September 9, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services

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 Prison Policy Initiative strongly supports the proposals to revise Medicare's custody description and the Special Enrollment Period for formerly incarcerated individuals. These modifications will expand access to coverage and care for people involved in the justice system and those who have recently exited prisons and jails.

The Prison Policy Initiative is a non-profit, non-partisan organization that produces cutting edge research to expose the broader harm of mass criminalization, and then sparks advocacy campaigns to create a more just society. Through our research work, we have regularly engaged with the issue of medical care for justice-involved people in the community, including briefings on the mental and physical health conditions of people on probation and parole,[1] long-lasting mental health impacts of incarceration,[2] especially of solitary confinement,[3] on reproductive health access for people on probation and parole,[4] a briefing on Medicare enrollment periods for incarcerated people,[5] and a briefing on electronic monitoring,[6] which includes information about how it decreases access to healthcare.

We also provide research support to a network of dozens of advocacy organizations across the United States who work directly with people on pretrial release, probation, and parole. Through our work with these groups, we have had the opportunity to speak to people working on the ground in several states about the current state of health care for justice-involved and formerly incarcerated people in the community.

[1] Widra, E., & Jones, A. (2023, April). *Mortality, health, and poverty: the unmet needs of people on probation and parole*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2023/04/03/nsduh_probation_parole/
[2] Quandt, K.R., & Jones, A. (2021, May). *Research Roundup: Incarceration can cause lasting damage to mental health*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/
[3] Herring, T. (2020, December). *The research is clear: Solitary confinement causes long-lasting harm*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/
[4] Sawyer, W. (2024, June). *Two years after the end of Roe v. Wade, most women on probation and parole have to ask permission to travel for abortion care*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2024/06/18/dobbs/
[5] Widra, E. (2023, January). How a Medicare rule that ends financial burdens for the incarcerated leaves some behind. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2023/01/03/medicare-part-b/
[6] Sanders, E. (2023, October). *Not an alternative: The myths, harms, and expansion of pretrial electronic monitoring*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2023/10/30/electronic_monitoring/

Individuals reentering the community without adequate health insurance coverage often face significant health care expenses and barriers to accessing necessary healthcare. This harms individuals who then have to delay or completely forgo treatment.

It is essential that people on pretrial release, probation, parole, and other forms of community supervision have access to Medicare

Research has consistently shown that people under correctional control in the community have specific and acute health needs that must be met. It is unconscionable to allow these people to fall through the cracks.

People on probation and parole have mortality rates two to three times higher than the general public.[7] Their medical needs are significantly higher than the population at large, and a sizeable portion of people under community supervision are at least 65 years old: 6% of people on probation and 9% of people on probation in 2022 were 65 or older.[8] Research shows that people on probation and parole experience higher rates of chronic medical conditions and disabilities: 23% of people on probation and parole have a physical or cognitive disability, compared to 16% of the general U.S. population.[9] In addition, data from the 2019 National Survey on Drug Use and Health (NSDUH)[10] show that people on probation and parole disproportionately experience substance use disorders, mental health conditions, and inadequate access to appropriate medical care and insurance; 25% of people on probation and 27% of people on parole report having no access to health insurance.

Mental health care is particularly important for people leaving prisons and jails, because incarceration can cause lasting damage to mental and physical health. Incarceration is a fundamentally traumatic experience and experiencing traumatic events behind bars is strongly correlated with rates of post-traumatic stress disorder (PTSD) upon release.[11] In addition, people leaving incarceration are particularly vulnerable to overdose and serious medical issues: the risk of death for people released from prison is 12.7 times higher than the general population in the first two weeks after release. In this dangerous two-week period, the leading causes of death are drug overdose, cardiovascular disease, homicide, and suicide, and the risk of death remains heightened for months and years after release.[12] Many of these deaths are preventable with appropriate medical, mental health, and substance use interventions, which usually require health

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[7] Binswanger, I. A., Stern, M. F., Deyo, R. A., Heagerty, P. J., Cheadle, A., Elmore, J. G., & Koepsell, T. D. (2007). Release from prison--a high risk of death for former inmates. *The New England Journal of Medicine*, *356*(2), 157–165. https://doi.org/10.1056/NEJMsa064115

[8] *National Survey on Drug Use and Health*. (2022). Substance Abuse and Mental Health Services Administration (SAMHSA), Data Analysis System (DAS). https://datatools.samhsa.gov/nsduh/2022/nsduh-2022-ds0001/variable-list

[9] Winkelman, T., Phelps, M.S., Mitchell, K.L., Jennings, L., & Shlafer, R.J. (2020). Physical health and disability among U.S. adults recently on community supervision. *Journal of Correctional Health Care, 26*(2). https://doi.org/10.1177/1078345820915920

[10] *National Survey on Drug Use and Health*. (2019). Substance Abuse and Mental Health Services Administration (SAMHSA), Data Analysis System (DAS). https://datatools.samhsa.gov/nsduh/2019/nsduh-2019-ds0001/variable-list. For analysis, see Prison Policy Initiative, *Mortality, health and poverty: the unmet needs of people on probation and parole*, available at: https://www.prisonpolicy.org/blog/2023/04/03/nsduh_probation_parole/

[11] Piper, A., & Berle, D. (2019). The association between trauma experienced during incarceration and PTSD outcomes: a systematic review and meta-analysis. *The Journal of Forensic Psychiatry & Psychology*, *30*(5), 854–875. https://doi.org/10.1080/14789949.2019.1639788

[12] Binswanger, I. A., Stern, M. F., Deyo, R. A., Heagerty, P. J., Cheadle, A., Elmore, J. G., & Koepsell, T. D. (2007). Release from prison--a high risk of death for former inmates. *The New England Journal of Medicine*, *356*(2), 157–165. https://doi.org/10.1056/NEJMsa064115

insurance. Uninsured people are less likely to seek medical care[13] (because of the financial costs), and when they do seek out care, the care is likely of poor quality[14] or too late[15], resulting in worse health outcomes and higher rates of death when compared to insured people.

This body of research reinforces how imperative it is that people released from prison have access to health care from the moment they are released, and not waste precious, dangerous weeks trying to find access to care. Increased access to Medicare could help close this gap and save lives.

Individuals are on bail, parole, probation, or home detention do not have their health care paid for by the justice system.

People living in the community under any form of supervised release, including bail, parole, probation, or home detention, are typically responsible for their own health care costs, including securing health insurance from an employer or Medicaid. While some people receive charity care or go to free clinics, that care is limited. People living in the community after release do not receive health care services or coverage from the jail, prison, or other correctional institution.

As part of our preparation for this comment, we conducted a survey of some of our on-the-ground community-based partners about this issue. We received responses from six states: California, Georgia, Illinois, Maryland, Massachusetts and Minnesota. These partners all work directly to advocate for and provide services for people on pretrial release, probation, and/or parole. Universally, our partners said that the people they served *did not* receive health care from the justice system, from prisons, or from jails. Some of their specific comments included:

- "I have never heard of [justice-involved people in the community receiving free medical care from the justice system]. People in Massachusetts can barely access health care *while* they're imprisoned."- *Lois Ahrens, Real Cost of Prisons, Massachusetts*

- "No, [non-incarcerated, justice-involved people in my community do not receive free medical care from jails, prisons, or the justice system]. I am an internal medicine physician at our safety net hospital and this is 100% untrue." – *Mark Spencer, Community Over Cages Atlanta, Georgia.*

- "No, [people on parole] do not receive any free medical care from jails, prisons, or the justice system." – *Gordon Pack, Jr. PREPARE, Maryland*

- No. With Medicaid expansion, more justice-involved people are able to access health care while in the community than in the past. This care is *not* provided by the justice system. In some cases, the justice system (or organizations funded by the justice system) might help a person get connected to a community-based health care provider.
  For the care TASC provides (substance use disorder case management), our primary

[13] Families USA "Dying for Coverage: The Deadly Costs of Being Uninsured", June 2012, available at: https://familiesusa.org/wp-content/uploads/2019/09/Dying-for-Coverage.pdf

[14] McWilliams JM. Health consequences of uninsurance among adults in the United States: recent evidence and implications. Milbank Q. 2009 Jun;87(2):443-94. doi: 10.1111/j.1468-0009.2009.00564.x

[15] Institute of Medicine (US) Committee on the Consequences of Uninsurance. Care Without Coverage: Too Little, Too Late. Washington (DC): National Academies Press (US); 2002. PMID: 25057604.

funding sources are outside the justice system (Medicaid and the Department of Human Services). The one exception is that we receive funding from the Illinois Department of Corrections to support case management for people returning to the community from prison. In all of these cases, TASC is connecting people to other providers to receive treatment, and those services are covered (or not covered) in the same way they are for other people in the community (primarily Medicaid). – *Rebecca Levin, Treatment Alternatives for Safe Communities, Illinois*

- "We have bailed out thousands of people in Minnesota over the last few years, and we have never heard of a single client of ours being offered access to health care because of that. Instead, we typically hear that they did not receive adequate medical care while sitting in jail waiting to be released." – *Jana Kooren, Minnesota Freedom Fund, Minnesota.*

- "In my experience, non-incarcerated, justice-involved people in the community typically do not receive free medical care from jails, prisons, or the justice system. Access to healthcare for this group largely depends on external factors like income level, insurance coverage, and local resources. Here's how justice-involved people generally access healthcare:
    - Public Health Services: Those who are low-income or unemployed might rely on public health services, such as Medicaid, or visit community health clinics that offer sliding scale fees based on income. These clinics often serve as a primary resource for justice-involved individuals who might lack stable employment or insurance.
    - Nonprofit Organizations: In some cases, nonprofit organizations focused on criminal justice reform or reentry support might assist justice-involved individuals in accessing healthcare. These organizations could offer referrals to medical services, mental health counseling, or substance abuse treatment programs.
    - Emergency Rooms: Unfortunately, due to a lack of continuous care, many justice-involved individuals end up using emergency rooms for acute medical needs, which is neither cost-effective nor conducive to ongoing health management.
    - Reentry Programs: Some reentry programs include health services as part of their support for individuals transitioning from incarceration back into the community. However, these services are often limited and dependent on the program's funding and resources.
    - Barriers: Many justice-involved people face significant barriers in accessing healthcare, including a lack of knowledge about available services, difficulty navigating complex healthcare systems, stigma, and mistrust of medical institutions. Additionally, without proper identification or stable housing, securing medical care becomes even more challenging.

  In sum, while the justice system may provide some level of medical care to incarcerated individuals, **once someone is released or remains non-incarcerated but justice-involved, their access to healthcare often becomes fragmented and dependent on external resources rather than being directly provided by the justice system**." – *Marvina Haynes, Minnesota Wrongfully Convicted Judicial Reform, Minnesota.*

From our perspective at the Prison Policy Initiative, in our decades of work in criminal legal system reform, including many partnerships with direct service organizations, we have never heard of a situation where the justice system – including probation and parole agencies, prisons, or jails – provided medical care to people on parole, probation, pretrial release, or any other form of community supervision.

Conclusion

We strongly support CMS' proposal to narrow Medicare's custody definition to no longer include individuals under community supervision on bail, parole, probation, or home detention. The new proposed definition will promote successful reentry, improve access to crucial healthcare services, and facilitate community integration for people in the criminal legal system. We further support CMS's proposal to revise and expand the eligibility criteria for the special enrollment period (SEP) for formerly incarcerated individuals so that people under community supervision can enroll in Medicare. We encourage CMS to make sure the final rule allows pre-trial populations and people required to reside in halfway houses to access Medicare and the SEP, as well as those on probation, parole, and home detention.

Thank you for the opportunity to comment and for your commitment to expanding access to health care for individuals who are reentering and living in the community following incarceration. Please contact Sarah Staudt, Director of Policy and Advocacy, (sstaudt@prisonpolicy.org) with any questions about our comments.

Sincerely,

Sarah Staudt
Director of Policy and Advocacy
Prison Policy Initiative