September 29, 2015

Ms. Victoria Wachino, MPP
CMS Deputy Administrator/Director
Center for Medicaid and CHIP Services (CMCS)
Centers for Medicare and Medicaid Services (CMS)
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Ms. Wachino:

On behalf of the National Association of Counties (NACo) and the nation's 3,069 counties as well as the National Sheriffs' Association (NSA) and the more than 3,000 elected sheriffs nationwide, and the National Association of County Behavioral Health and Developmental Disability Directors (NACBHDD) and the 750 county behavioral health authorities across the country, we kindly ask CMS to carefully consider a new, narrowly crafted Section 1115 Medicaid waiver that would offer states and counties tools to improve outcomes for Medicaid beneficiaries in local jails who are without access to benefits due to the statutory exclusion of federal financial participation (FFP) for services provided to inmates of public institutions (inmate exclusion).

Counties take our responsibility for protecting the health and well-being of our 305 million residents seriously, investing almost $70 billion in community health annually. Through 676 county-owned and supported long-term care facilities, 976 county-supported hospitals, 750 county behavioral health authorities and 1,592 local public health departments, counties deliver a wide range of health services, including many that are eligible for Medicaid reimbursement. Additionally, counties and other local governments help finance the Medicaid program, contributing $28 billion to the non-federal share in 2012.

In addition to the $70 billion spent on community health, counties spend another $70 billion annually on justice and public safety services, including the entire cost of medical care for all arrested and detained individuals in jails. Counties are required by federal and state law to provide adequate health care for the approximately 11.6 million individuals who pass through county jails each year, two-thirds of whom are held in pre-trial detention simply because they cannot afford to post bond. Counties, often through their behavioral health programs, are developing innovative systems of care that link this population to community-based resources but face challenges.

Most states terminate Medicaid benefits for inmates, instead of suspending them as CMS has long encouraged, and it can take months for former inmates to reenroll and for benefits to be restored upon reentry into the community. This is even more concerning considering that more than 95 percent of jail inmates eventually return to our communities, bringing both their physical and behavioral health conditions with them. In fact, serious mental illnesses are three to four times more prevalent among inmates than the general population, and almost three quarters also have substance abuse disorders.

From the county perspective – at the intersection of the local health and justice systems – we suggest that a new narrowly targeted Inmate Waiver could improve the ability of counties to provide access to appropriate, targeted health services and substance abuse treatment to this population. We believe that it would result in reduced medical costs to both the Medicaid program and to counties. Importantly, it would also help reduce health disparities, recidivism and the disproportionate burden of incarceration on individuals and communities of color.

We offer for your consideration some potential components of an Inmate Waiver which NACo partners and stakeholders have proposed:

- Allow states and counties to use FFP to work with Medicaid providers to identify patients in county jails who are receiving community-based care and then to maintain their treatment protocols. Better coordinating care would reduce the need for in-patient hospitalizations of inmates under the inpatient exception to the Medicaid inmate exclusion, thereby reducing Medicaid spending and reducing health disparities for justice-involved beneficiaries. This would also have the important public health benefit of limiting the proliferation of medication-resistant viruses that result when treatment is interrupted – a frequent occurrence in jails with infectious diseases such as HIV and Hepatitis C.

- Allow states and counties to use FFP for Medicaid providers to work with county jails to develop treatment and continuity of care plans for released or diverted individuals. Access to care upon release or diversion from jail is essential to good health outcomes – especially in the crucial 24 to 72 hours after release or diversion. Delays in re-activating Medicaid increase overall Medicaid costs, lead to treatment interruptions and can adversely impact communities, especially when access to psychotropic medications is hindered. Allowing the use of FFP to prescribe and dispense treatment prior to the point of release or diversion would reduce Medicaid spending and improve the health and safety of individuals and communities.

- Allow states and counties to use FFP to initiate medication-assisted therapy or other forms of medically necessary and appropriate intervention for jailed individuals with opiate addiction whose release is anticipated within 7 to 10 days. Many individuals booked into county jails have previously undiagnosed and untreated disorders. Allowing FFP to be used to cover the costs of treatment prior to release would prevent medical disorders from deteriorating upon release and save federal dollars. A disproportionate number of unintentional overdoses occur after release from jail, and such interventions can avoid these tragedies and improve overall health outcomes.

- Allow states and counties to use FFP to reimburse peer counselors to facilitate reentry and increase jailed individuals' health literacy. This has been shown to be cost effective in the Center for Medicare and Medicaid Innovation Transitions Project demonstration.

- Allow states and counties to waive the state-wide requirement in order to permit implementation of the new Inmate Waiver in counties with the capacity and desire to implement and test the demonstration projects.

We thank you for your attention to our request and look forward to continuing to work with you to improve the effectiveness of the Medicaid program for the benefit of the people it serves. For additional information, please do not hesitate to contact Brian Bowden, NACo Associate Legislative Director for Health, at 202.942.4275 or bbowden@naco.org, Breanna Bock-Nielsen, NSA Director of Government Affairs, at 703.838.5308 or bnielsen@sheriffs.org or Ron Manderscheid, NACBHDD Executive Director, at 202.942.4296 or rmanderscheid@nacbhd.org

Sincerely,

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