

May 31, 2023

The Honorable Bill Cassidy
U.S. Senate
Washington, DC 20510

The Honorable David Trone
U.S. House
Washington, DC 20515

The Honorable Jeff Merkley
U.S. Senate
Washington, DC 20510

The Honorable John Rutherford
U.S. House
Washington, DC 20515

The Honorable Ed Markey
U.S. Senate
Washington, DC 20510

The Honorable Michael Turner
U.S. House
Washington, DC 20515

The Honorable Thom Tillis
U.S. Senate
Washington, DC 20510

The Honorable Paul Tonko
U.S. House
Washington, DC 20515

Dear Senators and Representatives:

The undersigned addiction, mental health, recovery support, harm reduction, and healthcare professional organizations write to voice our strong support for [S. 971/H.R. 3074 – the Due Process Continuity of Care Act](#).

As you know, the Medicaid Inmate Exclusion Policy (MIEP) in federal law severely limits Medicaid from paying for healthcare services for individuals who are incarcerated. This includes individuals who are incarcerated pending disposition of charges against them, otherwise known as pretrial detainees. Your bill, the Due Process Continuity of Care Act, would amend the MIEP to allow these otherwise eligible individuals to receive their full Medicaid benefits while incarcerated at the option of the state. While a modified version of the Due Process Continuity of Care Act was included in December’s Consolidated Appropriations Act 2023, these provisions only applied to minors.

Individuals who are incarcerated have high rates of chronic diseases, including substance use and mental health disorders, and disproportionately low incomes, meaning many of these individuals qualify for Medicaid coverage.¹ About 65% of individuals who are incarcerated in jails in the U.S. – an estimated 490,000 people -- were awaiting court action on a current charge in 2019.² Of note, in the same year, Black Americans were incarcerated in jails at a rate more than three times the

¹ Pew Charitable Trusts. “Can Medicaid Help Improve Opioid Use Disorder Treatment in Correctional Facilities?” Accessed May 18, 2023. <https://pew.org/378xw3U>.

² U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. “Jail Inmates in 2019,” March 2021. <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf>.

rate for White Americans.³ Healthcare coverage while in pretrial detention affects the lives of a considerable number of Americans with substance use disorder (SUD), including opioid use disorder (OUD), and Medicaid coverage for pretrial detainees can save lives from overdose deaths. For these reasons, this is an important area for policy intervention.

Ensuring pretrial detainees maintain their Medicaid coverage is not only commonsense, but it represents an important social justice issue as many pretrial detainees remain in jails simply because they cannot afford financial bail⁴ - and would otherwise have access to their healthcare coverage. In this sense, the policy is discriminatory because it allows only those who can post financial bail to maintain their healthcare coverage. Additionally, the application of the MIEP to pretrial detainees puts significant pressure on already strapped local and state budgets, because U.S. jails and prisons have a constitutional obligation to provide inmates with adequate medical care.⁵ The denial of Medicaid coverage to pretrial detainees collectively burdens local and state governments with billions of dollars in additional healthcare costs to care for a vulnerable population eligible for federal Medicaid coverage.⁶

Further complicating the problem, individuals who are incarcerated in the U.S. frequently cannot access medications for OUD.⁷ For example, studies show that individuals who received buprenorphine in jails had less involvement with the criminal legal system post-incarceration.⁸ Passage of the Due Process Continuity of Care Act would likely increase access to these lifesaving medications in jails and reduce recidivism. Your legislation also carefully implements its amendment to the MIEP with the authorization of \$50 million in planning grant dollars to states.

In sum, the Due Process Continuity of Care Act is an important step towards reducing rising SUD-related mortality.⁹ Its enactment will save lives. The undersigned strongly support swift passage of this legislation, and thank you for your leadership in addressing this important issue.

³ Ibid.

⁴ Journal, A. B. A. "Justice Reform Advocates Offer a Roadmap for Reforming Pretrial Release." ABA Journal. Accessed May 18, 2023. https://www.abajournal.com/news/article/justice_reform_advocates_offer_a_roadmap_for_reforming_pretrial_release.

⁵ See *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 290, 50 L. Ed. 2d 251, 256 (1976) ("These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration.").

⁶ Pew Charitable Trusts. "In Reversal, Counties and States Help Inmates Keep Medicaid," January 8, 2020. <https://pew.org/306pS20>.

⁷ Binswanger, Ingrid A., Anh P. Nguyen, Jeffrey D. Morenoff, Stanley Xu, and David J. Harding. "The Association of Criminal Justice Supervision Setting with Overdose Mortality: A Longitudinal Cohort Study." *Addiction* 115, no. 12 (December 2020): 2329–38. <https://doi.org/10.1111/add.15077>.

⁸ Evans, Elizabeth A., Donna Wilson, and Peter D. Friedmann. "Recidivism and Mortality after In-Jail Buprenorphine Treatment for Opioid Use Disorder." *Drug and Alcohol Dependence* 231 (February 1, 2022): 109254. <https://doi.org/10.1016/j.drugalcdep.2021.109254>.

⁹ Ahmad FB, Cisewski JA, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2023. Designed by LM Rossen, A Lipphardt, FB Ahmad, JM Keralis, and Y Chong: National Center for Health Statistics.

Sincerely,

American Academy of Addiction Psychiatry

American Association for the Treatment of Opioid Dependence

American College of Emergency Physicians

American College of Medical Toxicology

American College of Osteopathic Emergency Physicians

American Foundation for Suicide Prevention

American Osteopathic Academy of Addiction Medicine

American Psychiatric Association

American Psychological Association Services

American Society of Addiction Medicine

A New PATH (Parents for Addiction Treatment & Healing)

Association for Behavioral Health and Wellness

Behavioral Health Association of Providers

CADA of Northwest Louisiana

Faces & Voices of Recovery

HIV Alliance

International Certification & Reciprocity Consortium (IC&RC)

National Alliance for Medication Assisted Recovery

National Association for Behavioral Healthcare

National Association of Addiction Treatment Providers

National Commission on Correctional Health Care

National Council for Mental Wellbeing

National Health Care for the Homeless Council

National Safety Council

Partnership to End Addiction

Shatterproof

SMART Recovery

Stop Stigma Now

Student Coalition on Addiction

The Kennedy Forum

Treatment Communities of America

Young People in Recovery