may not seem fair, especially when tempers flare, but it is the best way to conduct one's self above-board and not get into disciplinary trouble. If an inmate encounters a more serious threat or intimidation that is likely to escalate into a serious conflict, or the threat of being hurt, then there are steps that can and should be taken, again, however, with avoidance being the key. As mentioned previously, there are many different staff members with whom an inmate will become familiar and interact on a regular basis. I strongly recommend that an inmate work to develop a positive

and respectful working relationship with as many staff members as possible, though not being overly friendly, which can draw adverse reaction from other inmates. Then, if a potentially violent threat arises, the inmate can and should confide in a staff member that he trusts and who knows him. Such a staff member can be anyone — the unit officer, the case manager, a work supervisor, a lieutenant, a staff teacher, etc. Every staff member in a Federal Bureau of Prisons facility is considered, first and foremost, to be a correctional worker; their primary jobs, regardless of their specialty area of work, is the institution and inmate security.

***Q: Some inmates have court-ordered fines, criminal penalty assessments, or restitution. Will these need to be paid for from the same inmate trust fund account that is used for personal spending in the institution while the offender is confined? If so, what can the new inmate expect?***

A: Possibly, yes. The payment of court-directed fines or fees will be dependent upon how the court order is written. Some fines and/or fees, for example, might be imposed strictly as a condition of the offender's supervised release, after incarceration. Some court orders do not distinguish. The information is contained in the court's judgment and commitment order that is also used to impose sentence, and so it could benefit the offender to review that document closely, and with his or her attorney, for any needed clarification. After arrival at a federal prison, institution staff will review the judgment and commitment order and, if payment is required during confinement, they will discuss payment options with the inmate. When an installment-type of payment plan is needed, the inmate and the unit team can set up a payment schedule, which can involve regular fixed withdrawals from the inmate's trust fund account. The Bureau of Prisons' term for this is the Inmate Financial Responsibility Program, and the new inmate should understand that the Bureau of Prisons is quite serious in its administration of the program, to the point that there can be serious repercussions if prison staff determine that an inmate is not making a meaningful effort at satisfying court-imposed financial obligations. Sanctions that the bureau can impose for failure, which they call refusal, to make measurable progress in a payment plan can include loss of a preferred housing assignment, reduction of pay for an inmate's work assignment, and exclusion from programs for which the inmate may otherwise be qualified, including furloughs and halfway house placement.

**For Family and Friends**

***Q: What can you tell family members and friends about some prison issues that they might be concerned with? Let's start with visiting.***

A: The new inmate will receive a copy of visiting regulations and forms to send his family and friends, which need to be completed and returned in order to visit. The family and friends must understand that it is imperative for them to answer the questions on the visiting forms accurately and honestly because failure to do so may result in a loss or denial of visiting privileges. For example, a family member or friend who has a prior court conviction of any type, even if given probation, should report it matter-of-factly on the appropriate section of the visiting form. A background check by the Bureau of Prisons will uncover this and if it has been intentionally omitted, may result in denying visiting rights.

New inmates will be given a copy of their approved visiting list, usually by their assigned correctional counselor. Families and friends should ensure that they are approved prior to traveling to the prison to visit. It's helpful if the family or friends can prepare for visiting by viewing a federal prison as a serious and controlled setting, and not a place of emotional warmth. There are no private and/or unsupervised visits with family members or friends in Bureau of Prisons' facilities. However, families and friends can be somewhat relieved in knowing that the majority of visiting rooms are open ones, without the glass

partitions and telephones for communicating so often depicted in television and movie dramas. Inmates are permitted to kiss and embrace at the beginning and conclusion of a visit. Some facilities even provide outdoor visiting areas when the weather permits. Family members and friends should be prepared for being subjected to search procedures and supervision when visiting. Such scrutiny is necessary because, unfortunately, one of the ways illegal drugs and other types of contraband are smuggled into prisons is by visitors, including family and friends. Therefore, it is recommended that friends and family visitors bring very little with them into the prison, giving nothing to their incarcerated loved one other than change, which can be spent on the inmate at the vending machines in the visiting room.

After being cleared into the visiting room, family and or friend visitors will be expected to conduct themselves appropriately, meaning they should avoid any conduct which might make correctional staff suspicious, especially excessive physical contact. It is important to understand and appreciate the fact that a prison visiting room is a serious setting.

Another important factor that family and friends should be prepared for is the possibility of early termination of their visit, should the visiting room become crowded. This can and does happen to enable other inmates to receive visits. This can be an emotionally difficult situation for both the inmate and the family/friends, so it's important to remember that early visit termination due to crowding will be an impartial and necessary decision by prison staff. Arguing with prison staff will not improve or change the decision. In fact, in order to maintain visiting privileges, all visitors are expected to comply with prison staff at all times. The Bureau of Prisons holds the inmate accountable if a visitor fails to follow regulations or comply with staff instructions.

Finally, the family and friends should know that while their loved one is serving a sentence in a federal prison, misconduct that results in the receipt of a written incident report may be sanctioned by the loss of visitation privileges, even if the misconduct was not related to visiting. The reason for this is because the Bureau of Prisons expects clear conduct, if the inmate is to be permitted full privileges, and because receiving visits is meant to be a motivating factor to help an inmate maintain clear conduct. With this understanding, the family and/or friends can reiterate the importance of visiting to the inmate. Should the inmate incur misconduct sanctions that include a temporary loss of visitation, rather than being angry at the Bureau of Prisons, the family and friends will be better served by helping their loved one understand that visitation is a priority and worth clear conduct behavior.

***Q: Are family members and friends also subjected to security measures regarding written correspondence and telephone calls?***

A: Family members and friends should clearly understand that telephone calls and emails they receive from an inmate are subject to monitoring and recording for security, and that the inmates' incoming postal mail will be opened and screened. Therefore, what they say and what they write should always be above board and appropriate. Further, family and friends also need to know that an inmate is prohibited under Bureau of Prisons' regulations from conducting a business while confined. So, telephone, email and written correspondence must not involve such prohibited conduct. Finally, the family and friends should be strongly cautioned against making three-way, or third-party calls, after the inmate has connected with them telephonically, because this, too, is prohibited by the Bureau of Prisons. Such calls are generally viewed by the bureau as circumventing telephone regulations, which are reasonable, since inmates are allowed a large number of people on their authorized telephone lists, which can be frequently modified.

***Q: Since you earlier referenced the disciplinary process, what should the family and friends know about the prison disciplinary process?***

A: As already mentioned, the new inmate will receive a full and comprehensive list of Bureau of Prisons' rules and regulations, which includes all prohibited acts, immediately upon arrival at a federal prison. Therefore, the family and friends should understand that there is usually very little excuse for an offender's claim that they may not have known they were violating a rule. Also, the family and friends should understand that Bureau of Prisons' staff is generally much too busy with daily routines to write disciplinary reports against an inmate simply because the staff member "dislikes" the inmate. In fact, the formal disciplinary process requires an eyewitness staff account of an inmate's prohibited conduct, further investigation by a correctional supervisor, and then review with the inmate in person by a unit team staff member and, later, if referred by the unit team, by a disciplinary hearing officer. The process leaves very little room for the personal likes or dislikes of a single staff member. The family should realize that the institution's disciplinary hearing officer is virtually autonomous as an independent department within the institution. Finally, even if found guilty of an act, the inmate has an appeal process whereby all disciplinary proceedings are reviewed at administrative levels higher than the institution's.

This next article in this series will address BOP health care.

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*Alan Ellis, a past president of the National Association of Criminal Defense Lawyers, is a criminal defense lawyer with offices in San Francisco and New York. He practices in the areas of federal sentencing and prison matters, and was awarded a Fulbright Senior Specialist Award by the U.S. State Department in 2007 to conduct lectures in China on American criminal law and its constitutional protections. He is the co-author of "Federal Prison Guidebook: Sentencing and Post Conviction Remedies."*

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# How To Do Time: Part 3

By **Alan Ellis and J. Michael Henderson** (April 11, 2018)

Alan Ellis

J. Michael Henderson

Most lawyers are understandably unable to advise a first-time federal inmate as to what it will be like in prison. Rarely do they ever get beyond an attorney visiting room. In this four-part series of articles, we, the co-authors of "Federal Prison Guidebook," with the help of Philip S. Wise, retired Bureau of Prisons assistant director of heath services, offer answers to many questions attorneys, their clients, and their clients' family and friends may have. (Read the first part **here** and the second part **here**.)

This installment covers dealing with physical health care in the Bureau of Prisons.

What should the inmate's family and friends understand about medical care in the Bureau of Prisons?

The inmate and family and friends should understand that when an offender is sentenced to serve a federal prison term, the Bureau of Prisons must assume all responsibility for medical care. Therefore, their personal doctor will not be able to continue treating the inmate, and neither will the new inmate or family have a choice in selecting a medical provider. Each Bureau of Prisons facility has at least one licensed physician on staff, and most frequently, those physicians specialize in family practice or internal medicine. Many are board-certified in their specialty areas, as well. The medical services are extended by use of midlevel providers, usually physician assistants or nurse practitioners who will generally provide the initial evaluation of a medical concern. However, if necessary, a physician or specialist from the community will also be available.

As mentioned earlier, it is a good idea to bring a month's supply of any prescription medications if possible. This will ensure an initial supply of your medicine until you are examined by a Bureau of Prisons physician and longer-term arrangements are made.

The standard of medical care provided in the Bureau of Prisons is based on the standard of medical care provided in the community, and regular review and accreditation of the medical practices within facilities is required. The Bureau of Prisons policy is to provide medically necessary care. This means that any medical care determined by Bureau of Prisons staff to be medically necessary will be provided, but treatment that might be medically appropriate but not always necessary may not be provided. For example, some hernia repairs or repair of old, existing orthopedic issues that to not significantly interfere with daily living may be deferred.

There are four levels in the Bureau of Prisons medical CARE level classification system. A provisional care level is assigned by the Designation and Sentence Computation Center (DSCC), based primarily on information contained in the presentence investigation report. After arrival at the designated facility, the provisional care level is reviewed and a nonprovisional CARE level is assigned by BOP clinicians. These assignments depend on the

defendant's physical and medical condition, clinical resources an inmate needs and his or her ability to function daily without assistance.

- CARE level 1 inmates: This designation is made by the DSCC. These inmates are less than 70 years of age and are generally healthy but may have limited medical needs that can be easily managed by clinician evaluations every six months. Examples of such needs include mild asthma, diet-controlled diabetes and stable HIV patients not requiring medications. Level 1 institutions are located approximately one hour or more from community medical centers since medical care is not often needed.

- CARE level 2 inmates: This designation is made by the DSCC. These inmates are stable outpatients who require at least quarterly clinician evaluations. Their medical conditions, including mental health issues, can be managed through routine, regularly scheduled appointments with clinicians for monitoring. Enhanced medical resources, such as consultation or evaluation by medical specialists, may be required from time to time, but are not regularly necessary. Examples of issues at this level include medication-controlled diabetes, epilepsy or emphysema. Level 2 institutions have no special capabilities beyond those that health services staff ordinarily provide; however, they are within about an hour of major regional treatment centers (e.g., Fort Dix and Fairton, New Jersey), thereby permitting more immediate attention to medical emergencies. Most BOP facilities are classified as Care level 2 facilities.

- CARE level 3 inmates: This designation is made by the BOP's Office of Medical Designation and transportation in Washington, D.C. These inmates are fragile outpatients who require frequent clinical contacts to prevent hospitalization for catastrophic events. They may require some assistance with activities of daily living, such as bathing, dressing, or eating, but do not need daily nursing care. Other inmates may be assigned as "companions" to provide the needed assistance. Stabilization of medical or mental health conditions may require periodic hospitalization. Examples of these medical conditions include cancer in remission less than a year, advanced HIV disease, severe mental illness in remission on medication, severe congestive heart failure, and end-stage liver disease. Level 3 institutions are located adjacent to level 4 institutions, that is, federal medical centers.

- CARE level 4 inmates: This designation is made by the BOP's Office of Medical Designation and Transportation in Washington, D.C. These inmates require services available only at a BOP medical referral center, which provides significantly enhanced medical services and limited inpatient care. Functioning may be so severely impaired as to require 24-hour skilled nursing care or nursing assistance. Examples include cancer on active treatment, dialysis, quadriplegia, stroke or head injury patients, major surgical treatment, and high-risk pregnancy.

The BOP operates six CARE level 4 medical referral centers:

- U.S. Medical Center for Federal Prisoners, Springfield, Missouri, provides care primarily for higher security level inmates, and includes a full dialysis unit as well as an inpatient mental health unit.

- FMC Rochester, Minnesota, is affiliated with the Mayo Clinic for complex medical requirements and includes an inpatient mental health unit.

- FMC Lexington, Kentucky, generally manages lower security level inmates.

- FMC Devens, Massachusetts, includes a dialysis unit and an inpatient mental health unit, as well as the residential Sex Offender Treatment Program.

- FMC Butner, North Carolina, includes an inpatient mental health unit, and can manage inmates at all security levels. It is the cancer treatment center for the BOP.

- FMC Carswell, Texas, is exclusively for female inmates and is the only FMC available for women. It includes an inpatient mental health unit.

Most federal prisons have a full-time medical staff on hand and/or contract medical staff from the community. A local community hospital provides contract services for inmates who are in need of in-patient care because of a medical emergency. Normally, prisoners in need of special medical attention due to complex health problems will be designated to one of the BOP's six major medical centers listed above. With the exception of the federal medical centers, which provide primary and inpatient care, all other BOP facilities provide outpatient care (otherwise known as "ambulatory care"). Most BOP facilities also have one or more contract hospitals in the surrounding community) that provide secondary and inpatient care to inmates in "emergency situations" or when an inmate's medical needs cannot be adequately treated by medical staff at the prison facility.

The BOP defines its scope of medical services according to five levels of medical intervention:

- Medically Necessary — Acute or Emergent: Medical conditions that are of an immediate, acute or emergent nature, which without care would cause rapid deterioration of the inmate's health, significant irreversible loss of function, or may be life-threatening.

- Medically Necessary — Nonemergent: Medical conditions that are not immediately life-threatening but that without care the inmate could not be maintained without significant risk of serious deterioration leading to premature death, significant reduction of the possibility of repair later without present treatment; or significant pain or discomfort which impairs the inmate's participation in activities of daily living.

- Medically Acceptable — Not Always Necessary: Medical conditions that are considered elective procedures, when treatment may improve the inmate's quality of life. Relevant examples in this category include, but are not limited to, joint replacement; reconstruction of the anterior cruciate ligament of the knee; and treatment of noncancerous skin conditions (e.g., skin tags, lipomas).

- Limited Medical Value: Medical conditions in which treatment provides little or no medical value, are not likely to provide substantial long-term gain, or are expressly for the inmate's convenience. Procedures in this category are usually excluded from the scope of services provided to bureau inmates. Examples in this category include, but are not limited to, minor conditions that are self-limiting; cosmetic procedures (e.g., blepharoplasty (cosmetic surgery on the eyelids)); or removal of noncancerous skin lesions.

- Extraordinary. Medical interventions are deemed extraordinary if they affect the life of another individual, such as organ transplantation, or are considered investigational in nature.

It is the policy of the BOP to provide care that its clinicians determine to be medically necessary. Those medical interventions that fall into the categories of "medically necessary, acute or emergent" or "medically necessary, nonemergent" are those the agency considers to be medically necessary. Those that fall into the classification of "medically appropriate but not always necessary" are considered elective and must undergo review by a Utilization Review Committee before approval and are unlikely to be approved and completed based on limited medical resources.

The Utilization Review Committee members include the clinical director, health services administrator, medical trip coordinator, health care providers, director of nursing (if applicable), and a chaplain or social worker.

These committees typically convene every two weeks to consider the nonemergency referrals. The intent of these committee reviews is to establish an initial assessment of priority for recommended interventions and ensure that no services that fall outside the scope of those defined in BOP policy are provided.

Although there is no certainty that a utilization review committee will approve a specific recommendation for treatment, as long as the recommended intervention falls clearly within the category of "medically necessary — nonemergent," it is likely to be approved. Those that are within the category of "medical acceptable — not always necessary" are far less

likely to be approved by the committee. Some institutions assign an initial priority for approved consultations/interventions using a numeric system (where priority 1 requires attention within one week, a priority 2 requires attention within two to four weeks, and a priority 3 can be delayed for a month or more), while others use a color code with similar requirements.

In order for an inmate to be seen by a medical specialist such as a cardiologist or neurologist outside the facility for a nonemergency condition, an escorted trip must be approved and arranged in advance. The number of correctional officers required for each escorted trip ranges from one to five or more, depending on the characteristics of the inmate involved. Because of staffing limitations, a facility will typically schedule a limited number of escorted trips each day, and generally, the number of inmates requiring such trips exceeds the number approved daily. As a result, Bureau of Prisons medical staff, generally the clinical director, establish priorities to determine which inmates should fill the limited number of escorted trip "slots" available. These are clinical decisions based on the director's assessment of acuity.

Thus, while an inmate may have received medical approval for specialty consultation/intervention, the delivery of that care depends heavily on the number of escorted trips available and the acuity of his or her condition. The likelihood that an inmate will receive regular escorted trips for medical specialist consultation over an extended period of time is diminished in light of these logistical variables. It is most likely that at some point the inmate's care, even if approved by the Utilization Review Committee will be interrupted as he or she is displaced by an inmate with more acute needs.

It is likely that the Bureau of Prisons will have access to the services of medical specialists that most inmates will require. In larger or higher security facilities, the wait for an approved outside consultation may be extensive, based on limited escort staff. In some instances, medically appropriate nonemergent appointments (specifically orthopedics) have been delayed for months, up to a year after the initial recommendation for consultation. Should such consultation occur, any intervention/treatment suggested by the medical specialist is considered a recommendation subject to the review and approval of the institution clinical director in compliance with the scope of services defined by agency policy and the national formulary. It is not unusual for an institution's clinical director to decline to pursue a recommendation made by a consulting specialist, particularly if that recommendation includes intervention that is seen as medically acceptable but not always necessary or includes a non-formulary medication.

Pretrial or nonsentenced inmates, and inmates with less than 12 months to serve, are ineligible for health services considered "medically appropriate — not always necessary," "limited medical value," or "extraordinary".

The Bureau of Prisons has recently implemented primary care provider teams. Under the PCPT model, each inmate is assigned to a primary health care provider who will be responsible for managing the inmate's health care needs. It is anticipated that when PCPT is fully implemented throughout the bureau, sick call will be eliminated. In a nutshell, under the PCPT model, upon arrival at an institution each individual will be assigned to a primary care provider, and during the remainder of the inmate's stay at the institution, he or she will need to complete a request form any time he or she wishes to receive treatment and/or see the primary care provider under other than emergency medical circumstances.

The PCPT includes a staff physician, midlevel practitioners, and ancillary staff such as pharmacists, radiology technicians, and lab technicians.

The primary health care of the inmates is provided chiefly by the midlevel practitioners (physician assistants, nurse practitioners, or unlicensed foreign medical graduates) under the supervision of a staff physician. Upon arrival at the institution, inmates will be medically screened by one of the prison's medical staff. This process involves an interview and may include a brief physical examination. In addition, any medications the prisoner was taking prior to incarceration will be re-evaluated by the prison physician, who will decide whether or not to prescribe the same or a similar medication. Prison pharmacies in the BOP do not dispense herbal medicines. A full history and physical is generally completed within 14 days of arrival at the designated facility.

The staff physicians are generally family practice or internal medicine specialists. They control an inmate's access to specialty medical care and review any recommendations made by medical specialists to determine whether they are within the scope of services and policy of the Bureau of Prisons before implementation.

In order for an inmate to receive care or treatment by a specialist, including physical therapy, the midlevel practitioner would have to identify the inmate's medical problem and alert the staff physician who would then decide whether to refer the inmate to a specialist if one is available.

If the staff physician determines that a referral to a specialist is warranted for a nonemergency condition, such as physical therapy, that referral must be approved by the Utilization Review Committee.

The Bureau of Prisons seeks to obtain medical specialty care for its inmates through contracting with local hospitals. However, contracts with hospitals do not necessarily include services of specialty physicians. In fact, each facility of the Bureau of Prisons uses a variety of procurement practices to establish agreements with both hospitals and individual physicians and other medical specialists for specialty care. The success of establishing those agreements depends on the availability of any particular medical specialist or facility in the community in which the prison is located, the willingness of that provider or facility to travel to the prison and subject him/herself to the security requirements for entrance and the constraints of treating individuals in prison, the willingness of that provider to see inmates in his office/practice/facility, and, increasingly significantly, the ability of that specialty provider to obtain medical malpractice insurance when his or her practice includes inmates. The refusal of many malpractice insurers to cover practices that include inmate patients severely limits the number of specialty providers willing to treat inmates. The Bureau of Prisons does not indemnify contract medical specialists who treat inmates.

The BOP has also implemented a policy to facilitate the creation and implementation of advanced health care directives and do not resuscitate orders. Each Bureau of Prisons institution is to have an institution policy supplement covering advanced directives and DNR orders that is to include a copy of pertinent state laws; a sample standard form for inmate use if available from the pertinent state law; instructions for inmates to execute advanced directives, including the option of retaining private legal counsel at the inmate's expenses. Bureau policy requires filing of an inmate's executed advanced directives in the inmate's health record. Each institution policy supplement must also provide DNR information that complies with the law of the state in which the institution is located; a statement that DNR orders will never be invoked while an inmate is housed in a general (nonmedical) population institution, which means that DNR directives may be implemented only at community health care facilities or BOP medical referral centers); and that copies of valid DNR orders be documented in the inmate's health record.

The next article in this series will cover mental health care.

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# How To Do Time: Part 4

By **Alan Ellis and J. Michael Henderson** (July 19, 2018)

Alan Ellis

Most lawyers are understandably unable to advise a first-time federal inmate as to what it will be like in prison. Rarely do they ever get beyond an attorney visiting room. In this four-part series of articles, we, the co-authors of "Federal Prison Guidebook," with the help of Philip S. Wise, retired Bureau of Prisons assistant director of heath services, offer answers to many questions attorneys, their clients, and their clients' family and friends may have. (Read the first part here, the second part here and the third part here.)

This final installment covers mental health care and substance abuse treatment in the Bureau of Prisons.

J. Michael Henderson

**Alan Ellis: Can and will an inmate receive mental health care and substance abuse treatment in the Bureau of Prisons?**

**J. Michael Henderson**: The Bureau of Prisons has, as with medical care, adopted mental health classifications. In addition to receiving a classification for security and health care, BOP inmates are now classified based on mental health care need. Similar to the four medical care levels, all inmates are assigned to one of four mental health levels.

1. CARE1-MH: No Significant Mental Health Care

Those who show no significant level of functional impairment associated with mental illness and demonstrate no need for regular mental health interventions, and either has no history of serious functional impairment due to mental illness or, if a history of mental illness is present, have consistently demonstrated appropriate help-seeking behavior in response to any reemergence of symptoms.

2. CARE2-MH: Routine Outpatient Mental Health Care or Crisis-Oriented Mental Health Care

Those requiring routine outpatient mental health care on an ongoing basis, and/or brief, crisis-oriented mental health care of significant intensity, e.g., placement on suicide watch or behavioral observation status.

3. CARE3-MH: Enhanced Outpatient Mental Health Care or Residential Mental Health Care

Those requiring enhanced outpatient mental health care, such as weekly mental health interventions or residential mental health care, such as placement in a residential Psychology Treatment Program.

4. CARE4-MH: Inpatient Psychiatric Care

Those who are gravely disabled and cannot function in general population in a CARE3-MH environment.

In determining an appropriate mental health care level assignment, an individual’s current, recent and historical need for services is considered, along with any type of psychotropic

medication required.

The BOP offers a number of formal, organized psychology treatment programs with specific target populations, admission criteria and treatment modalities. Many of these are residential programs offered only at select facilities. General psychological services and mental health crisis intervention are available throughout the BOP. Psychiatric services, including psychotropic medication, are generally coordinated through health services in conjunction with psychology services staff. Psychiatry services may be available either through contracts with a community psychiatrist, or increasingly, through telepsychiatry with a BOP psychiatrist at another location.

While it may vary from institution to institution and from mental health professional to mental health professional, generally speaking, mental health treatment in the BOP is designed to enable the inmate to function within the prison system, meaning they are not a danger to themselves, staff or other inmates.

Outside of the formal programs mentioned above, rarely will an inmate receive any meaningful treatment for underlying disorders such as post-traumatic stress disorder, major depressive disorder, bipolar disorder, and the like, because not all treatment modalities are offered. For example, eye movement desensitization and reprocessing for treatment of PTSD is not available outside of the programs.

This is regrettable. The U.S. Department of Justice estimates are that one in four inmates in this country suffers from a diagnosable mental health disorder. With the BOP's emphasis on reducing recidivism, more attention given to the mentally ill would go a long way toward achieving this result.

The medical staffing also can vary from one federal prison to another, and offenders whose needs cannot be managed at one might be placed in another, which may mean a move further from their families. Families should be as supportive as possible under such circumstances, understanding that the health of their loved one should supersede proximity to the family. Also, the family should know that many prison facilities augment their medical care with doctors from the community, usually specialists, on a contract basis. These consulting specialists are available if BOP staff determine that a specialty consultation is required, and any recommendations made by a consulting specialist will be evaluated by a BOP physician for compliance with the agency's scope of service.

Mental health care, or lack thereof, in the BOP is exacerbated by the fact the bureau has had a difficult time recruiting competent mental health professionals. The same holds true for medical care.

One of the hardest parts for the family, I believe, is not having a choice in the health care of their loved one during confinement. But focusing on the positives of the BOP's system can help, even if that system is more impersonal to the inmate than private medical practice.

Finally, the family can be assured that each BOP region has a regional health services administrator who is usually open to knowing about serious and significant health care concerns, should an inmate believe medical needs are not being adequately addressed.

**Q: Does the bureau have any drug and/or alcohol substance abuse treatment programs?**

A: Yes, the bureau has a 500-hour, nine-month-long comprehensive Residential Drug and

Alcohol Treatment Program. RDAP is a highly successful program with a greater lack of relapse and recidivism rates than many other such programs. It ensures that an inmate will serve four to six months at the end of his sentence in a halfway house for the out-patient component of RDAP. Obviously, it is one thing to be able to abstain from drugs or alcohol while in prison, but it is harder once back in the community. This transitional care, outpatient component is a required follow-up to the 500-hour in-prison program. It has the added advantage of enabling inmates who successfully complete the program to earn one year off the amount of time they have to serve. Needless to say, it is very popular.

**Q: Can anyone qualify for the program?**

A: The presentence report must document that defendant had a substance abuse problem within one year prior to his or her arrest. Generally, this self-reporting by the defendant is sufficient. Unfortunately, many defendants not wanting to "blacken their character" any more than it has been, will downplay their drug and alcohol problems when being interviewed by the U.S. probation officer. If the presentence report does not document substance abuse within one year prior to the individual's arrest, the only other way to get into the RDAP program is if the defendant sought treatment from a physician, mental health professional or drug and alcohol counselor and that person is able to document the treatment. This may suffice to get the inmate into the program.

**Q: Do you have any final words of advice?**

A: Let me offer the three most important pieces of advice that I can to the offender who will be going to a federal prison facility for the first time.

First, the federal court proceedings and, ultimately, sentencing to prisons has likely taken a very serious toll on the offender and their family — psychologically, emotionally and often financially. When the time for confinement finally arrives, which suspends the individual's freedom and separates him or her from family, it sometimes happens that the offender and/or family will vent frustrations on or toward the BOP. It is important to keep the perspective, however, that the BOP is not responsible for the current circumstances. Ultimately, it will not be the BOP's responsibility to rebuild lives or relationships. Straight thinking in this regard can empower the offender and family to help them avoid the nonproductive trap of feeling as though they are victims.

Second, the offender would be well-advised to keep important personal information about themselves and their families confidential, period! This does not mean being so secretive as to arouse the suspicions of other inmates, but it should be obvious that there are predatory criminals in federal prisons and becoming vulnerable to such individuals will only complicate the lives of the well-meaning inmates who truly wish to serve their sentences with as little hassle as possible. Well-meaning inmates can be conned, their family's privacy and well-being compromised, and lives seriously disrupted if they are too friendly with the wrong inmates.

Last but not least, humility, clear conduct and an understanding that federal prison, while offering a variety of programs and activities, may be an experience of some drudgery can and should help maintain a positive mindset. There are no "entitlements," which should help the offender appreciate freedom and family even more. With self-reliance and keeping the "big picture" in mind, the offender can focus on the confinement term and returning home and staying out of prison. There is no sounder advice than this.

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