
The Legal Right to Medical Care in **Detention 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 people who are convicted of a crime the right to adequate medical care while incarcerated. The Due Process Clause to the U.S. Constitution (in the Fifth and Fourteenth Amendments) gives this same right to pretrial detainees, civil detainees, and immigration detainees.

The Americans with Disabilities Act is a federal law that requires equal access to services, programs, and activities for people with disabilities, including diabetes. This law may be violated if a jail, prison, or other detention facility’s policies or practices cause a person with a disability to be denied access to programs, services, or activities at the jail. For example, if you are denied access to classes or jobs, work release privileges, or housing in a lower-security unit because of your diagnosis of diabetes, this may be illegal discrimination under the Americans with Disabilities Act.

2. What is considered 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 glucose (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, including a diabetes management plan that is appropriate for your situation and needs.
- Appropriately timed blood glucose checks, insulin administration, and meals, since mistimed care may lead to emergencies related to unsafe low or high blood glucose levels.
- Access to current, established therapies and technologies, including insulin pump therapy and continuous glucose monitors (CGMs), consistent with individualized assessment of your circumstances and diabetes management needs.
- Prompt treatment for hypoglycemia (low blood glucose), 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 approximately 240 mg/dL should be promptly addressed.
- 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.
- Regularly scheduled chronic care appointments with a doctor, medical assistant, or specially trained nurse about your diabetes management and treatment plan.

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- Referral to specialists when necessary to assess and treat potential or actual 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 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 onward, you must clearly explain why the treatment you are receiving does not meet your needs and the standards of care.

Before you make a request for better care, you should take note of what problems you are experiencing so you know exactly what to ask for. The attached “The Legal Right to Medical Care in Detention Facilities: Self-Assessment” and blood glucose logs are tools 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 are you still not receiving the care 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 help advocate for you. They may call **1-800-DIABETES** (800-342-2383) or email askada@diabetes.org to request information and resources from the American Diabetes Association® that will help them advocate for better care for you.

If you have an attorney helping you with a quality of diabetes care issue, please encourage them to call **1-800-DIABETES** (800-342-2383) or email askada@diabetes.org. We have free legal research resources we are happy to provide.

Several resources are available at diabetes.org/tools-support/know-your-rights.

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5. What are the elements of a legal claim for inadequate medical care in detention settings under the United States Constitution?

There are four things you must prove to establish a legal claim for inadequate medical care in detention settings under the United States Constitution—that is, under the Eighth, Fourteenth, or Fifth Amendment:

- **A serious medical need**

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

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

- **The prison/jail official must know of your serious medical need**

If you know you are not getting the care you need, or you become sick or injured, you need to do everything you can for prison officials to notice your problem. It is critical that you create a written record, such as filing written complaints or grievances. You will not have a viable legal claim regarding inadequate 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 staff at the detention facility, so it is important for you to explain exactly why the care you are receiving/not receiving is a problem. For example:

“I need to eat within half an hour of receiving my insulin injection. If I do not receive food during 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: _____.”

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

OR

“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 might heal without any help. But my diabetes prevents 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.”

Do not say: “I need antibiotics for my foot because I have diabetes.”

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- **Prison/jail officials must unreasonably fail to provide needed treatment (showing “deliberate indifference” to your serious medical needs)**

According to the Supreme Court, officials violate the Constitution only if they demonstrate “deliberate indifference” to your serious medical need, meaning that they knew of and disregarded a substantial risk of harm to someone by, for example, denying access to necessary medical care, delaying care for longer than is clinically reasonable, or preventing the delivery of treatment that has been prescribed for a serious medical need.

You need to explain why the denial of your requested treatment is not just a “difference of medical 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 these levels as severely uncontrolled blood glucose. My blood glucose levels put me at immediate risk for diabetic ketoacidosis, and longer-term risk of 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. My doctor outside of jail/prison has prescribed insulin dosing that is very different from what I am getting while incarcerated, and I want to make sure I am getting the right amount of insulin to manage my diabetes effectively.”

Do not say: “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,” or “I need antibiotics for my foot because I have diabetes.”

- **The lack of treatment (due to deliberate indifference to a serious medical need) 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 or puts you at substantial risk of serious harm. 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 dosing to be adjusted based on my blood glucose levels. I need access to glucose tablets in my cell to treat hypoglycemia so I am not injured again in the future.”

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

This federal law requires equal access to services, programs, and activities for people with disabilities, including diabetes. This law may be violated if a jail, prison, or other detention facility's policies or practices cause a person with a disability to be denied access to programs, services, or activities at the jail. For example, if you are denied access to classes or jobs, work release privileges, or housing in a lower-security unit **because of your diagnosis of diabetes**, this may be illegal discrimination under the Americans with Disabilities Act. This right can be enforced through filing a lawsuit or by filing a complaint with the United States Department of Justice at civilrights.justice.gov/report/

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
aclu.org/prisoners-rights

aclu.org/prisoners-rights/2012-prisoners-assistance-directory

The Southern Poverty Law Center was founded to ensure the promises of the civil rights movement became a reality for all. It publishes two guides of particular interest to prisoners with diabetes, *Protecting Your Health and Safety: A Litigation Guide for Inmates* and *Prisoner Diabetes Handbook: A Guide to Managing Diabetes for Prisoners*. 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. To order one or both, include your name, check or money order (if applicable), 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
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.