

June 8, 2023

Hon. Kevin McCarthy  
Speaker  
House of Representatives  
H-232, The Capitol  
Washington, D.C. 20515

Hon. Hakeem Jeffries  
Minority Leader  
House of Representatives  
H-204, The Capitol  
Washington, D.C. 20515

Hon. Chuck Schumer  
Majority Leader  
S-221, The Capitol  
Washington, DC 20510

Hon. Mitch McConnell  
Minority Leader  
S-230, The Capitol  
Washington, DC 20510

Hon. McMorris Rodgers  
Chair  
House Energy and Commerce Committee  
2155 Rayburn House Office Building  
Washington, DC 20515

Hon. Frank Pallone  
Ranking Member  
House Energy and Commerce Committee  
2155 Rayburn House Office Building  
Washington, DC 20515

Hon. Ron Wyden  
Chair  
Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510

Hon. Mike Crapo  
Ranking Member  
Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510

Speaker McCarthy, Majority Leader Schumer, Minority Leader Jeffries, Minority Leader McConnell, Chair McMorris Rodgers, Ranking Member Pallone, Chair Wyden, and Ranking Member Crapo,

The undersigned organizations, representing a diverse group of stakeholders, write today to endorse the *Due Process Continuity of Care Act (H.R. 3074, S.971)*. This critical legislation would allow pre-trial incarcerated individuals to receive medical services supported by Medicaid.

Currently, the “Medicaid inmate exclusion policy” (MIEP) prohibits the use of federal funds and services for medical care for “inmates of a public institution.” This policy prevents Medicaid-eligible incarcerated individuals, regardless of whether they have been convicted, from receiving services funded by Medicaid. This means that incarcerated individuals awaiting trial in a jail cannot receive most Medicaid services. The policy also prevents incarcerated veterans from receiving hospital and outpatient care in local jails from the Department of Veterans Affairs.

The MIEP was established in Sec. 1905(a)(A) of the Social Security Act, decades before the current overdose crisis began. Almost sixty years later, the MIEP has become a significant barrier to accessing substance use disorder treatment in correctional facilities. Despite nearly 60% of incarcerated individuals having a substance use disorder, most go untreated.<sup>1</sup> In 2021, just 12% of jails and prisons offered medications for opioid use disorder (MOUD).<sup>2</sup> A recent Bureau of Justice Statistics report on local jails indicated that fatal drug overdoses are the fastest growing cause of death amongst incarcerated

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<sup>1</sup> <https://www.ojp.gov/ncjrs/virtual-library/abstracts/behind-bars-ii-substance-abuse-and-americas-prison-population>

<sup>2</sup> <https://prisonopioidproject.org/data/>

individuals, and the median time served before a drug or alcohol intoxication death was just one day.<sup>3</sup> According to the *New England Journal of Medicine*, individuals reentering society from incarcerations are 129 times likelier to die of a drug overdose during the two weeks following their release than the general population.<sup>4</sup> FDA approved MOUD, such as buprenorphine and methadone, have been associated with an 80% reduction in overdose mortality risk for the first month post-release. Despite this, most jails and prisons do not provide methadone or buprenorphine for opioid use disorders.<sup>5</sup>

The MIEP can also be linked to our nation's high recidivism rates. Not treating substance use disorder in a correctional setting can contribute to increased chances of returning to illicit drug use upon release, which leads to a greater likelihood of reoffending. If an individual initiates MOUD treatment while in a correctional setting they have a greater chance of continuing care upon reentry, which contributes to a 32% reduction in recidivism rates.<sup>6</sup> Not only will initiating and maintaining care in correctional settings save lives, but it will also have a positive impact on public safety and reducing the cycle of recidivism.

This act is crucial in ensuring an individual's constitutionally protected rights. The MIEP violates the right that an individual is presumed innocent until proven guilty by including pre-trial incarcerated individuals in the definition of "inmate", thus causing them from to lose their Medicaid benefits before having a chance to defend their innocence. The *Due Process Continuity of Care Act* will ensure that access to treatment is maintained while an individual awaits trial.

Our organizations stand unified in our support of the *Due Process Continuity of Care Act* and our belief that increasing access to treatment will improve public health and public safety in our communities. Thank you for your leadership.

If you have any questions, please contact Ryan Greenstein at [rgreenstein@advocacyincubator.org](mailto:rgreenstein@advocacyincubator.org).

Sincerely,

A New PATH (Parents for Addiction Treatment & Healing)

Academic Consortium on Criminal Justice Health

ACOJA Consulting LLC

Addiction Professionals of North Carolina

AIDS United

Alcohol & Drug Abuse Certification Board of Georgia

American Association of Psychiatric Pharmacists

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<sup>3</sup> <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>

<sup>4</sup> Ingrid A. Binswanger, M.D., Marc F. Stern, M.D., Richard A. Deyo, M.D., Patrick J. Heagerty, Ph.D., Allen Cheadle, Ph.D., Joann G. Elmore, M.D., and Thomas D. Koepsell, M.D., Release from Prison – A High Risk of Death for Former Inmates, *The New England Journal of Medicine*, 2007, <https://perma.cc/L49X-7MZ7>

<sup>5</sup> Lim S, Cherian T, Katyal M, Goldfeld KS, McDonald R, Wiewel E, Khan M, Krawczyk N, Braunstein S, Murphy SM, Jalali A, Jeng PJ, MacDonald R, Lee JD. Association between jail-based methadone or buprenorphine treatment for opioid use disorder and overdose mortality after release from New York City jails 2011-17. *Addiction*. 2022 Oct 28. doi: 10.1111/add.16071.

<sup>6</sup> Elizabeth A. Evans, Donna Wilson, Peter D. Friedmann, Recidivism and mortality after in-jail buprenorphine treatment for opioid use disorder, *Drug and Alcohol Dependence*, Volume 231, 2022, <https://doi.org/10.1016/j.drugalcdep.2021.109254>.

American College of Correctional Physicians  
American Jail Association  
American Medical Student Association (AMSA)  
Association for Ambulatory Behavioral Healthcare  
C4 Recovery Foundation  
CADA of Northwest Louisiana  
California Consortium of Addiction Programs & Professionals  
CASES  
Church of Scientology National Affairs Office  
Clinical Social Work Association  
Community Catalyst  
Community Oriented Correctional Health Services  
Correctional Leaders Association  
Drug Policy Alliance  
Due Process Institute  
Faces & Voices of Recovery  
Families On The Move Of NYC, Inc.  
Family Based Services Assoc of NJ  
Fox Valley Perinatology  
FREDLA (Family-Run Executive Director Leadership Association)  
Futures Without Violence  
Global Alliance for Behavioral Health and Social Justice  
HIV Alliance  
International Community Justice Association  
Just Detention International  
Law Enforcement Leaders to Reduce Crime & Incarceration  
Legal Action Center  
Montgomery County Federation of Families for Children's Mental Health, Inc.  
National Alliance for Medication Assisted Recovery (NAMA Recovery)

National Association for Behavioral Healthcare  
National Association of Criminal Defense Lawyers  
National Association of State Mental Health Program Directors  
National Behavioral Health Association of Providers  
National Center for Advocacy and Recovery, Inc.  
National Commission on Correctional Health Care  
National Council for Mental Wellbeing  
National District Attorneys Association  
National Health Care for the Homeless Council  
National Juvenile Justice Network  
North Carolina Formerly Incarcerated Transition Program  
North Carolina Psychiatric Association  
Operation Restoration  
Overdose Crisis Response Fund  
Overdose Prevention Initiative  
Prison Families Alliance  
Prison Policy Initiative  
R Street Institute  
TASC, Inc. (Treatment Alternatives for Safe Communities)  
The AIDS Institute  
The Council of State Governments (CSG) Justice Center  
The Fortune Society  
The Kennedy Forum  
The National Association for Rural Mental Health  
The National Association of County Behavioral Health and Developmental Disability Directors  
The Police, Treatment, and Community Collaborative (PTACC)  
Voices of Community Activists and Leaders- Kentucky  
Washington State Community Connectors  
Women on the Rise

CC

Congressman David Trone

Congressman Mike Turner

Congressman Paul Tonko

Congressman John Rutherford

Senator Bill Cassidy

Senator Ed Markey

Senator Jeff Merkley

Senator Thom Tillis