



June 27, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Re: Medicare Program: Implementing Certain Provisions of the Consolidated Appropriations Act and other Revisions to Medicare Enrollment and Eligibility Rules

Submitted electronically via Regulations.gov

Dear Secretary Becerra:

As the nation's largest organization representing people with mental illness and their families, NAMI appreciates the opportunity to comment on this proposed rule, Implementing Certain Provisions of the Consolidated Appropriations Act and other Revisions to Medicare Enrollment and Eligibility Rules. Millions of people with mental illness rely on Medicare as a lifeline for treatment and medications, and as such, we are highly supportive of the proposed special enrollment periods for exceptional conditions, including incarceration. These enrollment flexibilities are urgently needed to better facilitate access to coverage and care for the Medicare population, and we urge CMS to finalize this proposed rule. Below you will find more detailed comments regarding this proposal.

### **People with Mental Illness and Incarcerated Settings**

NAMI represents the voice of people with mental illness, including people with mental illness involved in the criminal justice system. On any given day, approximately 44 percent of people incarcerated in jails and 37 percent of people in state and federal prisons have a history of mental illness.<sup>i</sup> Medicare is prohibited from paying for covered services while recipients are incarcerated, and the individual's health care becomes the responsibility of the state and local governments that run the over 1,500 state prisons and 2,850 local jails nationwide, as well as the federal Bureau of Prisons.<sup>ii</sup>

As a result, jails and prisons have become America's de-facto mental health providers, but despite court mandates, they are often unable to provide adequate mental health care as part of a system that is not built to provide health services. Over 60 percent of people with a history of mental illness do not receive mental health treatment while incarcerated in state and federal prisons.<sup>iii</sup> It is also challenging for people to remain on treatment regimens once incarcerated.

Continuous access to health insurance is important for people with mental illness. Research has shown that individuals with disruptions in coverage during a year are more likely to delay care, receive less preventive care, refill prescriptions less often, and have more emergency department visits.<sup>iv</sup> When eligible people with mental health conditions go on and off of coverage – called “churn” – they are less likely to receive outpatient mental health services.<sup>v</sup> This scenario is especially critical for those about to transition out of incarcerated settings who often have no access to health coverage once they reenter the community.

## **Medicare Enrollment and Incarceration**

When individuals become eligible for Medicare – either by attaining the age of 65 or due to certain disabilities – the first opportunity to enroll in Medicare Parts A and B is during their initial enrollment period (IEP). The next opportunity for eligible individuals who do not enroll during their IEP is in the general enrollment period (GEP), which runs from January 1st through March 31st each year. If individuals do not enroll during these periods or qualify for an existing special enrollment period (SEP) for which they are eligible, they face a life-long late enrollment penalty (LEP) for late enrollment and a potential gap in coverage, as well as months without health coverage upon their release.

If an individual qualifies for Medicare while incarcerated, that individual is not automatically enrolled in the program, which means they may go months without health coverage upon their release and further delay care. When individuals are released from incarceration and return to the community, it is a particularly crucial period for those with mental illness because it is associated with significant stress and high risk of recidivism, relapse, or crisis. Nationally, about 80 percent of individuals released from prison in the United States each year have a SUD or chronic medical or psychiatric condition.<sup>vi</sup> Once individuals re-enter their community, establishing or re-establishing health care is often on the backburner as they deal with more pressing needs like housing and food security, reconnecting with family members, and finding employment.<sup>vii</sup> Many do not have appropriate access to coverage and continuity of care and are more likely to lack health insurance.<sup>viii</sup> On release, people with serious mental illness (SMI), particularly those with co-occurring substance use disorders, recidivate at higher rates than other offenders. This is frequently attributable to lack of timely access to needed services and supports for their condition.<sup>ix</sup> These striking statistics underscore the important need for proposals to improve access to care for those who are incarcerated and improve transitions to care upon release.

## **Proposal for a New SEP**

Under the proposed rule, CMS would establish five new SEPs for individuals who missed enrolling in premium Part A and Part B during an enrollment period due to exceptional conditions, which includes incarceration, and would be available beginning January 1, 2023. Each of these SEPs would provide an opportunity for individuals to enroll without having to wait for the GEP or be subject to the LEP. This SEP starts the day of the individual's release from incarceration and ends the last day of the sixth month after the month in which the individual is released from incarceration, starting on or after January 1, 2023.

We note the agency's justification:

We propose this duration because (1) it takes approximately 3 months for Old Age, Survivors, and Disability Insurance program (OASDI) payments to be reinstated upon an individual's release from incarceration; and (2) data demonstrate that individuals with arrest or conviction records face barriers in obtaining employment. Such lack of income from employment or OASDI might dissuade formerly incarcerated individuals from enrolling in Medicare upon their release because of concerns about their ability to pay Medicare premiums and cost sharing. Formerly incarcerated individuals may experience social risk factors including financial, housing or food insecurity, social isolation, and other factors that can increase the likelihood of chronic physical or mental health conditions that require healthcare services.

NAMI believes that all people with mental health conditions who are incarcerated deserve access to quality mental health treatment and reducing barriers to Medicare coverage will make it easier for people with mental illness to receive continuous care when they reenter the community. We urge CMS to finalize this proposed rule.

Thank you for your commitment to HHS' mission to enhance the health and well-being of all Americans and for your efforts to address the needs of people with serious mental illness. NAMI appreciates the opportunity to comment on this important proposal. We would be happy to serve as a resource on improving quality of care and experience for people with mental illness in settings of incarceration. To discuss further, please contact Jennifer Snow, National Director of Government Relations and Policy, at [jsnow@nami.org](mailto:jsnow@nami.org).

Sincerely,



Chief Advocacy Officer

CC: Dr. Miriam Delphin-Rittmon, Ph.D., Assistant Secretary for Mental Health and Substance Use  
Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services

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<sup>i</sup> Jennifer Bronson and Marcus Berzofsky. Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12. U.S. Department of Justice Office of Justice Programs, June 2017, <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>ii</sup> Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2022," Prison Policy Initiative, March 14, 2022, <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>iii</sup> Jennifer Bronson and Marcus Berzofsky. Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12. U.S. Department of Justice Office of Justice Programs, June 2017, <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>iv</sup> Sarah Sugar et al. Medicaid Churning and Continuity of Care: Evidence and Policy Considerations Before and After the COVID-19 Pandemic. U.S. Department of Health and Human Services Office of Health Policy, April 12, 2021, <https://aspe.hhs.gov/sites/default/files/private/pdf/265366/medicaid-churning-ib.pdf>.

<sup>v</sup> Xu Ji et al. Effect of Medicaid Disenrollment on Health Care Utilization Among Adults With Mental Health Disorders. *Medical Care* 57, no. 8 (August 2019), [https://journals.lww.com/lww-medicalcare/Abstract/2019/08000/Effect\\_of\\_Medicaid\\_Disenrollment\\_on\\_Health\\_Care.2.aspx](https://journals.lww.com/lww-medicalcare/Abstract/2019/08000/Effect_of_Medicaid_Disenrollment_on_Health_Care.2.aspx).

<sup>vi</sup> Shira Shavit et al. Transitions Clinic Network: Challenges and Lessons in Primary Care for People Released from Prison. *Health Affairs* 36, no. 6 (June 2017): 1006–15. <https://doi.org/10.1377/hlthaff.2017.0089>.

<sup>vii</sup> Reentry from incarceration is a difficult transition, and health management is often a low priority as people grapple with more basic survival needs (e.g., food and housing), reconnecting with family members, and finding employment (Mallik-Kane 2005).

<sup>viii</sup> Tyler Winkelman et al. Health Insurance Trends and Access to Behavioral Healthcare Among Justice-Involved Individuals—United States, 2008–2014. *Journal of General Internal Medicine* 31 (September 2016): 1523–1529. DOI: <https://doi.org/10.1007/s11606-016-3845-5>.

<sup>ix</sup> Glenda Wrenn, Brian McGregor, and Mark Munetz. The Fierce Urgency of Now: Improving Outcomes for Justice Involved People with Serious Mental Illness and Substance Misuse. *Psychiatric Services*, published online (April 16, 2016), <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201700420>.