

Good Clinical Practice Q&A: Focus on Prisoners

Do some clinical trials today actively enroll inmates in the U.S. prison system, and how common is this in clinical programs today?

Yes, there are at least some clinical trials that involve U.S. prison inmates today. There are, for example, HHS-conducted or –sponsored clinical trials that enroll inmates, although the majority of these are said to involve social-behavioral studies rather than biomedical studies.

It is unclear how many clinical trials are enrolling inmates, and it seems that few individuals, if any, are able to answer this question definitively. Even an Institute of Medicine (IOM) committee studying the issue noted, in a June 2006 report, that "today, it is impossible to know how many prisoners are involved in [research studies]."

Prison inmates were once commonly used in clinical research, including new drug research – in the early 1970s, FDA officials estimated that over 90 percent of all experimental drugs were first tested in prisoners. Shortly thereafter, however, it seemed that all types of prison-based research declined markedly following revelations of research abuses in prisons such as Holmesburg and in other research, such as the infamous Tuskegee Study of Untreated Syphilis in the Negro Male.

The federal government responded to the above-mentioned research abuses by releasing, in 1978, regulations that today comprise Subpart C (Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects) of the HHS's regulations governing the protection of human subjects in research. These regulations, which currently apply primarily to HHS-sponsored or –regulated clinical research, define the special conditions (e.g., IRB composition and review, additional IRB duties, certification to HHS, HHS review) under which prison inmates may be enrolled under HHS-funded or –regulated research. The FDA has not adopted Subpart C (see Q1.21 below).

The firestorm that the above-mentioned revelations ignited in the early 1970s very much continues today in the form of active public and political debate over the ethics of research involving prisoners (see discussion of IOM report below). Meanwhile, drug firms were said to have largely – if not entirely – abandoned the use of prisoners in FDA-regulated research during the 1970s. Many assume that this continues to be the case today.

As noted, certain types of research are being conducted in prisons today, some of which takes place under Subpart C regulations. Some government officials claim that the vast majority of HHS-sponsored or –regulated research involving prisoners is "social/behavioral" research (e.g., reintegration into the community following incarceration or alcohol/drug rehabilitation). Only a small percentage of today's research projects enrolling prison inmates is said to involve biomedical research, which might include measuring biomedical outcomes or testing drugs or other medical products. According to officials from the Federal Bureau of Prisons (BOP), many of the research projects involving prisoners today involve cases in which a person who is already enrolled in an FDA-approved clinical trial becomes incarcerated (see Q1.22 below).

Unless the research study meets all the criteria specified under Subpart C, "the default is that you do not include prisoners in research when it is HHS supported," said Kristina Borrer, director of compliance oversight within HHS' Office for Human Research Protections in a January 2007 speech. In fact, it would seem that the current focus on the enrollment of

vulnerable populations in clinical trials by both federal regulators and prosecutors will only serve to make conducting research in prison settings even more challenging.

Recognizing the significant changes in the U.S. correctional system (four-fold growth) and other changes since the Subpart C regulations were issued, HHS recently commissioned the Institute of Medicine (IOM) to re-examine the ethical issues in research involving prisoners. And, in a June 2006 report, the IOM recommended a new paradigm based upon a risk-benefit analysis, together with additional safeguards for such research, while at the same time recognizing that access to research may be critical to improving the health of prisoners. The IOM recommended, however, that biomedical research in correctional settings be "severely limited," that inmates be enrolled only in Phase 3 studies (i.e., not Phase 1 or 2), and that the ratio of prisoner to non-prisoner subjects not exceed 50 percent (i.e., to ensure a fair distribution of research burdens). As the IOM notes, "...prisoners face restrictions on liberty and autonomy, limited privacy, and potentially inadequate health care services, [which] can be barriers to the prerequisites of ethical research, namely the acquisition of voluntary informed consent, protection of privacy, and access to adequate health care such that a choice between research participation and nonparticipation is not simply a desperate action to obtain treatment." ¹

So does the FDA have any regulations or policies specific to clinical trials involving prisoners?

FDA regulations say little regarding clinical trials involving prisoners, and do so only in the context of other "vulnerable" populations. The FDA's regulations at 21 CFR 21.111-Criteria for IRB approval of research state that, "When some or all of the subjects, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons, are likely to be vulnerable to coercion or undue influence [the IRB must determine that] additional safeguards have been included in the study to protect the rights and welfare of these subjects."

Although the FDA has not published its own regulations or adopted subpart C (Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects) of the HHS regulations, it did attempt to do so in an effort to provide additional protections for prisoners. Following the release of the Subpart C regulations in the late 1970s, government officials instructed the FDA to develop similar regulations. Ironically, in July 1980, about a year before the proposed FDA regulations were to take effect, a group of prisoners at the State Prison of Southern Michigan filed suit, claiming that the agency's pending regulations would violate their right to consider and choose to participate in clinical research (*Fante et al. v. Department of Health and Human Services, et al.*). During negotiations, the FDA agreed to indefinitely stay the regulations. Ultimately, the regulations were no longer considered necessary, in large part because testing in prisons was no longer a common practice in commercial research.²

So, other than FDA and HHS regulations, are there any regulations or standards that are relevant to clinical testing in prison inmates?

Yes. In addition to FDA and HHS regulations, there is also a complex network of state and federal laws, regulations, and standards relevant to conducting research in prisons. In its program statement 6031.01-Patient Care, the Federal Bureau of Prisons, which is not formally bound by Subpart C, outlines its policy for biomedical testing in federal prisons:

"EXPERIMENTATION AND PHARMACEUTICAL TESTING. Inmates in the custody of the Federal Bureau of Prisons will not be used as subjects for any non-therapeutic medical experimentation. This does not preclude the use of approved clinical trials that may be

warranted for a specific inmate's diagnosis or treatment when recommended by the [institution's clinical director] and approved by the [BOP's] Medical Director. Such measures must have the inmate's prior written consent and must be conducted under conditions approved by the Department of Health and Human Services. Research regarding disease prevalence, response to accepted therapeutic interventions, etc., can be performed under protocols meeting the requirements of the Program Statement on Research."

As noted, officials from the Federal Bureau of Prisons claim that many of the research projects involving prisoners today are cases in which a person who is already enrolled in an FDA-approved clinical trial becomes incarcerated. In such cases, however, the individual's continued participation in the study must be reviewed and approved, including by the BOP's medical director.

Testing in state prisons would require a reading of individual state laws and regulations. Some states seem to prohibit clinical testing in state prisons, although experts in the field caution that exceptions may be possible in some cases.

To complicate matters, there are also private, for-profit prison facilities that provide prison services to the federal government and the states. In such cases, experts emphasize that one must refer to the terms of the contract that a private facility signs with the federal or state government to determine whether research will be permitted and the conditions under which it must be conducted.³

References

1. "Good Clinical Practice: A Question & Answer Reference Guide", Barnett International, 2007
2. Ibid
3. Ibid

Source

"Good Clinical Practice: A Question & Answer Reference Guide 2007," is available for \$39.95 at <http://www.barnettinternational.com/>