

# TREATMENT INDUSTRIAL COMPLEX:

## How For-Profit Prison Corporations are Undermining Efforts to Treat and Rehabilitate Prisoners for Corporate Gain



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### EXECUTIVE SUMMARY

Over the last 30 years, for-profit prison corporations, such as Corrections Corporation of America (CCA) and GEO Group (formerly Wackenhut Corrections Corporation), have benefited from the dramatic rise in incarceration and detention in the United States. Since the advent of prison privatization in the early 1980's, the number of people behind bars in the US has risen by more than 500 percent to more than 2.2 million people.<sup>1</sup> Meanwhile, the number of people held in immigration detention centers has exploded from an average daily population of 131 people to over 32,000 people on any given day.<sup>2</sup>

Private prison corporations have profited from, and at times contributed to, the expansion of tough-on-crime and anti-immigrant policies that have driven prison expansion. This confluence of special interests and profit-driven policy making has been referred to as the "prison industrial complex."

This brief describes the expansion of the incarceration industry away from warehousing and into areas that traditionally were focused on treatment and care of individuals involved in the criminal justice system—prison medical care, forensic mental hospitals, civil commitment centers, and 'community corrections' programs such as halfway houses and home arrest.

While the prison industrial complex was dependent on incarceration or detention in prisons, jails, and other correctional institutions, this emerging "treatment industrial complex" allows the same corporations (and many new ones) to profit from providing treatment-oriented programs and services. This includes moving to capitalize on efforts at the state and federal levels to look at alternatives to prison, a softening of criminal sentencing laws, and a new

interest in evidence-based practices in parole, probation, and sentencing.

As a result, this emerging Treatment Industrial Complex has the potential to ensnare more individuals, under increased levels of supervision and surveillance, for increasing lengths of time—in some cases, for the rest of a person's life.

### COMPONENTS OF THE TREATMENT INDUSTRIAL COMPLEX

For the purposes of this brief, we have divided the Treatment Industrial Complex into three segments:

#### Segment 1: Civil Commitment and Psychiatric Care Facilities.

Unlike prisons, from which over 90% of those incarcerated are eventually released, mental health hospitals and civil commitment centers represent the potential for lifetime confinement, which spells long-term, guaranteed profits for private corporations.

#### Segment 2: Subcontracted Prisoner Mental Health and Medical Care

This is the largest and fastest-growing sector in the treatment industrial complex. Total state spending on correctional healthcare rose from \$4.2 billion in 2001 to \$6.5 billion in 2008 (the last year available for comprehensive review).<sup>3</sup> Private companies have contracts for close to 1/3 of all correctional healthcare spending, or \$3 billion per year.<sup>4</sup>

#### Segment 3: Community Corrections

Community corrections is a vast segment of the criminal justice system. It includes a variety of treatment services historically delegated to probation and/or parole, halfway houses, day reporting centers, home arrest, surveillance, and electronic monitoring. Overall, two-thirds of individuals involved in the criminal justice system are in the community,

not behind bars. One in 45 adults is on probation or parole and 1 in 100 is in prison or jail.<sup>5</sup>

## FINDINGS

1. Most for-profit prison corporations have **dismal records in terms of safety, cost, and quality** of the prisons that they manage.<sup>6</sup> Across the country, evidence has surfaced that these companies cut corners on staff pay and training and services to prisoners in order to make a profit.<sup>7</sup> Application of the same business model to treatment, services, and alternatives to incarceration has demonstrated the same sorts of problems
2. The profit motive is inherently at odds with the stated purpose of 'corrections,' including community corrections, which is to reduce offenses that land people in prison thereby reducing the number of incarcerated individuals. **Private prison corporations are financially dependent on the growth of supervised populations, providing a perverse incentive not to rehabilitate.**
3. While many sentencing reform efforts are geared toward keeping people out of the system and/or returning them to their communities as quickly as possible, **the financial incentive for private prison corporations is to keep people in custody or under some form of supervision for as long as possible at the highest per diem rate possible in order to maximize profits.** This creates the potential for a dangerous trend of "**net widening**"—placing more people on stricter forms of supervision than is necessary, for longer than is warranted.
4. The problems inherent in the Treatment Industrial Complex **cannot be simplified into a for-profit vs. non-profit dichotomy.** There are many examples of for-profit healthcare, mental health, and reentry programs that are effective and plenty of publicly-run or non-profit organizations with dismal track records. However, the fact that certain for-profit prison corporations are publicly traded does raise the question of where such companies' primary loyalties lie. In most corporations, the first priority is to generate profits for shareholders. This creates pressure on the business to constantly grow, which encourages compromising the quality of care.

Despite the serious implications for sentencing policy, public safety, state budgets, and the lives of thousands of individuals in the criminal justice system and their families nationwide, the treatment industrial complex has not yet received the critical analysis or public attention that it deserves. Stakeholders (sentencing reform advocates, treatment providers, criminal justice professionals, elected officials) are largely unaware of this trend or its implications for their agencies, programs, or public policy options.

This is a critical moment. There is a nationwide movement to rethink our criminal justice priorities, favoring evidence-based practices that favor treatment and prevention over prison warehousing. At the same time, the Affordable Care Act provides the greatest potential for providing needed substance abuse, medical, behavioral and mental health care at the community level in decades. This could divert a huge number of people from prisons and jails.<sup>8</sup> Unfortunately, it also provides a potential new funding source to for-profit prison corporations moving into the "alternatives market."

This brief represents an initial effort to name and describe this phenomenon, as well as to provide some basic framework for decision-makers and other stakeholders to examine, evaluate, and make contracting decisions.

Within the national dialogue(s) around mental health and criminal justice there must be more scrutiny and examination of these trends. Further study is needed on each of these segments (and the many others—juvenile detention, in-prison services, etc.) to determine the cost, effectiveness, and impacts of the treatment industrial complex.

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# TABLE OF CONTENTS

BACKGROUND/HISTORY.....	5
INDUSTRY THREATS EMERGE.....	6
THE TREATMENT INDUSTRIAL COMPLEX.....	7
COMPONENTS OF THE TREATMENT INDUSTRIAL COMPLEX.....	9
PROFITIZING TREATMENT.....	13
DISCUSSION.....	13
CONCLUSIONS.....	15
RECOMMENDATIONS.....	16
GUIDELINES.....	17
REFERENCES.....	19

## BACKGROUND/HISTORY

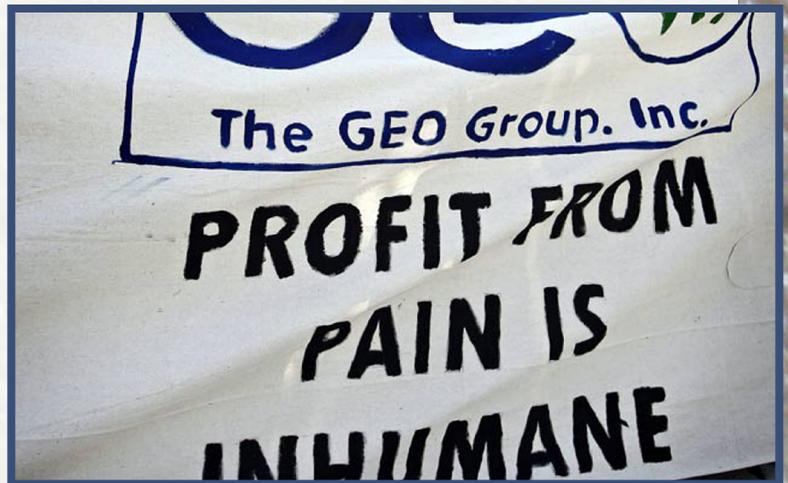
Over the last 30 years, for-profit prison corporations, such as Corrections Corporation of America (CCA) and GEO Group (formerly Wackenhut Corrections Corporation), have benefited from the dramatic rise in incarceration and detention in the United States. Since the advent of prison privatization in the early 1980s the number of people behind bars in the US has risen by more than 500 percent to more than 2.2 million people.<sup>1</sup> Meanwhile, the number of people held in immigration detention centers has exploded from an average daily population of 131 people to over 32,000 people on any given day.<sup>2</sup> Private prison corporations have profited from, and at times contributed to, the expansion of tough-on-crime and anti-immigrant policies that have driven prison expansion.

CCA has spent over \$19 million<sup>3</sup> and GEO \$3 million, on lobbying activities through 2013.<sup>4</sup> Both corporations have stated publicly that they do not lobby on “sentencing or detention enforcement legislation” and “do not take a position on or advocate for or against any specific immigration reform legislation.”<sup>5</sup> Yet, evidence shows that both corporations have indeed lobbied aggressively to increase their share of federal detention and other prison contracts:

- Senate lobby expense disclosures reveal that in 2012 CCA hired a lobbying firm to follow federal immigration policy issues.<sup>6</sup>
- In April 2013 as the Senate undertook immigration reform; GEO’s quarterly lobbying disclosures show it hired a firm to lobby Congress on “issues related to comprehensive immigration reform.”<sup>7</sup>
- GEO’s in-house lobbyists spent \$1.2 million while the company also paid \$880,000 to an external firm to engage Members of Congress on “policies of interest” in 2013.<sup>8</sup>

As a result, CCA and GEO Group both wield significant political and economic influence in many states as well as nationally. They further solidify their influence through a ‘revolving door’ between the public and private sectors, hiring former legislators and corrections officials once they retire from public service in order to take advantage of their political connections. They also help their lobbyists (or former lobbyists) obtain positions of influence in government, serving as political advisors and garnering appointments to various committees and boards.<sup>9</sup>

These investments have clearly paid off. CCA and GEO Group have turned incarceration into a multi-billion dollar industry. Combined, these two corporations operate more than 158 correctional and detention facilities with a capacity of more than 163,500 beds in the US and three other countries.<sup>10</sup> Together, the companies’ revenues exceed three billion dollars annually.<sup>11</sup> Behind state and federal facilities, privately operated facilities represent the third largest prison system in the US. While these companies have generated billions of dollars for their shareholders, there are also well-documented records of prisoner abuse, poor pay and benefits to employees, scandals, escapes, riots, lawsuits, and wrongful deaths. At the same time, states and the federal government have begun to rethink their sentencing and detention policies, citing cost, effectiveness, and public safety outcomes.



## INDUSTRY THREATS EMERGE

Over the past five years, a majority of US states have begun to reform their criminal sentencing laws to reduce prison populations. Spurred by budget cuts and overcrowding, states have discovered that evidence-based practices in diversion, treatment, and earned release are far more effective at reducing recidivism and preserving public safety than incarceration. The Bureau of Justice Statistics reported that in 2012 the US prison population dropped for the third consecutive year. During 2013, legislators in at least 31 states adopted 47 criminal justice policies that may help to further reduce the prison population, improve juvenile justice outcomes, and eliminate the barriers that marginalize persons with prior convictions.<sup>12</sup>

Due to expanding prison populations in the majority of states, the total U.S. prison population grew in 2013, according to a new report from the Bureau of Justice Statistics. The 1,574,700 inmates in state and federal prisons at yearend 2013 represent an increase of 4,300 prisoners since the previous year. (The rate of incarceration declined from 480 prisoners per 100,000 population to 478 per 100,000 during the year due to increases in the overall U.S. population.) The new figures come after three years of modest decline from a high of 1,615,500 prisoners in 2009.

In some states, reforms have had such dramatic impact on prison populations that they have spurred the closure of prison facilities. The Sentencing Project reports:

*“During 2013, at least six states closed 20 correctional facilities or contemplated doing so, potentially reducing prison capacity by 11,370 beds and resulting in estimated five-year cost savings of over \$229 million. Since 2011, at least 17 states have reduced prison capacity totaling over 35,000 beds.”<sup>13</sup>*

More recently, US Attorney General Eric Holder announced a new “Smart on Crime” initiative aimed at reducing federal prison populations. Among his proposals are reduced sentences for low-level drug offences, a review of racial disparities in sentencing, compassionate release for elderly prisoners, and drug treatment alternatives to prison.<sup>14</sup> The federal prison population decreased in size for the first time since 1980, with 1,900 fewer prisoners in 2013 than in 2012.<sup>15</sup>

Likewise, administrative or legislative immigration reforms at the national level could decrease the number of people held in Immigration and Customs Enforcement (ICE) detention, nearly 60% of whom are housed in privately operated facilities. State and federal contracts represent roughly equal portions of the contracts held by both CCA and GEO Group. The private prison industry depends on expansion and acquisition of new contracts for its profits. Immigration reform that offers a ‘path to citizenship,’ combined with sentencing reform in multiple states poses a significant threat to prison corporations’ bottom lines.

In its 2012 report to shareholders, Corrections Corporation of America (CCA), noted:

*“The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them. Immigration reform laws are currently a focus for legislators and politicians at the federal, state, and local level. Legislation has also been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities.”<sup>16</sup>*

An additional threat is the negative publicity garnered by multiple scandals in for-profit facilities nationwide. Allegations of prisoner abuse, financial mismanagement, medical neglect, riots, escapes, and deaths have made headlines, contributing to growing popular opposition to for-profit incarceration and costly litigation for states. Negative publicity is viewed as a significant risk factor for investors in prison corporations, as it could impact current and future contracts. The CCA Annual Report addresses this issue as well:

*“Escapes, inmate disturbances, and public resistance to privatization of correctional and detention facilities could result in our inability to obtain new contracts or the loss of existing contracts. The operation of correctional and detention facilities by private entities has not achieved complete acceptance by either governments or the public. The movement toward privatization of correctional and detention facilities has also encountered resistance from certain groups, such as labor unions and others that believe that correctional and detention facilities should only be operated by governmental agencies.”<sup>17</sup>*

## THE TREATMENT INDUSTRIAL COMPLEX

For-profit prison corporations such as CCA and GEO Group are keenly aware of industry trends and are constantly seeking new and different markets to preserve and increase their profits. As states have pursued sentencing reform efforts to reduce prison populations, the private prison industry has adapted by expanding its services to include more treatment services and “alternative” programs.

The result is an emerging **“Treatment Industrial Complex” (TIC)** — the movement of the for-profit prison industry into correctional medical care, mental health treatment, and ‘community corrections.’ Community corrections include corrections programs outside of jail or prison walls: probation and parole services including halfway houses; day reporting centers; drug and alcohol treatment programs; home confinement; electronic monitoring; and an array of supportive services such as educational classes and job training. Community corrections is a huge business, with three times as many people under “community corrections” programs as currently incarcerated in prison facilities.<sup>18</sup>



To take advantage of these emerging markets, for-profit prison corporations have begun acquiring smaller companies that specialize in health care, mental health and substance abuse treatment; “alternatives to incarceration” such as electronic monitoring; reentry services; and community corrections.

GEO Group, the country’s second-largest private prison corporation, spun off a wholly-owned subsidiary called GEO Care in 2012, which provides “correctional mental healthcare services and operat[es] state psychiatric hospitals treating forensic and civil populations.<sup>19</sup> More recently, GEO Care was acquired by Correct Care Solutions, which provides health care to incarcerated populations in 30 states.<sup>20</sup>

GEO Group is also angling for a piece of the “alternatives to prison” market. In 2010, the company acquired Behavioral Interventions Inc. (BI), which makes GPS ankle bracelet monitors and other “compliance technologies.” George C. Zoley, Chairman and Chief Executive Officer of GEO, stated:

*“This important transaction represents a compelling strategic fit for our company as it further positions GEO to meet the demand for increasingly diversified correctional, detention and residential treatment facilities and services in every state and federal detention and corrections agency.”<sup>21</sup>*

Corrections Corporation of America, meanwhile, announced a “watershed moment” in September 2014 that

*While the Prison Industrial Complex was dependent on incarceration or detention in prisons, jails, and other correctional institutions, the Treatment Industrial Complex now allows the same corporations to profit from housing of people with mental illnesses in facilities that had originally been intended as a therapeutic environment, such as state hospitals or civil commitment centers. In addition, the companies stand to profit from expanding their purview beyond physical prisons and jails to supervision and surveillance of people on parole or probation and formerly incarcerated people, potentially infiltrating all segments of the criminal justice system.*

would result in the company focusing more of its resources on prisoner re-entry, drug counseling, and rehabilitation programs.<sup>22</sup> The move is simply a response to consumer demand. CEO Damon Hininger said in an interview, “government clients are increasingly concerned about the long-term costs of housing inmates and are pushing CCA and other private operators to save them money by reducing recidivism, the number of inmates who are released only to do a repeat turn in prison.”<sup>23</sup>

Other companies have sprung up to take advantage of these opportunities. In 2013, Connecticut contracted with a private company to run a nursing home specifically for aging and disabled state prisoners<sup>24</sup> and more states are expected to follow suit.<sup>25</sup> One private prison corporation cheerfully refers to this potential cradle-to-grave supervision and control as the “corrections lifestyle.”<sup>26</sup>

The term, “treatment industrial complex” has its roots in a 1961 address by President Dwight D. Eisenhower, who expressed his concern at the time about defense contractors, politicians, and the press capitalizing on public fears during the cold war with the Soviet Union in order to secure more military spending. “In the councils of government,” Eisenhower said, “we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex.”<sup>27</sup>

In 1997, educator, author, and activist Angela Davis delivered a speech entitled, “The Prison Industrial Complex,” which later served as the title of a book on the subject. Writing in *ColorLines*, Davis explained,

*“[Incarceration and the maintenance of penal infrastructure], which used to be the primary province of government, is now also performed by private corporations, whose links to government in the field of what is euphemistically called “corrections” resonate dangerously with the military industrial complex. The dividends that accrue from investment in the punishment industry, like those that accrue from investment in weapons production, only amount to social destruction. Taking into account the structural similarities and profitability of business-government linkages in the realms of military production and public punishment, the expanding penal system can now be characterized as a ‘prison industrial complex.’”<sup>28</sup>*

In 1998, Eric Schlosser, writing in the *Atlantic*, further described the phenomenon:

*“Three decades after the war on crime began, the United States has developed a prison-industrial complex—a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need. . . . It is a confluence of special interests that has given prison construction in the United States a seemingly unstoppable momentum. It is composed of politicians, both liberal and conservative, who have used the fear of crime to gain votes; impoverished rural areas where prisons have become a cornerstone of economic development; private companies that regard the roughly \$35 billion spent each year on corrections not as a burden on American taxpayers but as a lucrative market; and government officials whose fiefdoms have expanded along with the inmate population.”<sup>29</sup>*

In this industry, the raw material is people. While the Prison Industrial Complex was dependent on incarceration or detention in prisons, jails, and other correctional institutions, the Treatment Industrial Complex now allows the same corporations to profit from housing of people with mental illnesses in facilities that had originally been intended as a therapeutic environment, such as state hospitals or civil commitment centers. In addition, the companies stand to profit from expanding their purview beyond physical prisons

and jails to supervision and surveillance of people on parole or probation and formerly incarcerated people, potentially infiltrating all segments of the criminal justice system.

Many for-profit prison corporations generate revenue by charging “per diem”—meaning a dollar amount for every incarcerated individual, for every day. It is a static system to a large degree, dependent upon fixed contracts based on established sentencing practices and population rates. The Treatment Industrial Complex, on the other hand, is a dynamic system, with many people constantly moving through. This high volume represents the potential for much higher profit.

Under the Treatment Industrial Complex, individuals may no longer be held in prisons, but instead are housed in other types of facilities (mental health institutions, residential drug treatment centers, halfway houses). While corporations typically charge a lower per diem for this type of facility, the pool of individuals is larger than the incarcerated population, potentially generating increasing levels of profit for the company.

Those who are not physically held in any sort of institution, yet remain under state supervision through home arrest, probation, parole, or other community corrections programs become potential profit-making engines when corporations can charge for monitoring equipment, supervision fees, drug testing, counseling, and the like. Although the profit generated from this type of supervision is typically low, the length of time under supervision can be much longer. As a result, this emerging Treatment Industrial Complex has the potential to ensnare more individuals, under increased levels of supervision and surveillance, for increasing lengths of time—in some cases, for the rest of a person’s life.

At the same time that it is responding to industry threats, the Treatment Industrial Complex is also poised to take advantage of a new potential revenue stream—The Patient Protection and Affordable Care Act (sometimes referred to as “Obamacare”). The law will provide tens of millions of people with healthcare, including, for the first time, mental health and substance abuse treatment.

This presents an unprecedented opportunity to expand treatment alternatives to incarceration for those with mental health issues or addiction disorders.

*“By increasing federal dollars for expanding community mental health and substance use treatment options, including case management services that can coordinate care needs, the ACA enables jurisdictions to reduce their misplaced reliance on jails and prisons for treatment. Under the ACA, community-based options become the cost-effective solution for jurisdictions, with the added benefit of reducing unnecessary criminal justice system involvement in addressing health conditions.”<sup>29</sup>*

Ideally, these programs would be developed and administered through established local agencies and organizations that have a track record of providing such services in the community. However, given the tremendous political and economic influence wielded by for-profit prison corporations, there is concern that companies like GEO Care will be able to out-compete these smaller non-profits to win contracts.

## COMPONENTS OF THE TREATMENT INDUSTRIAL COMPLEX

For the purposes of this brief, we have divided the Treatment Industrial Complex into three segments:

**Segment 1:** Civil Commitment and Psychiatric Care Facilities.

**Segment 2:** Subcontracted Prisoner Mental Health and Medical Care

**Segment 3:** Community Corrections, which includes a variety of treatment services historically delegated to probation and/or parole.

It is important to note that these are not the only additional markets that have grown out of the privatization of prisons (the growth of immigrant detention is an example). Practically every service and component of

correctional operations has been privatized in some settings, including prisoner transportation, prison food service and commissary, and prisoner telephone calls and visitation services. However, in this brief we will focus on those programs and services that are both the clearest examples of the Treatment Industrial Complex, and which are the most troubling in terms of their potential for expanding the number of people under control of the criminal justice system and lengthening the amount of time spent under some form of supervision.

### ***Segment 1: Civil Commitment for People Convicted of Sex Offenses and Psychiatric Care Facilities.***

This segment encompasses two different forms of residential/custodial supervision. They are grouped together because they represent the highest level of custody/supervision in the Treatment Industrial Complex (second only to incarceration in prisons, jails, and detention centers). In both types of institutions, individuals are still held against their will for substantial periods of time in secure facilities.



Unlike prisons, from which over 90% of those incarcerated are eventually released, mental health hospitals and civil commitment centers represent the potential for lifetime confinement, which spells long-term, guaranteed profits for private corporations.

Increasingly, aging buildings and shrinking state budgets are conspiring to force states into the position of privatizing their mental health hospitals and other facilities. In FY 2008, over 50,000 people were housed in 187 state psychiatric or forensic facilities in the US.<sup>30</sup>

Every year states spend some \$8.6 billion—or 20 percent of their mental health spending—on state psychiatric hospitals.<sup>31</sup> One third of the people in state psychiatric hospitals are forensically committed, meaning they were committed to a mental health facility through their interaction with the criminal justice system.<sup>32</sup> Most often, individuals forensically committed are found incompetent to stand trial or not guilty by reason of insanity. This scenario offers a stepping-stone for for-profit prison company expansion into the delivery of mental health services.

Civil commitment is a process by which certain people convicted of sex offenses may be involuntarily committed to a residential facility after they have served their full prison sentence, if they are deemed to pose a risk of recidivism. The term of this commitment is generally indefinite, meaning that many such individuals will be confined for the remainder of their lives. Twenty states and the District of Columbia have enacted laws permitting the civil commitment of individuals convicted of sexual offences. In addition, the Adam Walsh Child Protection and Safety Act of 2006 authorized the federal government to institute a civil commitment program for people convicted of federal sex offenses.<sup>33</sup>

GEO Care, the subsidiary spun off by GEO Group in 2013 and (acquired by Correct Care Solutions in April, 2014) is the only private prison corporation involved in this segment. They operate five residential psychiatric treatment hospitals in Florida, South Carolina and Texas. They also operate the only privatized civil commitment facility in the country (in Florida). In recent years, GEO Care attempted to take over a civil commitment center in Virginia and a forensic psychiatric state-run hospital in Kerrville, Texas but was unsuccessful due to popular opposition and government concerns about staffing levels and quality of care. GEO Care currently is a bidder on a request for proposals for another state hospital in Terrell, Texas.<sup>34</sup>

Although public mental health systems continue to be chronically underfunded, new funding for mental health is expected to flow from the federal government and from private insurance companies in coming years. The Bureau of Labor Statistics projects that employment in the mental health and substance abuse treatment sector will expand by 22.8 percent by 2022, compared with only moderate growth for correctional officers and jailers (4.9 percent).<sup>35</sup>

While this is a very positive development in terms of access to care, there is growing concern that for-profit prison corporations, by virtue of their deep pockets and political connections, will be well-positioned to exploit these new funding streams, which could lead to the demise of community-based organizations and programs.

While local organizations are likely more qualified, they may lack the clout and relationships to obtain large-scale competitive contracts.

## Segment 2: Subcontracted Prisoner Mental Health and Medical Care

While prisons began privatizing in the 1980s in the United States, the privatization of correctional healthcare began as early as the late 1970s. The medical care segment is the fastest growing segment in the Treatment Industrial Complex, with 26 states contracting some or all of their correctional health care and/or mental health treatment to private corporations as well as county jails.

This segment represents subcontracted medical and mental health care provided to prisoners in jails, prisons, and detention centers. These correctional facilities may themselves be either publicly (state, federal, county) run or managed by a prison corporation. For-profit prison healthcare corporations like Corizon and Wexford compete for contracts to provide some or all of the medical services inside existing facilities. Some states contract for management of all medical and mental health services, while others adopt a “partial privatization” model, where certain services are contracted out while others are still provided by the state. For example, the doctors in a given prison system may be employed by the Department of Corrections, while the nurses are provided by a subcontractor.

Over the past 10 years, shrinking state budgets and rising correctional healthcare costs (due to higher populations and older prisoners with more expensive health conditions) have resulted in correctional healthcare becoming a more and more significant chunk of state budgets. State spending for corrections reached \$52.4 billion in fiscal 2012 and has been higher than 7.0 percent of overall general fund expenditures every year since fiscal 2008. State correctional healthcare costs can be as high as 20% of a state’s correctional budget.

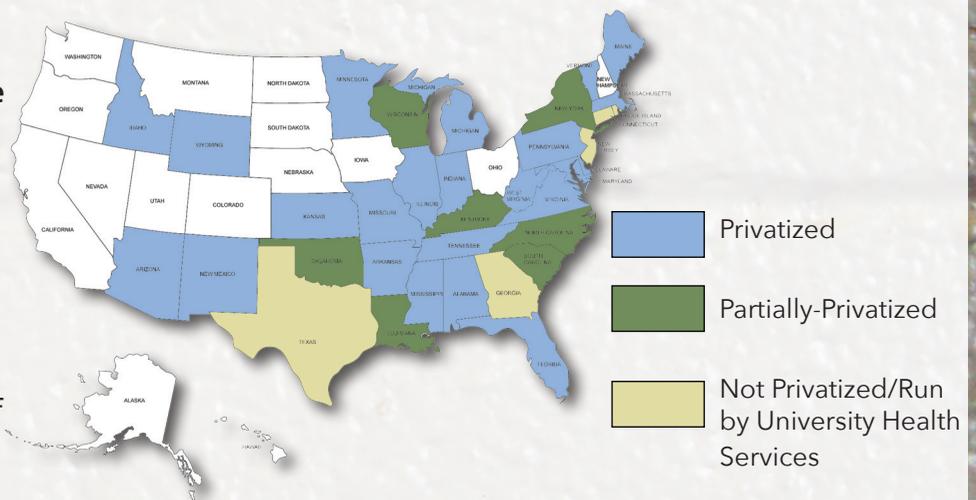
**Total state spending on correctional healthcare rose from \$4.2 billion in 2001 to \$6.5 billion in 2008 (the last year available for comprehensive review).**

1. A comprehensive report recently published by the State Health Care Spending Project, an initiative of The Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation, documented a total of \$6.5 billion in state spending on inmate health care in 2008, up from \$4.2 billion in 2001 (amounts in 2008 dollars).<sup>36</sup>

**Private companies have contracts for close to 1/3 of all correctional healthcare spending, or \$3 billion per year.<sup>37</sup>**

- Industry sources estimate total 2012 Correctional Health Care spending at \$10 billion, including state, municipal and federal spending. Industry estimates put the private correctional healthcare industry at around \$3 Billion/year, or one third of total correctional spending.<sup>38</sup>

**As seen above, as of January 1, 2014, 22 states have privatized correctional healthcare and 7 are partially privatized.**



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### Segment 3: Community Corrections

Community corrections includes corrections programs outside of jail or prison walls: Probation and parole services, including halfway houses; day reporting centers; drug and alcohol treatment programs; home confinement; electronic monitoring; and an array of supportive services such as educational classes and job training.

Community corrections is a huge segment of the criminal justice system. Overall, two-thirds of individuals involved in the criminal justice systems are in the community, not behind bars. One in 45 adults is on probation or parole and 1 in 100 is in prison or jail.<sup>39</sup>

Many states are looking into options for shifting corrections spending to community corrections services, which cost less than incarceration and offer better public safety outcomes for many individuals.

A June 2014 report from the Pew Charitable Trusts warns that more than 1 in 5 state inmates maxed out their prison terms and were released to their communities without any supervision in 2012.<sup>40</sup> The report suggests that for many people, shorter prison terms followed by supervision have the potential to reduce both recidivism and overall corrections costs.<sup>41</sup>

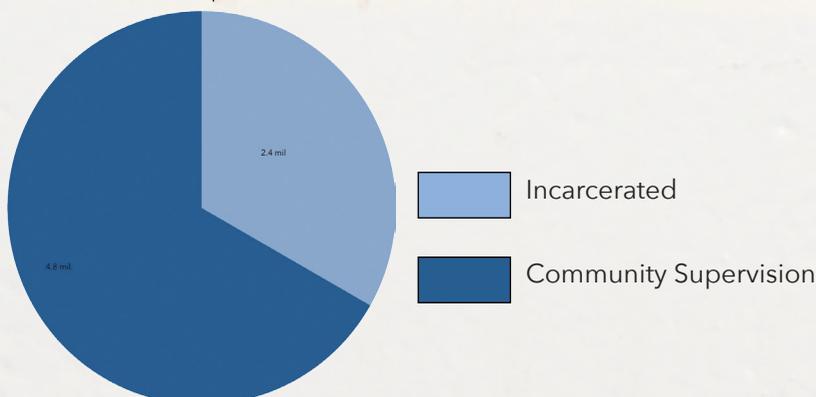
For-profit prison corporations are maneuvering to take advantage of this potential avenue of expansion. In 2010, GEO Group acquired BI Incorporated, which makes electronic monitoring products, including GPS ankle bracelet monitors, voice verification technology, and alcohol monitors for individuals on home confinement. The company boasts of its newly reorganized "Community Services" unit, which operates halfway houses, day reporting centers, and juvenile detention facilities. This segment represented 20% of GEO Group's operations in 2012.<sup>42</sup>

CCA has more recently begun to follow suit. In August of 2013, the company acquired Correctional Alternatives, Inc (CAI). In doing so, CCA absorbed CAI's existing contracts providing work furloughs, residential reentry programs and home confinement for San Diego County, the Federal Bureau of Prisons (BOP) and United States Pretrial Services and Probation.<sup>43</sup>

A particularly disturbing offshoot of the Community corrections sector is the trend toward for-profit probation. In at least 10 states (mostly in the Southeastern US), municipal courts contract with private, for-profit probation companies. Unlike state probation programs, in which probation provides an alternative to incarceration for certain crimes, in these states, individuals charged with misdemeanors like minor traffic violations, shoplifting, or public intoxication who cannot afford to pay their court ordered fines are placed on probation.

Once on probation, they are expected to pay the private company monthly fees for the privilege of being supervised, in addition to paying their original fine. Human Rights Watch investigated these schemes and found that "[m]any of these offenses carry no real threat of jail time in and of themselves, yet each month, courts issue thousands of arrest warrants for offenders who fail to make adequate payments towards fines and probation company fees."<sup>44</sup> The result has been likened to the creation of modern day debtor's prisons. Not only does this represent an unequal system of justice (one for those who can pay, one for those who can't), it also puts taxpayers on the hook, paying for jail time that is completely unnecessary and counterproductive.

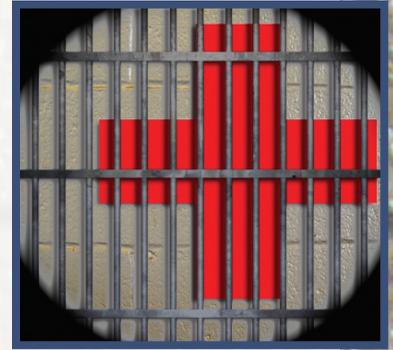
Individuals Under Supervision 2011



Source: Bureau of Justice Statistics

# PROFITIZING TREATMENT

Most for-profit prison corporations have dismal records in terms of safety, cost, and quality of the prisons that they manage.<sup>45</sup> Across the country, evidence has surfaced that these companies cut corners on staff pay and training and services to prisoners in order to make a profit.<sup>46</sup> Application of the same business model to treatment, services, and alternatives to incarceration is already demonstrating the same sorts of problems:



- In July of 2012, the Associated Press reported three gruesome deaths, including a patient who died in a scalding bathtub, at the South Florida State Hospital operated by a division of private prison corporation GEO Group.<sup>47</sup>
- For-profit prison health care company Corizon was sued 600 times in 5 years for neglect and malpractice issues.<sup>48</sup> The second largest such company, Wexford, “was hit with 1,092 malpractice claims — suits, notices of intent to sue and letters from aggrieved inmates from Jan. 1, 2008, through 2012. Records say Wexford settled 34 of 610 closed matters for a total of \$5.4 million, as well as another case that ended in a \$270,000 jury verdict against the company.”<sup>49</sup>
- The New York Times ran an investigative series on the problems in for-profit halfway houses in New Jersey run by Community Education Centers, a company with close ties to Governor Chris Christie.<sup>50</sup> The facilities were rife with violence, drugs, and sexual abuse, and plagued by a high rate of escapes.

These and many other similar incidents raise important questions about the potential drawbacks of handing over control of such important therapeutic and public safety responsibilities to a corporation whose principal business is punishment and whose primary loyalty is to its shareholders.

The primary argument in favor of most privatization scenarios is cost savings. However, medical care, mental health treatment, and rehabilitation programs are inherently expensive. The only way to save money on these services is to provide less care, or substandard care. For-profit prison corporations not only need to promise cost savings to acquire contracts, those contracts also need to be profitable. The result, more often than not, is a corporation cutting corners, running staff vacancies, providing inadequate or ineffective treatment programming, and denying needed procedures, hospitalizations, and medications.

This is the fundamental fallacy of correctional privatization: Politicians want to believe that they can have “cheap” medical and mental health care and quality community corrections programs without making a significant investment. This has repeatedly been proven false, in numerous contexts and in a variety of states. It is flatly impossible to provide adequate treatment and rehabilitation programs without sufficient funding.

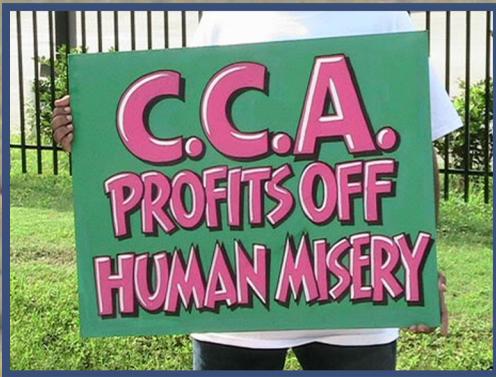
The situation may be summed up with this truism: “Pay now or pay later.” “Paying later” in this case refers to the expenses associated with treating advanced and chronic conditions, higher recidivism rates, and the cost of defending the state against wrongful death lawsuits and class-action suits.

## DISCUSSION

### *Widening the Net*

The profit motive is inherently at odds with the stated purpose of ‘corrections,’ including community corrections, which is to reduce offenses that land people in prison thereby reducing the number of incarcerated individuals. Private prison corporations are financially dependent on the growth of prisoner populations, providing a perverse incentive not to rehabilitate.

While many sentencing reform efforts are geared toward keeping people out of the system and/or returning



them to their communities as quickly as possible, the financial incentive for private prison corporations is to keep people in custody or under some form of supervision for as long as possible at the highest per diem rate possible in order to maximize profits. This creates the potential for a dangerous trend of “net widening”—placing more people on stricter forms of supervision than is necessary, for longer than is warranted.

Several private prison corporations are now advocating re-purposing prisons into “alternative” facilities, including specialized mental health centers, halfway houses, and “intermediate sanctions” facilities. This amounts to little

more than prisons by another name. While the conditions may be less restrictive, this scenario still allows the companies to charge for a residential program, which is far more expensive than allowing individuals to remain in the community while they complete treatment or other programs.

In Oklahoma, a plan for significant sentencing reforms was scuttled after for-profit prison operators unduly influenced the process. Records revealed that operators of private facilities actively lobbied “to have their halfway houses serve as the “intermediate sanctions facilities” spelled out in the new law to handle individuals with low-level offences who violated terms of their release. Leaders from Avalon Correctional Services and GEO both sought meetings with the governor’s office and Corrections Department officials regarding the Justice Reinvestment reforms, records show.<sup>51</sup>

The New York Times recently reported that GPS ankle bracelets are being placed on immigrant mothers seeking asylum who have no criminal records.<sup>52</sup> These individuals are arguably the lowest flight risk, given that they are eager to attend immigration proceedings in order to ensure they are able to remain in the country.

The bracelets are monitored by BI Inc., which was acquired by GEO Group. In July of 2014, the Times reports that some 7,440 immigrants are wearing the bracelets.<sup>53</sup> But a move by Immigration and Customs Enforcement (ICE) to increase use of alternatives to detention ensures that there will be many more in the years to come. A review of the program by the Rutgers-Newark School of Law Immigrant Rights Clinic and the American Friends Service Committee in 2012 concluded that:

*“Despite their designation as ‘alternatives to detention,’ many ATD programs are used on individuals who have been released from detention or who were never detained in the first place, rather than individuals who would otherwise be detained in a detention facility and for whom the government’s goals of ensuring compliance with removal orders and court appearances could be accomplished with alternative measures.”<sup>54</sup>*

Another disturbing example of this trend is the rise of “for-profit probation” companies. As mentioned above, these programs are designed for people accused of misdemeanor offenses or who simply could not pay a ticket. Yet, they are saddled with the same level of surveillance as some individuals on criminal probation or parole. Worse yet, they are often jailed for nothing more than failure to pay the required fines and fees. Individuals who pose no threat to the public are being penalized for being poor. Both the probation companies and private jail operators stand to make significant profits through this misapplication of justice.

### ***Moral, Ethical and Democratic Implications***

It is also important to evaluate the Treatment Industrial Complex in terms of its ethical and moral implications. Increasingly, the public is questioning the morality of profiting from incarceration. Faith organizations – including the American Friends Service Committee, the United Methodist Church, Presbyterian Church USA, and the Southern Catholic Bishops – have all called into question the practice of prison profiteering. This concern may be extended to other fundamental rights and freedoms, such as the right to adequate medical and mental health care, drug treatment, and rehabilitation.

The trend of for-profit prison corporations moving into these arenas also has implications for our democratic

principles. Many consider it an abdication of a fundamental government responsibility to care for its citizens, even those who may have broken the law or need supports in order to function in society. To delegate this literal life and death power to a for-profit corporation is a decision that should not be taken lightly, or pursued solely for the purpose of cost savings.

### *Business Models*

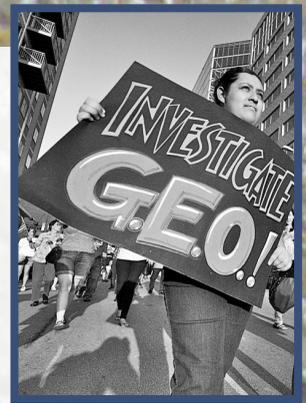
The problems inherent in the Treatment Industrial Complex cannot be simplified into a for-profit versus non-profit dichotomy. There are many examples of for-profit healthcare, mental health, and reentry programs that are effective and plenty of publicly-run or non-profit organizations with dismal track records. However, the fact that certain for-profit prison corporations are publicly traded does raise the question of where such companies' primary loyalties lie. In most corporations, the first priority is to generate profits for shareholders. This creates pressure on the business to constantly grow, which encourages compromising the quality of care.

From a business perspective, the varying stages in the life cycle of a large behavioral health or mental health corporation have varying implications for quality of care. The business world has a term for this phenomenon: the "S-Curve." Companies start small, often picking up local contracts and growing at a moderate pace. At this point, the local government is driving the need and the company is fulfilling the needs of a community. The next phase happens when companies go public in order to acquire capital for expansion. The infusion of capital causes rapid growth, as the company attempts to gain a dominant position in the market. This phase is good for shareholders and companies will attempt to prolong this phase as long as possible (using net widening strategies). The third phase of the "S-Curve" creates problems for quality of care. At this point, without as many options for expansion and growth, the companies must begin cutting corners in order to maintain the same levels of profitability to which shareholders are accustomed.

The United States has four decades of experience with the combination of public funding and private health care management and delivery through HMO's, and the results are less than encouraging. One study found that "The commercialization of care in the United States has driven up costs by diverting money to profits and by fueling a vast increase in management and financial bureaucracy, which now consumes 31 percent of total health spending." The author concludes, "The poor performance of US health care is directly attributable to reliance on market mechanisms and for-profit firms, and should warn other nations from this path."<sup>55</sup>

Fortunately, there are also many examples and emerging programs that provide an alternative to this model. Non-profit entities other than the traditional social service agencies that are sometimes involved include churches and state universities. There are some emerging hybrid models that have potential for providing excellent services while remaining cost effective.

In March of 2014, the State of Michigan's Department of Corrections (MDOC) Bureau of Health Care Services announced an innovative new collaboration with Michigan State University College of Human Medicine. The project's goals include creation of a corrections/community public health care model; development of a population and disease management approach to correctional health care; and creation of a prison health education and prevention model.<sup>56</sup>



## CONCLUSIONS

Despite the serious implications for sentencing policy, public safety, state budgets, and the lives of thousands of individuals in the criminal justice system and their families nationwide, the Treatment Industrial Complex has not yet received the critical analysis or public attention that it deserves. Stakeholders (sentencing reform advocates, treatment providers, criminal justice professionals, elected officials) are largely unaware of this trend or its implications for their agencies, programs, or public policy options.

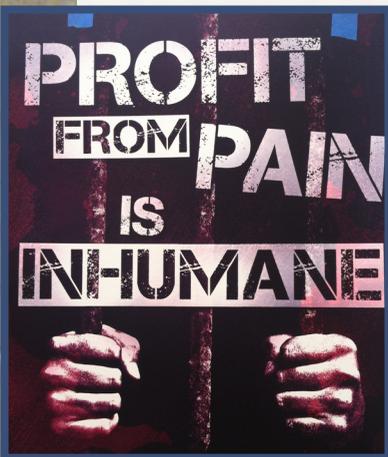
This is a critical moment. There is a nationwide movement to rethink our criminal justice priorities, favoring evidence-based practices that favor treatment and prevention over prison warehousing. The debate over immigration reform rages, with the potential 'path to citizenship' posing a serious threat to essentially half of CCA and GEO Group's profits. The role of for-profit prison corporations in these important policy discussions could mean the difference between reforms that truly address human needs and a destructive "widening of the net" that only serves to increase the level of control and surveillance at the expense of public safety.

At the same time, the Affordable Care Act provides the greatest potential for providing needed substance abuse, medical, behavioral and mental health care at the community level in decades. This could divert a huge number of people from prisons and jails.<sup>57</sup> Unfortunately, it also provides a potential new funding source to for-profit prison corporations moving into the "alternatives market."

There is no question that treatment services are desperately needed in many states. The constitution requires that incarcerated people be provided with quality medical and mental health care. Patients in state psychiatric hospitals and civil commitment centers deserve safe and effective treatment and safety. Alternatives to prison and reentry services are critical to reducing prison populations and lowering recidivism rates.

Yet, for-profit prison corporations are too often not qualified or appropriate to manage such programs. Applying a corporate culture of incarceration to treatment and alternatives to prison has consistently delivered poor to disastrous results. These critical programs should be in the hands of community-based non-profit organizations and/or companies that bring experience in the relevant field, are transparent and accountable to taxpayers, and are grounded in evidence-based practice and high standards of care.

## RECOMMENDATIONS



The emergence of the Treatment Industrial Complex raises important and timely questions about the driving force behind, the real decision-makers involved, and other influences at work in the national movement toward sentencing reform and efforts to privatize prison medical care and forensic mental health care.

This is a new phenomenon that is only just being discovered and examined. Criminal justice advocates, systems actors, good government proponents, treatment and service providers, mental health advocates, and government agencies must be aware of the TIC and critically evaluate any proposed movement in this direction. Within the national dialogue(s) around mental health and criminal justice there must be more scrutiny and examination of these trends. Finally, further study is needed on each of these segments (and the many others—juvenile detention, prison services, etc.) to determine the cost, effectiveness, and impacts of these emerging trends.

The fact that the Treatment Industrial Complex is an emerging and evolving phenomenon provides both dangers and opportunities for states and local governments. In the best case scenarios, government and systems actors have the opportunity to be proactive rather than reactionary. Because state and municipal agencies award contracts, they are key influencers in crafting how individual contracts are structured.

This also means that, collectively, they have the power to determine what the landscape will look like ten and twenty years from now. Although many of the privatization scenarios that we see today have been motivated by reactionary fiscal measures rather than real reform, a new approach emphasizing outcomes, evaluation, and accountability could promote creative local solutions to local problems.

When a state contracts with an organization or company to provide medical or mental health care, treatment or rehabilitation services, it is handing over control of an essential public function to a company that may have different goals and priorities than the government and public. Privatization contracts represent a long

term investment (typically 20 years) in a business relationship with a corporation. Once the state enters into a contract, it can be extremely difficult to nullify or amend the contract, even when the contractor is shown to be grossly negligent or abusive.

For these reasons, as well as those enumerated above, the following guidelines are important in guiding decisions regarding prisoner or detainee medical care, inpatient and forensic mental health care and civil commitment, and a variety of treatment, rehabilitation, and supervisory services. They are grouped by the various stages of the decision-making process: Assessment, contracting, and evaluation.

## GUIDELINES

### *Assessment*

This analysis brings forward three primary questions that decision-makers can use in determining whether and when privatization is appropriate:

**1. What is the public health, safety or justice-related goal of the proposed program (treatment, prevention, reduced recidivism, etc.)? Does the contractor have the same or different goals?**

- **Corporate Philosophy:** Corporations such as CCA and GEO Group are historically grounded in a “prison-mindset” that emphasizes custody, control, and punishment. The difference between viewing individuals in a facility as “inmates” versus “patients” or “consumers” is vast. Even when rebranded as healthcare companies, their original purpose of incarcerating “inmates” remains.
- **Priorities:** Large publicly held corporations should be viewed with scrutiny because they must continually produce increasing profit for their shareholders, often prioritizing their shareholder profits over quality, effectiveness and ethical and moral concerns.

**2. Is the contractor/program effective and how are outcomes measured?**

- **Due Diligence:** A critical component of potential outsourcing is conducting the “due diligence” on the background and performance of potential contractors. In the case of corporations such as CCA and GEO Group, decision-makers have the benefit of 30 years of state private prison contracts. Corizon and Wexford, too, have long histories, and a basic scan is enough to generate an overwhelming body of criticism including negative press, audits, investigation reports, lawsuits and the like. There are additional resources that will be listed in Appendix A that can provide more detailed evidence and analysis.

One critical aspect of researching these corporations’ track records is monitoring their mergers or acquisitions with other companies. Corporations such as GEO Group and Corizon should be evaluated as the sum of their parts, meaning that the histories of the companies they have acquired and spun off should not be overlooked.

**3. Is the level of custody or supervision appropriate to the individual’s level of risk or is it “widening the net”?**

- **Level of Need:** The latest research on evidence based practices in treatment and rehabilitation stresses using scientific risk assessment tools to place individuals on the least restrictive form of supervision appropriate. This allows states to focus resources on those who require the most supervision and need the most help. However, for-profit prison corporations work on a contract basis, which tends toward a “one-size-fits-all” approach.
- **Profit increases with volume:** Corporations moving from the prison and detention market into treatment and alternatives bring a corporate perspective that is too focused on profit through

volume. Fees are usually structured based on a per-diem amount set out in the contract. Non-profits and medical care companies, by contrast, charge a set “fee for service.”

### **Contract Requirements**

1. **Limit contract length:** The contract term should be limited to a reasonable amount of time, to ensure the contract can be re-bid at regular intervals if necessary.
2. **Avoid occupancy guarantees,** for those facilities that are in-patient or house defendants, patients, or parolees/probationers. These requirements are effectively bed quotas that leave the contracting governmental entity on the hook for unfilled units. These types of contracts can result in decreased flexibility in responding to demand, population changes, or serious problems in the facility.
3. **Accountability:** Is the contractor/program responsive and accountable to the needs/requirements of the agency and the public? How is that accountability structured and enforced?
  - a. Require regular monitoring, financial and record-keeping audits, and complete transparency in all areas of operation. Contractors should be held to the same public records laws and other transparency requirements as government agencies.
  - b. Clearly delineate between contractor and state/county/municipal responsibilities and costs.
  - c. Explicitly require compliance with state law, departmental policies, and standard medical or professional practices. This includes use of force standards, incident reporting, operating standards, minimum staffing ratios, staff educational and training requirements, medical standards of care, and emergency protocols.
  - d. Clear and adequate consequences for non-compliance
4. **Contracts should incentivize positive outcomes.** Payment should be tied to disease/relapse prevention, effective treatment, improved patient functioning, reduced recidivism and other positive results.
5. **Contract Local:** Priority should be given to local or state-based non-profits and for-profit providers.

### **Evaluation**

1. **Regular Audits:** Audits should be conducted on a regular basis, by an impartial third party. The results should be made publicly available.

**Payment and contract status** (including amendments and renewals) should be contingent upon positive audit results and achievement of key outcomes.



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# TREATMENT INDUSTRIAL COMPLEX:

How For-Profit Prison Corporations are Undermining Efforts to Treat and Rehabilitate Prisoners for Corporate Gain

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