MedicalXpress

Reforms needed for compassionate release of prison inmates

June 2 2011

The nation's system of freeing some terminally ill prisoners on grounds of compassionate release is so riddled with medical flaws and procedural barriers that many potentially medically eligible inmates are dying behind bars, say UCSF researchers in a new study.

The research, which calls for an overhaul of current practices, is published online this week in Annals of Internal Medicine.

"Current compassionate release guidelines are failing to identify seriously ill prisoners who no longer pose a threat to society, placing huge financial burdens on state budgets and contributing to the national crisis of prison overcrowding," says lead author Brie Williams, MD, a UCSF assistant professor of medicine in the division of geriatrics.

The authors call for the development of standardized national guidelines by an independent advisory panel of palliative medicine, geriatrics and correctional healthcare experts. The new guidelines would require a fast-track option to evaluate rapidly dying prisoners and an advocate to help the prisoner navigate the application process.

With an aging inmate population, overcrowded prisons and soaring criminal justice medical costs, many policy experts have been calling for broader use of compassionate release.

Inmates are eligible if they have a clinically diagnosed life-limiting illness and if it is legally justifiable to release them into society.

Compassionate release has been in effect in the United States since 1984, and all but five states grant some form of early release to eligible dying prisoners. The number of applications annually for compassionate release is unknown because many prisoners die during the laborious review process which can take months -- even years. Only a small number of inmates are granted the special discharge: in 2008, for example, there were 27 such releases from federal prisons compared to 399 deaths.

To be released from federal incarceration, a prisoner must establish "extraordinary and compelling" reasons. In actuality, say the researchers, prisoners must have a terminal prognosis and be expected to die quickly. Their physicians must be able to predict "not only limited life expectancy, but functional decline as well," say the authors.

Yet predicting how long patients will live is difficult when they suffer from conditions like dementia, advanced liver, heart and lung disease. And for those with cancer and other such diseases, life expectancy and functional abilities can be unpredictable, with declines sometimes occurring only in the last weeks of life.

The result is a "Catch 22," say the authors. If compassionate release is requested too late, eligible prisoners will die before their application is complete. If requested too early, terminally ill prisoners could live longer than expected "and perhaps pose a threat to society."

Other inequities are cited, including those faced by illiterate prisoners, cognitively impaired prisoners unable to complete a written petition, or prisoners with little support from family or friends who need an outside agent to act as an advocate.

"In California, the warden must enable the prisoner to designate an outside agent to act as an advocate," the researchers note. "However,

once an advocate is appointed, there are no formal guidelines to help the agent navigate the system."

The authors support a clear delineation between the role of physicians or other healthcare providers, who would assess medical eligibility, from prison officials who would be responsible for balancing medical eligibility with public safety.

The authors also suggest that seriously ill prisoners be categorized into three groups: 1. Prisoners with a terminal illness with poor prognosis; 2. Prisoners with Alzheimer's and related dementia; and 3. Prisoners with serious, progressive, nonreversible illness who have profound functional and cognitive impairments. That breakdown would provide a framework to redesign the current eligibility criteria, the researchers say.

Additionally, the authors recommend that compassionate release programs have a recall mechanism for prisoners whose medical conditions improve substantially after release.

Provided by University of California, San Francisco