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Court-appointed receiver blasts California prison health system

Big changes in the works—with major state budget implications

We normally try to spare our readers from detailed discussion of particular budget issues. The prison health care crisis, however, has the very real potential to swallow any General Fund money not already used by K-14 education and bond debt payments. As most of you know, in February 2006, U.S. District Court Judge Felton Henderson placed California's prison health care system in receivership and subsequently appointed a receiver to monitor and help enforce his decision. Henderson's action came after years of fact-finding and futile attempts by several governors to improve the provision of health care for inmates.

If you want to see what a tough federal court order looks like, take a look at the ruling that created the receiver. For your amusement, we have attached a copy of that nine-page document. What impressed us was the restrained anger of the Judge and the truly harsh words directed at California's policy makers for ignoring the need for action

All of which means that you had better pay attention to this dispute and how it works out. Our readers who depend on state funding may find themselves out of luck when the court simply orders increased spending for prison health care. This may sound like insider baseball, amusing but not of any importance. We remind our readers that total correctional costs are about \$8 billion, and health care expense in the prison system is a significant percentage of that amount.

Now, on to the latest part of the story.

On July 5, 2006, Robert Sillen, the receiver in *Marciano Plata v. Arnold Schwarzenegger* (NO C01-1351-T.E.H) filed the first of his bi-monthly reports. You can find the report, and a separate 180-page appendix at www.cand.uscourts.gov/. When you get there, go to the Current Interest page and you will find the two most recent documents. Note: We are told by the Receiver's Office that a separate web site will be created, but that in the meantime they expect reports to appear under Judge Henderson's "opinions" section.

Press and media reaction to the first receiver's report emphasized the highly critical nature of his comments about the executive branch, the Legislature and various state departments and agencies. Several days ago, a separate report by John Hager, Chief of Staff of the Office of the Receiver and a long-time Special Master on prison issues for Judge Henderson, issued his own finding, including comments on the role of the prison guards' union and the Governor's staff. The media was full of his criticism of the role of Schwarzenegger's Chief of Staff Susan Kennedy and her allegedly close ties to the California Correctional Peace Officers' Association.

For those of us who pay attention to budget matters, it is hard to escape the conclusion that major changes in spending for health care in corrections, plus major forced revisions in the state's purchasing and outside contracting laws are in the making. We read the receiver's report and think the following items are worth noting:

- Perennial overcrowding in the prison system and constant changes in leadership in the Department of Corrections and Rehabilitation make it "difficult, if not impossible" for the receiver to complete his work (p. 3). Later in the report, the receiver noted that even if the Governor gets the Legislature to approve his proposed prison building plan, it will have no impact on the current situation, and inmate growth is likely to exceed any expanded capacity within five years.
- The receiver is harsh on the Governor, the Legislature and many of the non-corrections state agencies, in particular the Department of Finance, Department of General Services and the Department of Personnel Administration.

"The present crisis was created by, and has been tolerated by, both the Executive and Legislative branches of the State of California. Furthermore, these problems have not been adequately addressed by the State's control agencies.....For example, the imposition of unreasonable and unfunded bureaucratic mandate, concerning certain essential services (for example, the ability to obtain medical supplies in a timely and cost effective manner and the ability to enter into contracts with specialty providers in a timely and cost effective manner) has all but crippled the CDCR's efforts to provide adequate health care. Therefore, concerning these services, the corrective action required from the Receiver must, of necessity involve the restructuring not only of the CDCR, but also the operation and oversight of State of California control agencies." (p. 4)

- To no one's surprise, the receiver heavily criticizes the labor agreements, civil service protections and other rules and regulations that make

"...it virtually impossible to effectively discipline and/or terminate State employees for poor performance, up to and including incompetence and arguably illegal behavior. The sense of hopelessness this creates for supervisors, managers, department heads and others with the responsibility and supposed authority to assure adequate and competent performance of subordinate employees cannot be overstated and has led, in some cases, to the dereliction of their own responsibilities.... In addition, the lack of qualifications, training and, in some instances, competence of the above personnel has created a culture of incompetence

and non-performance which, unfortunately, is more rewarded than not within State employment.” (p. 5)

- Ironically, the receiver also asserted that inmates aren't the only prisoners in the system. He strongly suggests that the “overwhelming majority of State employees involved in activities essential to the receiver's mission are also prisoners.” (p. 6).

This conclusion was followed by the receiver's strong suggestion that salary increases for key corrections health care staff and administrators are needed. We assume that Judge Henderson could simply order salaries increased, although it is more likely that he will also join in the eventual recommendation and set a hearing date to receive the state's response. If no action is forthcoming, the judge may proceed on his own authority and order the increases.

- Waste of taxpayers money, particularly involving the purchasing but not using of medical equipment, and the well-established problems of drug purchases and pricing are highlighted. Judge Henderson has set a hearing for July 26, 2006 concerning the pharmacy problems and expects a presentation of a report on the situation by consultants Maxor.
- Finally, the receiver noted that state funding for health care reforms remains unresolved. Meetings with the Administration are continuing at this time.

What are policy makers thinking about all this?

We think politicians are secretly happy that there is a federal court receivership of the prison health care system. They don't want to spend a lot of money for decent health care for prisoners (which is required by the U.S. Constitution). Citizens of California have no sympathy for crooks and are not enthusiastic about increased spending on prisoners, especially increasing spending on health care for prisoners when many law-abiding Californians have little or none. So legislators want someone else to force them to do what needs to be done.

This means that the current situation is perfect for politicians and citizens. The courts have taken over the health care system. The courts will order all kinds of changes, including increased salaries for prison health care personnel and administrators, and probably order modification or abolition of some of the bizarre state purchasing rules that have built up over the years. But politicians won't do this; the court will.

Big changes are probably coming in state labor contracts and work rules, though most of those changes will be opposed by the various unions who represent employees in the prison system. Once again, the judge will have to order these changes and not wait until the Legislature or Governor does the dirty deed.

Finally, the receiver suggested that perhaps a change in California's sentencing laws (Three Strikes?) needs to be made if the situation is going to improve. Not many politicians are anxious to take on this issue. We predict of all the changes needed, this is one the court will avoid, simply because it lacks authority to force the legislative branch to change the law.

The end game goes like this: When Judge Henderson acts, the Governor and other politicians will either say they are forced to act, that the changes are inevitable, or they will strongly condemn the judge. Perhaps all three at once. You can bet the state Assembly will have four or five hours of inflamed and at times entertaining debate about this.

In government today, it does not get much better than this: Needed change imposed by a court and the Governor and Legislature absolved of responsibility for making the changes. We love all this! After all, it is just the latest example of the American public's resistance to taxes, but insistence that "good" spending should always continue, even if the money is not available.

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