

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). Law Enforcement Leaders to Reduce Crime and Incarceration (LEL) supports the proposals to revise Medicare's custody description and the Special Enrollment Period for formerly incarcerated individuals. We are a coalition of nearly 200 current and former police chiefs, sheriffs, federal and state prosecutors, attorneys general, and corrections officials from across the country who are committed to supporting practical, tested policies that reduce incarceration and aid reentry. The proposed modifications will expand access to coverage and care for older adults and people with disabilities who are living in the community under supervised release following incarceration. The changes will also make it easier for stakeholders like LEL members to connect individuals leaving incarceration to coverage by making Medicare policy more consistent with Medicaid as well as commercial health insurance.

Individuals reentering the community who do not qualify for Medicaid often face significant health care costs, needing to either pay out-of-pocket or find other insurance. This harms individuals who have to delay or forgo treatment

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 from the jail, prison, or other correctional institution. Most people who are required to reside in halfway houses get their healthcare in the community and are responsible for paying for it.

We recommend CMS remove individuals "under arrest" from its proposed description of custody. This term is overly broad and could prevent people who are on bail or pre-trial release and whose services are not covered or provided by a carceral setting from accessing Medicare. To the extent that the population CMS is trying to exclude are those that are confined to jail, that population remains excluded under the proposed modification.

## **Conclusion**

We support CMS' 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.

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 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.

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 Rosemary Nidiry at [rnidiry@lawenforcementleaders.org](mailto:rnidiry@lawenforcementleaders.org) or Jessie Brenner at [jessica.brenner@lawenforcementleaders.org](mailto:jessica.brenner@lawenforcementleaders.org) with any questions about our comments.

Sincerely,

Law Enforcement Leaders to Reduce Crime & Incarceration