

September 9, 2024

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850.

RE: Medicare and Medicaid Programs: Medicare Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Individuals Currently or Formerly in Custody of Penal Authorities; Revision to Medicare Special Enrollment Period for Formerly Incarcerated Individuals (CMS-1809-P)

Dear Administrator Brooks-LaSure,

Thank you for the opportunity to provide comments on the Center for Medicare & Medicaid Services' (CMS) CY25 Medicare Outpatient Prospective Payment System proposed rule (CMS-1809-P). The undersigned 117 organizations strongly support the proposal to revise Medicare's custody definition and the Special Enrollment Period (SEP) for formerly incarcerated individuals. 42 C.F.R. §§ 411.4(b)(3), 406.27(d), 407.23(d). These modifications will advance health equity and expand access to high quality and affordable coverage and care for hundreds of thousands of older adults and people with disabilities who are living in the community under supervised release following incarceration, and will make Medicare more consistent with Medicaid and with commercial health insurance.

In 2022, there were at least 340,000 people ages 65 and older on probation and parole. In addition, there are some number of individuals who meet Medicare's current custody definition while living in the community, such as those on bail or home detention, and an additional number under age 65 who may be eligible for Medicare due to disability. Individuals in these conditions who are not currently able to access Medicare benefits but do not qualify for Medicaid could face significant health care costs, needing to either pay out-of-pocket or find other insurance. This harms individuals who must delay or forgo treatment, or who cannot access specialists. Individuals who are dually eligible for Medicare and Medicaid are also impacted if records show they are enrolled in Medicare even when Medicare isn't paying for coverage, leading to Medicaid coverage denials. They may also need to switch providers and treatment plans upon completing parole or similar circumstances that denied them access to Medicare or the SEP.

The broad Medicare custody payment exclusion has a particularly significant impact on the ability of individuals with substance use disorders to access health care. Drug overdose death is the leading cause of death after release from prison, and studies suggest that recently incarcerated people are 10-40 times more likely to die from an overdose than the general public. Approximately 65% of the United States prison population has an active substance use disorder and another 20% were under the influence of alcohol or drugs at the time of their crime. When these individuals are released from the correctional facility, it is critical that they have insurance to pay for care so that they can continue substance use disorder and any other treatment they received while incarcerated or initiate medically necessary treatment. Over 4.6 million adults ages 65 and older have a substance use disorder. We commend CMS for its work over the past several years to improve access to substance use disorder treatment for people with Medicare, including developing strong coverage and payment policies for

opioid treatment programs, office-based substance use disorder treatment, addiction counselors, and intensive outpatient treatment. Older adults and people with disabilities who have been released from incarceration need access to these lifesaving benefits, and these proposed changes would support the Administration's Unity Agenda to beat the overdose epidemic and CMS's Behavioral Health Strategy.

We strongly support CMS's proposal to narrow Medicare's custody definition to no longer include individuals on bail, parole, probation, and home detention. The new proposed definition will promote successful reentry and community integration for people in the criminal legal system. Research has shown that health coverage and access to care, including for those with unaddressed substance use and mental health conditions, has a positive impact on recidivism. For example, a study examining the impact of the Medicaid expansion on arrest rates found that Medicaid expansion produced a 20-32% decrease in overall arrest rates in the first three years, with the largest negative differences (25-41%) for drug arrests. Another study found increased access to Medicaid after incarceration led to lower re-incarceration rates, higher employment rates, and higher earnings. Thus, ensuring people who are eligible for Medicare and under community supervision can enroll in and use Medicare coverage should also decrease the likelihood of re-arrest and re-incarceration.

We further support CMS's proposal to revise the eligibility criteria for the special enrollment period (SEP) for formerly incarcerated individuals so that people under community supervision can enroll in Medicare. We respectfully request that CMS ensure that individuals who were or are released from incarceration under conditions that prevent or hinder their access to the current SEP between the initial implementation of the SEP (January 1, 2023), and the effective date of this proposed rule have an opportunity to enroll in Medicare coverage as well with equitable relief, either by expressly including overlapping effective dates or by establishing an instruction for local Social Security Administration offices.

In response to CMS's specific requests for comments, we offer the following recommendations:

- **Explicit Statement:** We encourage CMS to explicitly state in the regulatory text that individuals on bail, parole, probation, or home confinement are not considered to be in custody, as this would provide much needed clarity to individuals, providers, and advocates who are navigating these circumstances.
- **Pre-Trial Release:** We encourage CMS to remove the proposed exclusion of individuals under arrest ((§ 411.4(b)(3)(i)) as it is overly broad, insofar as it could encompass people who are on bail or pre-trial release and whose services are not covered or provided by a carceral setting. To the extent that the population CMS is trying to exclude are those that are confined to jail, that population is already represented in the § 411.4(b)(3)(ii).
- **Halfway Houses:** We encourage CMS to adopt Medicaid's interpretation and approach to individuals residing in halfway houses. If individuals have "freedom of movement," they should be entitled to have Medicare pay for their care.

Thank you for your commitment to advancing health equity and expanding access to quality and affordable care for individuals who are reentering and living in the community following incarceration.

Sincerely,

Addiction Policy Forum  
Aging Life Care Association

AIDS Foundation Chicago  
Alabama Appleseed Center for Law & Justice  
American Academy Of Addiction Psychiatry  
American Civil Liberties Union  
American Foundation for Suicide Prevention  
American Geriatrics Society  
American Medical Association  
American Muslim Health Professionals  
American Psychiatric Association  
American Society of Addiction Medicine  
Anxiety and Depression Association of America  
Asian & Pacific Islander American Health Forum  
Association of University Centers on Disabilities  
Autistic Self Advocacy Network  
Banana Kelly Inc  
BestSelf Behavioral Health Inc  
Brooklyn Community Services  
California Consortium of Addiction Programs & Professionals  
California Elder Justice Coalition  
California Pan-Ethnic Health Network  
CalPACE  
CASES  
Caz Recovery  
Center for Medicare Advocacy  
Clarity Wellness  
Clinical Social Work Association  
Coalition for Asian American Children and Families  
Colorado Consumer Health Initiative  
Community Access  
Community Advocacy Resource Enterprise U-CARE  
Community Catalyst  
Community Legal Services of Philadelphia  
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces  
Council of State Governments Justice Center  
Community Service Society New York  
Disability Belongs  
Disability Rights Education and Defense Fund (DREDF)  
Diverse Elders Coalition  
Dream.org  
Drug Policy Alliance  
Empire Justice Center  
Edwin C Chapman MD PC  
Epilepsy Foundation  
Faces & Voices of Recovery  
Florida Justice Center  
Gerontological Society of America  
Global Alliance for Behavioral Health and Social Justice  
Greater Mental Health of New York

Health Care for All New York (HCFANY)  
HIV Medicine Association  
Housing Works  
International Certification and Reciprocity Consortium (IC&RC)  
Illinois Alliance for Reentry and Justice NFP  
Innocence Project  
Institute for Responsive Government  
International Community Justice Association  
Justice in Aging  
Kelly Street Block Association  
Lawyers for Good Government  
League of United Latin American Citizens (LULAC)  
Legal Action Center  
Maine Prisoner Advocacy Coalition  
Make the Road NY  
Massachusetts Law Reform Institute  
Medicare Rights Center  
NAADAC, the Association for Addiction Professionals  
NASTAD  
National Advocacy Center of the Sisters of the Good Shepherd  
National Alliance on Mental Illness  
National Association for Behavioral Healthcare  
National Association of Addiction Treatment Providers  
National Association of Councils on Developmental Disabilities  
National Association of County Behavioral Health and Developmental Disability Directors  
National Association of Social Workers  
National Association of State Mental Health Program Directors  
National Behavior Health Association of Providers  
National Center for Advocacy and Recovery, Inc.  
National Center for Medical-Legal Partnership  
National Consumer Voice for Quality Long-Term Care  
National Council for Mental Wellbeing  
National Council on Alcoholism and Drug Dependence-Maryland Chapter  
National Disability Rights Network (NDRN)  
National Health Law Program  
New Hour Long Island  
New Jersey Association of Mental Health and Addiction Agencies, Inc.  
New York Presbyterian Columbia  
New York State Council for Community Behavioral Healthcare  
NYC Against Segregated Healthcare (NYCASH)  
One Touch Ministry, Inc.  
Overdose Prevention Initiative at the Global Health Advocacy Incubator  
Pinnacle Community Services  
Public Justice Center  
REDF  
Reentry Working Group  
Religious Society of Friends (Quakers), Brooklyn Monthly Meeting  
Safe & Just Michigan

ServiconCares  
Shriver Center on Poverty Law  
St. Mary's Center  
StoptheDrugWar.org  
TASC (Treatment Alternatives for Safe Communities)  
Technical Assistance Collaborative, Inc.  
The Alliance for Positive Change  
The First 72+  
The Fortune Society  
The Kennedy Forum  
The Legal Aid Society (New York City)  
The Leukemia & Lymphoma Society  
Transgender Law Center  
Treatment Communities of America  
Triple Track Treatment  
United Church of Christ  
Vivent Health  
Western Center on Law and Poverty  
Women on the Rise GA