November 6, 2013

The Honorable Joe Pitts
Chairman
Health Subcommittee
Energy and Commerce Committee
U.S. House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515-2206

Dear Congressman Pitts:

We are a coalition of organizations representing criminal justice, mental health and substance use disorders. We are writing to clarify how the Medicaid provisions in the Patient Protection and Affordable Care Act (P-PACA) apply to persons with criminal justice system involvement.

It has long been established that Medicaid cannot be used to pay for health care services for persons who are incarcerated in jails or prisons. This provision was not changed by the P-PACA. The prohibition on Medicaid paying for health care services inside correctional facilities continues to apply to Medicaid, including in states that elected to expand their Medicaid programs pursuant to the P-PACA.

When persons who are Medicaid recipients enter jails or prisons, their Medicaid benefits are either suspended or terminated depending upon the practice in each particular state. In states that elect to suspend rather than terminate Medicaid benefits, health care services provided to detainees or inmates in community hospitals outside of the correctional setting can be paid for by Medicaid only if the person would otherwise be covered by Medicaid and the person is hospitalized for 24 hours or more. This provision was not changed by the P-PACA.

Persons with serious mental illness, substance use disorders, or both are disproportionately represented in U.S. jails and prisons. Approximately 17% of jail inmates and up to 24% of prison inmates are diagnosed with serious mental illness. More than half of persons in prisons (54%) and 68% in jails have a diagnosable substance use disorder. As many as 75% of persons with mental illness in correctional facilities have co-occurring substance use disorders. Many of these individuals were homeless prior to their arrest and were charged or convicted of non-violent offenses, such as trespassing or property crimes. Less than one-third of these individuals receive treatment after they re-enter their communities following their arrest and detention.

The provision of timely mental health and substance use treatment following discharge has been shown to reduce recidivism, improve successful reentry into communities and save money. For example, research from Washington State demonstrated significant savings by providing drug treatment to low-income individuals, a group that had frequent contact with the criminal justice system.

- Arrest rate reductions of 17-33%;
- Justice system cost savings of $5,000 to $10,000 per person treated (law enforcement, jails, courts and state prison systems);
- Average medical cost savings of $2,500 annually per person treated; and
- Average increased income among those treated of $2,000 per person.

The benefits accrue not only to the persons themselves, but also to society as a whole. Timely reinstatement of Medicaid following discharge can make all the difference in facilitating recovery and preventing recidivism. The P-PACA did not change the rules regarding reinstatement of Medicaid. The only difference is that more persons re-entering communities may be eligible for Medicaid in states that opted to expand their programs.

In your letter to the U.S. Government Accountability Office (GAO), you emphasize that the intent of Medicaid is "to serve the nation's most vulnerable populations." We agree entirely and emphasize that persons with serious mental illness and substance use disorders re-entering communities are among our nation's poorest, most vulnerable citizens.

We would welcome the opportunity to discuss this topic further with you or your staff. Please contact Ron Honberg (703-516-7972) or Al Guida (202-331-1120).

Sincerely,

American Correctional Association (ACA)
Bazelon Center for Mental Health Law
Council of State Governments (CSG) Justice Center
Legal Action Center (LAC)
Major County Sheriffs' Association (MCSA)
Mental Health America (MHA)
National Alliance on Mental Illness (NAMI)
National Association of County Behavioral Health and Developmental Disability Directors (NACBHDD)
National Council for Behavioral Health (NCBH)
National Sheriffs' Association (NSA)
Treatment Alternatives for Safe Communities Inc. (TASC)