June 27, 2022

The Honorable Chiquita Brooks-LaSure
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-4199-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare Program; Implementing Certain Provisions of the Consolidated
Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility
Rules

Dear Administrator Brooks-LaSure,

The Association for Behavioral Health and Wellness (ABHW) appreciates the
opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS)
proposed rule to implement certain provisions of the Consolidated Appropriations
Act of 2021 and other revisions to Medicare enrollment and eligibility rules. Our
comments are below.

ABHW is the national voice for payers that manage behavioral health insurance
benefits. ABHW member companies provide coverage to over 200 million people in
both the public and private sectors to treat mental health, substance use disorders
(SUDs), and other behaviors that impact health and wellness.

ABHW members are committed to ensuring patients with mental health and SUDs
receive the best care possible. We strongly support the Medicare rule's proposal to
establish a special enrollment period (SEP) for formerly incarcerated individuals and
to exempt those who enroll under the SEP from a Late Enrollment Penalty (LEP).
Currently, individuals who turn 65 while they are incarcerated are not automatically
enrolled in Medicare Part A and do not have the ability to enroll in Medicare Part B.
As a result, when they are released from incarceration, they may go months without
health coverage and incur a Late Enrollment Penalty (LEP) that would make their
Medicare premiums more expensive for the rest of their lives, even though their

failure to enroll in Medicare was beyond their control. Unfortunately, coverage disruptions as people return home to the community from incarceration are common and can be harmful. People with mental health and SUDs who are reentering the community from incarceration are particularly vulnerable; in the first two weeks of reentry, people are 129 percent more likely to die from a drug overdose and are at significantly higher risk to die by suicide.

Given the numerous barriers formerly incarcerated individuals face upon their release, we strongly support the proposed rule's recommendation to make the SEP last for six months, so that these individuals have a sufficient opportunity to learn about their enrollment options and get the assistance they need to make enrollment decisions. We further strongly support the proposal to exempt those who enroll under this SEP from the LEP.

Creating a SEP for formerly incarcerated individuals is aligned with the pillars of the Administration's vision for the Medicare program: advancing health equity, expanding access to affordable health coverage and care, and promoting affordability and sustainability.

As this Administration continues to advance these goals, we additionally urge CMS to revise its current definition of "in custody" for the Medicare population to be consistent with the definition it uses for Medicaid. Medicare does not pay for services for individuals who are in the custody of a penal authority. Individuals on parole, probation, bail, or supervised release may be 'in custody' for purposes of the Medicare exclusion, even if they live outside of a correctional facility and, therefore, receive no correctional health services. CMS addressed similar reimbursement restrictions in the Medicaid program in 2016, clarifying that individuals who are on parole or probation or have been released to the community pending trial are eligible for Medicaid-reimbursed services. We urge CMS to extend this definition to Medicare and issue guidance to its effect.

Thank you for the opportunity to comment on this important proposed rule. Please feel free to contact me at greenberg@abhw.org with any questions.

Sincerely,

Pamela Greenberg, MPP
President and CEO