

CHAPTER 14: YOUR RIGHT TO ADEQUATE MEDICAL CARE

A. INTRODUCTION

This chapter explains your right to medical care as a Louisiana prisoner under Louisiana state law. All Louisiana prisons also have to follow federal law. Federal law on adequate medical care is explained in Chapter 23 of the main *JLM* (“Your Right to Adequate Medical Care”) with some specific issues explained in other chapters of the main *JLM*: Chapter 29, “Special Issues for Prisoners with Mental Illness,” Chapter 26, “Infectious Diseases: AIDS, Hepatitis, and Tuberculosis in Prisons,” and Chapter 28, “Rights of Prisoners with Disabilities.” You should read Chapter 23, and any of the other chapters mentioned above that may affect you, to learn about your right to medical care under federal law. This chapter will only deal with the state law of Louisiana.

Part B of this chapter explains that the state must provide all prisoners with medical facilities within the prison, or transfer prisoners to medical facilities outside of the prison. Part B also explains that although the state is required to pay for your medical treatment, you may have to pay a copayment. Finally, Part B describes how your stay at a hospital or medical facility will count against how long you have to stay in prison.

Next, Part C explains the standard of “reasonable care” in more detail. Federal law requires medical facilities to treat you with “reasonable care.” Part C gives some examples of cases where courts thought that the medical officials did give reasonable care. It also gives examples of cases where the courts thought there was no reasonable care. If you do not get reasonable medical care, the state may be liable to you.

Finally, Part D explains that you may be required to be tested for infectious diseases. All Louisiana prisons must test prisoners for tuberculosis. They might also have to test you for diseases if you do certain things, like bite or throw bodily fluids at somebody else.

B. DUTY TO PROVIDE REASONABLE MEDICAL CARE

1. Provision of Hospital Quarters in Prison

Louisiana law says that the government has a duty to provide every prisoner with reasonable medical care. Reasonable medical care includes hospital quarters, health, medical, and dental services.¹ The City-Parish in which your prison is located also has a duty to provide for physicians or health care providers to treat prisoners.² Each prison does not have to have its own full hospital, but prisons should be prepared for the risk that prisoners will be injured and will need life-saving medical care.³ If prisons are not prepared for this risk, and you get injured or sick and do not get adequate medical care, the

¹ LA. REV. STAT. § 15:760 (2017) (“Where large numbers of prisoners are confined the proper authorities in charge shall provide hospital quarters with necessary arrangement, conveniences, attendants, etc.”); *Elsley v. Sheriff of Parrish of East Baton Rouge*, 435 So. 2d 1104, 1106 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 762 (La. 1983) (stating that LA. REV. STAT. § 15:760 applies to all prisons, jails, and lockups in Louisiana); LA. REV. STAT. § 15:831 (2017) (“The secretary of the Department of Public Safety and Corrections shall establish and shall prescribe standards for health, medical, and dental services for each institution, including preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients.”); *see also* *Moreau v. State*, 333 So. 2d 281, 283 (La. App. 1 Cir. 1976) (“The [state] has certain statutory duties to provide medical care to prisoners.”) (citing statutes).

² LA. REV. STAT. § 15:703 (A), (B) (2017) (“The governing authority of each parish shall appoint annually a physician who shall attend the prisoners who are confined in parish jails whenever they are sick In lieu of appointing a physician, the governing authority of any parish may enter into a contract with a health care provider, licensed or regulated by the laws of this state, to provide requisite health care services, as required in this Section.”).

³ *Moreau v. State*, 333 So. 2d 281, 284 (La. App. 1 Cir. 1976) (“The duty [to provide reasonable medical care] does not require the [state] to maintain a full hospital at the site of each of its prisons in order to protect the prisoners against every known medical risk. However, the duty does encompass the risk . . . that an inmate would be injured and require life-saving medical attention.”); *see also* *Elsley v. Sheriff of Parrish of East Baton Rouge*, 435 So. 2d 1104, 1106 (La. App. 1 Cir. 1983) (citing *Moreau v. State*, 333 So. 2d 281 (La. App. 1 Cir. 1976), for the same rule).

government may be liable to you.⁴

The services in the prison must meet certain requirements. The doctors or paramedics who work for the prison must be able to recognize when you have an emergency. They must then be able to give you the right treatment or to transfer you to a hospital or treatment center.⁵ If the doctors or paramedics do not treat or transfer you when they should have, then a court would say the prison is liable to you. But, if it was reasonable for the doctors or paramedics not to recognize that there was an emergency, the government may not be liable for giving you inadequate treatment.⁶ A court will determine if it was reasonable for the doctors and paramedics to miss the emergency by looking at what other doctors would have done if they had the same patient.⁷

Sometimes, the jail or prison has written guidelines that they have to follow for certain medical situations. Courts will ask if these guidelines apply to your situation. If they do apply, courts will then ask if they were followed.⁸

2. Transfers to Outside Medical Treatment Facilities

Louisiana law only requires your jail, prison, or lockup to have hospital facilities if there are a large number of prisoners confined there.⁹ If there are only a small number of prisoners confined in your prison, there may be no hospital or medical treatment facility within the prison itself.

If you get sick or injured and your prison does not have the medical facilities to treat you properly, the government must transfer you to a hospital or another medical facility where you can get proper care.¹⁰ Prison officials can also choose to transfer you to outside medical facilities if they think it is necessary.¹¹ Like the medical facilities in the prison, the outside medical facilities must be able to give you reasonable medical care.¹² Otherwise, the government may be liable to you.¹³

⁴ *Moreau v. State*, 333 So. 2d 281, 284 (La. App. 1 Cir. 1976) (finding the state liable when the prisoner was stabbed and eventually died because the prison hospital could not provide life-saving care for him).

⁵ *Moreau v. State*, 333 So. 2d 281, 283 (La. App. 1 Cir. 1976) (stating the prison should have recognized a medical emergency after prisoner was stabbed).

⁶ *Cole v. Acadia Parrish Sheriff's Dep't.*, 07-1386, p.10 (La. App. 3 Cir. 11/5/08); 998 So. 2d 212, 227 (finding that the state is not liable when prison physicians may not reasonably have recognized an emergency, as in this case where prisoner was treated for tooth pain without prison paramedics recognizing that it was a serious infection).

⁷ *Cole v. Acadia Parrish Sheriff's Dep't.*, 07-1386, pp.12–21 (La. App. 3 Cir. 11/5/08); 998 So. 2d 212, 217–221 (listing what other physicians and medical experts thought of the medical situation).

⁸ *Cole v. Acadia Parrish Sheriff's Dep't.*, 07-1386, p.23–29 (La. App. 3 Cir. 11/5/08); 998 So. 2d 212, 221–223 (listing guidelines followed by the jail and finding that they had not been violated). The court can also look at expert testimony as to whether the jail followed the written guidelines. *Cole v. Acadia Parrish Sheriff's Dep't.*, 07-1386, p.30–31 (La. App. 3 Cir. 11/5/08); 998 So. 2d 212, 223–224 (considering expert testimony from certified peace officer with bachelor's degree in Criminal Justice).

⁹ LA. REV. STAT. § 15:760 (2017) (“Where large numbers of prisoners are confined the proper authorities in charge shall provide hospital quarters with necessary arrangement, conveniences, attendants, etc.”).

¹⁰ *State v. Brouillette*, 163 La. 46, 49, 111 So. 491, 492 (La. 1927) (“And although the law does not require that hospital quarters should be provided in prisons, unless where ‘large numbers’ of prisoners are confined, yet this surely does not mean, in this humane age, that where there are only *small numbers* of prisoners confined, such prisoners are to receive no adequate care and attention should they happen to become ill. Hence . . . where a prisoner falls ill in a prison which is not provided with proper hospital facilities, it follows that a humane judge and sheriff . . . have no other recourse but to use the hospital facilities nearest at hand; for a prisoner is no more to be done to death through neglect than by ill treatment.”); *Jacoby v. State*, 434 So. 2d 570, 573 (La. App. 1 Cir. 1983) (“If these medical services are not available on the premises, it is the duty of the confining authority to transfer a sick prisoner to a medical facility for appropriate treatment.”).

¹¹ LA. REV. STAT. §15:831(A) (2017) (“An inmate may be taken to a medical facility outside the institution when deemed necessary by the director.”).

¹² *Jacoby v. State*, 434 So. 2d 570, 573 (La. App. 1 Cir. 1983) (“The standard of care imposed upon the confining authority [here, an outside medical facility] in providing for the medical needs of prisoners is that those services be adequate and reasonable.”).

¹³ *Jacoby v. State*, 434 So. 2d 570, 573–574 (La. App. 1 Cir. 1983) (“If the confining authority fails to provide reasonable medical services and treatment, an inmate has a civil rights action pursuant to [42 U.S.C. § 1983 (2012)] to secure such care.”). For more on 42 U.S.C. § 1983 (2012) and how to use it to bring a federal civil rights action, *see*

3. Payment for Medical Services and Hospitalization

The City-Parish must pay for medical services and treatments that you receive while you are in prison.¹⁴ If you are transferred to a hospital for *necessary* treatment, the City-Parish should pay for your stay in the hospital.¹⁵ However, there are some procedures that the government does not have to pay for. These include organ transplants or cosmetic medical treatments. The government will pay for these procedures if they are necessary because of something the Department of Public Safety and Corrections is responsible for (such as an accident).¹⁶ Although the government has to pay for your medical services, you may have to pay a copayment. The amount of your copayment will depend on how much you can afford to pay.¹⁷ These copayments can be taken out of your drawing or savings account, according to written guidelines established by the secretary of the Department of Public Safety and Corrections.¹⁸

4. Effect of Hospitalization on Sentencing

If you are hospitalized, the number of days you spend in the hospital or treatment facility will count as part of your prison sentence.¹⁹ This is true no matter what you are in prison for.²⁰ For example, if your sentence is for 50 days and, after 10 days of serving your sentence, you are hospitalized for 10 days, after your hospitalization, you only have 30 days left to serve. However, after your medical condition clears up and you do not need to be hospitalized anymore, you must serve out the rest of your sentence.²¹

C. STANDARD OF CARE: REASONABLENESS

If you receive medical care in prison, or if a prison transfers you to a medical facility for treatment, the care must meet a “reasonableness” standard. This means that when a court looks at whether you were given the right treatment or adequate treatment, the court will look at whether the

Chapter 16 of the main *JLM*, “Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief From Violations of Federal Law.”

¹⁴ *Amiss v. Dumas*, 411 So. 2d 1137, 1141 (La. App. 1 Cir. 1982) (“The general scheme which we gather from a reading of all of the statutes is that the City-Parish is responsible for the expenses of establishing, maintaining and operating the jail and for all the expenses of feeding, clothing, and providing medical treatment to the prisoners while the sheriff has the duty of operating the jail and seeing to it that the prisoners are properly cared for, fed and clothed.”) (emphasis added).

¹⁵ Op. Atty. Gen., 1938-40, p. 393 (“The police jury of parish must pay for hospitalization of sick prisoner when it becomes absolutely necessary to remove prisoner from parish jail to hospital for treatment, particularly since allowance for sick prisoners under R.S. 15:705 is limited to 12 1/2 ¢ per day.”).

¹⁶ LA. REV. STAT. § 15:831(A) (2017) (“Notwithstanding any law to the contrary, all payments to private hospitals or health care providers shall be governed by R.S. 15:824(B)(1)(c). No monies appropriated to the department from the state general fund or from dedicated funds shall be used for medical costs associated with organ transplants for prisoners or for the purposes of providing cosmetic medical treatment of prisoners, unless the condition necessitating such treatment or organ transplant arises or results from an accident or situation which was the fault of the department or resulted from an action or lack of action on the part of the department. However, nothing in this Section shall prohibit an inmate from donating his vital organs for transplant purposes.”)

¹⁷ LA. REV. STAT. § 15:831(B)(2) (2017); see also *Wilkerson v. Champagne*, No. 03-1754, 2003 U.S. Dist. LEXIS 21645, at *10 (E.D. La. Nov. 28, 2003) (holding that copayments required of non-indigent prisoners were not against the Constitution).

¹⁸ LA. REV. STAT. § 15:831(B)(2) (2017) (“The secretary shall also establish written guidelines for collection of copayments from an inmate’s drawing account or savings account pursuant to R.S. 15:874.”).

¹⁹ *State v. Brouillette*, 163 La. 46, 49, 111 So. 491, 492 (La. 1927) (holding that “a prisoner confine[d] [sic] by illness to a hospital, whether within the confines of the prison itself or elsewhere, is entitled to count the time of such confinement against his sentence”); *State ex rel. Brown v. Bailes*, 247 So. 2d 625, 627 (La. App. 2 Cir. 1971) (“We are of the opinion that under the holding in the *Brouillette* case the Sheriff had no authority to reincarcerate Wood after his release from medical treatment at the L’Herrison-Hanna Clinic as the time spent in that institution was in excess of this ten day sentence imposed by the court.”).

²⁰ *State ex rel. Brown v. Bailes*, 247 So. 2d 625, 627 (La. App. 2 Cir. 1971) (refusing to distinguish between sentence for violation of penal statute and sentence for contempt on this issue of hospitalization time counting against prison sentence).

²¹ *State v. Brouillette*, 163 La. 46, 49–50, 111 So. 491, 492 (La. 1927) (holding that prisoner should have been returned to prison to serve the rest of his remaining sentence after hospitalization, even though his physician said that clean air and sunshine would be better for his condition).

treatment you were given was objectively reasonable.²² Whether your treatment was reasonable can depend on your symptoms, whether it was an emergency situation, and what alternatives could have been given to you. This does not mean, however, that you are always owed the “ideal” or “perfect” medical care, especially if your medical condition is complicated.²³

1. Cases Where Court Found Treatment was Reasonable

In one case, the Department of Public Safety and Corrections could not repair the inmate’s artificial leg any more, and instead gave him crutches and a wheelchair to use in wet conditions. The court found that this was a reasonable alternative, since it still allowed the patient to move around.²⁴

In another case, the court evaluated the treatment given to a patient who had a history of severe asthma. The court found it reasonable that the patient was not treated for his asthma on a certain day, because he did not complain about having trouble breathing, and was seen walking around and talking to the other inmates.²⁵ The inmate died of a severe asthma attack. The court said that the prison officials could not have reasonably known this was going to happen, based on how the inmate acted earlier.

2. Cases Where Court Found Treatment was Unreasonable

Louisiana courts have ruled that prisons must have some kind of set medical health standards or procedures that they follow. Prisons have some ability to choose exactly what these standards should be.²⁶ However, if a prison does not set medical standards, and a court determines that an inmate was injured because the prison had none of these standards, the court may find that the state failed to provide reasonable medical care.²⁷

In one case, a female inmate who was six months pregnant complained of severe pain and stomach cramps.²⁸ When she was finally taken to a hospital, she gave birth to an infant that died because it was premature.²⁹ The court said that it was unreasonable for the prison officials to only check her underwear for bleeding. They should have performed a vaginal exam or taken her to the hospital

²² *Neidlinger v. Warden*, 45-235, pp. 6–7 (La. App. 2 Cir. 5/19/10); 38 So. 3d 1171, 1173 (affirming that the standard of care for medical services is reasonableness); *Robinson v. Stalder*, 98-0558, p. 6 (La. App. 1 Cir. 1/1/99); 734 So. 2d 810, 812 (finding that “the standard of care imposed upon the Department of Public Safety and Corrections in providing for the medical needs of inmates is that those services be reasonable”); *Cole v. Acadia Parrish Sheriff’s Dep’t.*, 07-1386, p. 8 (La. App. 3 Cir. 11/5/08); 998 So. 2d 212, 216 (stating that the standard of care to provide for medical needs of inmates is reasonableness); *see also Calloway v. New Orleans*, 524 So. 2d 182, 187 (La. App. 4 Cir. 1988) (“Medical care requires some degree of professional skill. La. R.S. [§] 40:1299.39 provides that the standard of care of every health care provider shall be to exercise the same degree of skill required by others licensed in his profession in the community.”). The court in *Calloway* applied that standard to a hospital treating a transferred inmate.

²³ *Brown v. State*, 392 So. 2d 113, 114 (La. App. 1 Cir. 1990) (“Considering [the inmate’s] condition when he entered the penitentiary and the treatment he received while there, the Court finds that he did not receive ‘ideal’ or ‘perfect’ care, such as would have been afforded him in a private hospital. But the care he did receive was adequate and reasonable.”). The court based this partly on the fact that the inmate “was not an easy patient to treat or control. Most of plaintiff’s complaints concern his condition, which required a lot of attention. He felt that he wasn’t getting the proper amount of attention and treatment. He also complained about the doctor’s choice of medication. He was seen frequently by the doctors and given medication.” *Brown v. State*, 392 So. 2d 113, 114 (La. App. 1 Cir. 1990).

²⁴ *Robinson v. Stalder*, 98-0558, pp. 7–8 (La. App. 1 Cir. 4/1/99); 734 So. 2d 810, 813 (finding that the Department is not required to provide inmate with a new prosthesis when it provided him with these alternative means of mobility: the crutches and wheelchair).

²⁵ *Elsy v. Sheriff of Parrish of East Baton Rouge*, 435 So. 2d 1104, 1105–1107 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 762 (La. 1983).

²⁶ *Dancer v. Dep’t. of Corrs.*, 282 So. 2d 730, 733–734 (La. App. 1 Cir. 1973) (describing general standards for medical services, treatments, and qualification of medical personnel that must be set).

²⁷ *Dancer v. Dep’t. of Corrs.*, 282 So. 2d 730, 732 (La. App. 1 Cir. 1973) (“*Furthermore there were no established medical health standards or procedures in effect at Angola.* It is clear that the state breached its duty to provide reasonable medical treatment to inmates under these circumstances.”) (emphasis added).

²⁸ *Calloway v. New Orleans*, 524 So. 2d 182, 183 (La. App. 4 Cir. 1988).

²⁹ *Calloway v. New Orleans*, 524 So. 2d 182, 184 (La. App. 4 Cir. 1988).

immediately. This was required by the medical procedures and policy of the prison.³⁰

In an extreme case, the court also held that treatment was unreasonable. A doctor locked up an inmate who could not move his lower body. He was not given help with showering or going to the bathroom.³¹ The court did not discuss the reasons for why the doctor used this treatment but said that there was no way the treatment could be reasonable. The treatment was unreasonable because the inmate was left in very unhealthy and dirty conditions with no help.³²

D. INFECTIOUS DISEASES (AIDS, HEPATITIS, AND TUBERCULOSIS)

1. Testing Required if Person Throws Bodily Waste or Fluids on Another Inmate

Louisiana state law requires you to be tested for HIV/AIDs, hepatitis, or other infectious diseases if you are convicted of doing something that may cause another person to get an infectious disease. Things that may cause another person to get an infectious disease include spitting at them, biting them, or throwing bodily waste or fluids like feces, urine, blood, or saliva, at them.³³ If this is the case, you will be tested by a medically qualified person. You will be told of the results of the test.³⁴ You will have to pay for the testing.³⁵ If you test positive for an infectious disease, your results will also be told to the chief administrator of your prison.³⁶ If you test positive for an infectious disease, you will be able to get some counseling and health care services.³⁷

2. Other Circumstances in Which Testing May be Ordered

The Secretary of the Department of Public Safety and Corrections may also order you to be tested if you were in a fight or argument with someone else and there is reason to think bodily fluids were exchanged between you and the other person.³⁸

Tuberculosis (“TB”) is a disease that can spread quickly through prisons and may lead to death. Because of this, the Department of Public Safety and Corrections requires every inmate to be tested for TB.³⁹ If you test positive for TB, this does not mean you definitely have TB.⁴⁰ However, if you do test

³⁰ Calloway v. New Orleans, 524 So. 2d 182, 186 (La. App. 4 Cir. 1988).

³¹ Brown v. State, 392 So. 2d 113, 114–115 (La. App. 1 Cir. 1990) (“[The inmate] could not get his wheelchair into the shower nor could he move his bowels normally. He was forced to use his hands to void his bowels and was forced to do without a bath or shower during this nine day period. For this the Department is liable to plaintiff in the sum of \$ 2,500.00.”).

³² Brown v. State, 392 So. 2d 113, 114–115 (La. App. 1 Cir. 1990).

³³ LA. REV. STAT. § 15:739(A)(1) (2017) (“Any incarcerated prisoner, whether before trial, during trial, pending appeal, or after final conviction, who is housed in any jail, prison, correctional facility, juvenile institution, temporary holding center, or detention facility within the state and who bites another person; spits or throws feces, urine, blood, saliva, or any other form of human waste or bodily fluid directly on another person; or causes, through contact, bleeding or exposure of flesh of another person in such a manner that the contact may cause the other person to contract an infectious disease, shall submit to a test designed to determine whether the incarcerated prisoner is infected with a sexually transmitted disease, or acquired immune deficiency syndrome (AIDS), the human immunodeficiency virus (HIV), HIV-1 antibodies, or any other probable causative agent of AIDS, viral hepatitis, or other infectious disease. Each incarcerated prisoner who is involved in an incident shall be deemed to be an offender and shall be subject to testing.”); *see also* Seaman v. Howard, 2002-0855, p. 4 (La. App. 3 Cir. 12/30/02); 834 So. 2d 1288, 1290 (recognizing that LA. REV. STAT. § 15:739 imposes duties of testing under circumstance where blood and saliva was transferred to a law enforcement officer, but stating that the statute was not in effect at the time of the incidents in the case).

³⁴ LA. REV. STAT. § 15:739(A)(2) (2017).

³⁵ LA. REV. STAT. § 15:739(B)(3) (2017).

³⁶ LA. REV. STAT. § 15:739(A)(2) (2017).

³⁷ LA. REV. STAT. § 15:739(B) (2017).

³⁸ LA. REV. STAT. § 15:831(C) (2017).

³⁹ LA. REV. STAT. § 40:4(A)(2)(c)(iv) (2017) (“Requiring any person entering any Louisiana prison as an inmate for forty-eight hours or more to be screened for tuberculosis in a communicable state.”); LA. REV. STAT. § 40:4(A)(2)(c)(v) (2017) (“Requiring any person entering any Louisiana jail as an inmate for fourteen days or more to be screened for tuberculosis in a communicable state, where funding is available.”); LA. REV. STAT. § 40:4(A)(2)(c)(vi) (2017) (“Requiring all persons with acquired immunodeficiency syndrome (AIDS) or known to be infected with human

positive, you will be given medication. If you do not take this medication, you have to sign a Refusal to Accept Medical Care form. Then, you will be watched to see if you develop any more signs of TB.⁴¹ During the observation, you may be placed in lockdown or medical isolation.⁴²

For more information on infectious diseases and testing for these diseases, see Chapter 23 of this Supplement, “Infectious Diseases (HIV/AIDS, Tuberculosis, Hepatitis, and MRSA in Prison).”

E. CONCLUSION

You have a right to adequate medical care while you are incarcerated. Prisons must have standards and procedures in place that ensure adequate medical care for prisoners. Furthermore, prison staff must be able to recognize medical emergencies. If you have a medical emergency or an ongoing medical condition, your prison must either treat you at your facility or transfer you to a facility where you can be treated. Finally, the medical care you receive in jail or prison must be “reasonable.” Reasonable medical care does not mean that you are entitled to the best medical care. However, if a court rules that the medical treatment you have received does not meet a standard of reasonableness, the government may be liable to you for injuries caused by inadequate medical care. You can find more information about your right to medical care while incarcerated in Chapter 23 of the main *JLM*.

immunodeficiency virus (HIV), in the process of receiving medical treatment related to such condition, be screened for tuberculosis in a communicable state.”); *Jones v. Hearn*, 248 F. App’x. 568, 569–570 (5th Cir. 2007) (stating that the Department of Public Safety and Corrections’ health policy required TB testing and explaining the testing procedure).

⁴⁰ *Jones v. Hearn*, 248 F. App’x. 568, 570 (5th Cir. 2007) (stating that “a patient can have an allergic reaction to a test, resulting in a false positive”).

⁴¹ *Jones v. Hearn*, 248 F. App’x. 568, 570 (5th Cir. 2007).

⁴² *Jones v. Hearn*, 248 F. App’x. 568, 570 (5th Cir. 2007).