

The Legal Right to Medical Care in Correctional Facilities

1. What rights do I have when I am in jail or prison?

You have rights to adequate medical care and equal treatment guaranteed by the Constitution and federal law. The Eighth Amendment to the Constitution—prohibiting “cruel and unusual punishment”—gives convicted inmates the right to adequate medical care. The Due Process Clause to the U.S. Constitution (Fifth and Fourteenth Amendments) gives this same right to pretrial detainees.

The Americans with Disabilities Act (ADA) is a federal law that requires equal access to services, programs, and activities for inmates with disabilities, such as diabetes. This law may be violated if inadequate care or prison policies cause an inmate to be denied access to prison programs or services. For example, if you are denied work release privileges because of your diagnosis of diabetes, this may be discrimination under the ADA.

2. What is adequate care?

Because diabetes impacts every person differently, appropriate care differs from person to person. Adequate care may include:

- Finger sticks to check your blood sugar levels as often as necessary for adequate diabetes control. If you have type 1, generally at least twice a day.
- Insulin and other medications needed to help control your diabetes.
- Appropriately timed blood glucose checks, insulin administration, and meals, since mistimed care may lead to emergencies that can lead to serious injury or death.
- Prompt treatment for hypoglycemia (low blood sugar), typically defined as a blood glucose level of less than 70 mg/dl.
- Prompt treatment in the event of severe hyperglycemia (high blood glucose) or diabetic ketoacidosis. Blood glucose levels of above 240 mg/dl should be immediately assessed.
- Specialized wound care, as diabetes can prevent normal healing, leading to amputations.
- A1C testing every three to six months and adjustment to treatment regimen if indicated. An A1C of above 7% indicates a greatly increased risk of serious complications.
- Regular, scheduled chronic care appointments with a doctor, medical assistant, or specially trained nurse.
- Referral to specialists when necessary to treat complications resulting from diabetes.
- Annual dilated eye exams to screen for retinopathy.
- Regular foot exams and special footwear when medically necessary.
- Annual urine protein testing (microalbumin test) for kidney problems.
- A diet appropriate to your treatment regimen.

3. What can I do if I am not getting this care?

If you are not getting the care you need, there are several steps that you can take. Your first step is to clearly request care from the health care staff. It is critical that you make **written requests** for care and explain with specific detail what care you need—general requests for improved care are more likely to be ignored. From your first request onwards, you must clearly explain why your care does not meet constitutional standards.

Before you make a request for better care, you should take stock of what problems you are experiencing so you know exactly what to ask for. The attached “The Legal Right to Medical Care in Correctional Facilities: Self-Assessment” and blood glucose logs are tools that you can use to do a self-evaluation of whether you are receiving the care you need.

If you do not get an adequate response to your initial requests for better care, you may want to file a grievance. There should be information in your inmate handbook or law library about your facility’s process for doing this.

If you still do not receive the care that you need, you may also consider filing a lawsuit to protect your rights under the Eighth Amendment. You must go through the full grievance process (called “exhausting your administrative remedies”) before you are allowed to file a lawsuit.

4. Can my family help me?

Your family, or friends can also help advocate for you. They may call 1-800-DIABETES to find out how they can speak to a legal advocate. If you return the enclosed “Request for Discrimination Information and Assistance,” you may also include their contact information.

If you have an attorney, please encourage him or her 1-800-DIABETES. We have free legal research resources we are happy to provide.

5. What are the elements of an Eight Amendment Medical Care Claim?

There are four things you must prove to show that you are not receiving adequate care:

1. A serious medical need

The Constitution gives inmates a right to treatment only for medical needs that are “serious.” A medical need is serious when it has been diagnosed by a physician as mandating treatment or is so obvious that even an average person on the street would easily recognize the necessity for a doctor’s attention. While diabetes is usually considered to be a serious medical need because it can be life-threatening if not treated properly, you should explain exactly why it is a serious medical need. For example:

“I have type 1 diabetes and therefore have a serious medical need for uninterrupted insulin. If I do not receive insulin, within a matter of hours or days, I can develop diabetic ketoacidosis. This can lead to coma and death.”

2. The prison official must know of your serious medical need

If you know that you are not getting the care you need, or you become sick or injured, you need to do everything to put prison officials on notice about your problem. **It is critical that you create a written record**, such as filing written complaints or grievances. You have no right to medical treatment if no one knows about your problem. While your need for specific care might seem obvious to you, it may not be

obvious to prison officials so it is important for you to explain exactly why the care you are receiving/not receiving is not appropriate. For example, write:

“I need to eat within half an hour of receiving my insulin injection. If I do not receive food in this time, my blood glucose will drop too low and I may have another seizure. Before coming to prison, I never had a seizure due to low blood glucose, but since coming here, I have had seizures on the following dates: _____.”

Not: *“I need to have food at the right time so that I don’t get low blood sugars.”*

“I need treatment for the cut on my foot because it isn’t healing. A cut exactly like this for a person who doesn’t have diabetes would heal without any help. But my diabetes is preventing it from healing by itself. If I do not get treatment, my cut will likely get worse and my entire foot may need to be amputated.”

Not: *“I need antibiotics for my foot because I have diabetes.”*

3. Prison officials must unreasonably fail to provide needed treatment (showing “deliberate indifference” to your needs)

According to the Supreme Court, officials only violate the Constitution when they refuse to let you access medical care or make you wait longer than is reasonable, provide treatment that is not at all helpful, or prevent you from using the treatment that you have been prescribed.

You need to explain why the denial of your requested treatment is not just a difference of opinion, but a completely unreasonable decision. For example:

“I am not receiving enough insulin. I know this because my daily blood glucose readings are at least 250 mg/dl and my last A1C level was 10%. Both the Bureau of Prisons and the American Diabetes Association define this as severely uncontrolled blood glucose. This blood glucose level puts me at immediate risk for diabetic ketoacidosis and vision, nerve, and kidney damage. I have started to feel tingling in my feet and hands, a symptom of diabetic neuropathy, and my vision is constantly blurry, a symptom of diabetic retinopathy.”

Not: *“I am not getting the kind of insulin that my doctor ordered for me. I need to be put back on Lantus instead of NPH.”* *“I need antibiotics for my foot because I have diabetes.”*

4. The lack of treatment (deliberate indifference) caused you an injury or is likely to cause you an injury

Again, you should explain specifically how the denial of appropriate care has harmed you. Explain specifically what you are at risk of. For example: blindness, amputation, or seizure.

“On April 15, I experienced severe hypoglycemia in my sleep because I received too much insulin. When my cellmate called for help because I was unresponsive, nobody came to help. While still unresponsive, I fell off of my bunk bed and broke my wrist when I landed. I need my insulin to be adjusted daily based on my blood glucose levels and permission to have glucose tablets in my cell to prevent hypoglycemia so that I am not injured more severely in the future.”

6. How does the Americans with Disabilities Act protect me?

This federal law requires equal access to services, programs, and activities for inmates with disabilities, such as diabetes. This law may be violated if prison policies cause an inmate to be denied access to prison programs or services. For example, if you are told you can't participate in a boot camp program that would reduce your time spent in prison because you have diabetes, this may be discrimination under the Americans with Disabilities Act. This right can be enforced through a lawsuit in federal court or a complaint to the Department of Justice.

7. Where can I find more information about my rights?

The American Civil Liberties Union National Prison Project provides information and materials to individuals or organizations with complaints about prison conditions. It does not handle criminal law cases or post-conviction cases. It does not normally handle cases on behalf of individual prisoners, except sexual assault cases. Its Prisoners Assistance Directory provides information about state and local organizations that may be able to assist.

ACLU National Prison Project
Address: 915 15th Street, N.W., 7th Floor
Washington, DC 20005
www.aclu.org/prisoners-rights
www.aclu.org/prisoners-rights/2012-prisoners-assistance-directory

The Southern Poverty Law Center was founded to ensure that the promises of the civil rights movement became a reality for all. It publishes two guides of particular interest to prisoners with diabetes. These guides are distributed by Prison Legal News.

To order *Protecting Your Health and Safety: A Litigation Guide for Inmates*, send a check or money order for \$10.00. *Prisoner Diabetes Handbook: A Guide to Managing Diabetes for Prisoners*, by Prisoners is free of charge. Make sure you include your name, prison identification number, mailing address, and any other necessary information to the following address:

Prison Legal News
P.O. Box 2420
West Brattleboro, VT 05303
www.prisonlegalnews.org/

Important Note: This fact sheet describing the legal rights of individuals with diabetes is for your general information and review only, and is not to be construed as a substitute for the advice of legal counsel.