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September 11, 2023

VIA ELECTRONIC SUBMISSION

Hon. Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1784-P
P.O. Box 8016
Baltimore, MD 21244-8016.

Re: RIN 0938-AV07: Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program [CMS-1784-P]

Dear Administrator Brooks-LaSure:

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the **2024 Physician Fee Schedule** proposed rule. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over three million people with Medicare, family caregivers, and professionals.

General Comments

All bodily systems are inextricably linked and are impacted by the individuals' environmental contexts and support infrastructures. Yet, historic silos and outdated rules have long hampered access to comprehensive coverage and treatment for people with Medicare. We welcome this proposed rule, which would take important strides towards dismantling these harmful barriers, thereby improving Medicare coverage and beneficiary outcomes.

We specifically support the provisions that would increase the availability of valuable services, including provider screenings for social determinants of health, mental health (MH) and substance use disorder

(SUD) care, and medically necessary dental services. We urge the Centers for Medicare & Medicaid Services (CMS) to approach each of these issues with the flexibility and expansiveness required to ensure that people with Medicare have the access, coverage, care, and resources they need for their physical and financial health and well-being.

Advancing Access to Behavioral Health (section II.J.)

We applaud the regulatory changes that would implement the Consolidated Appropriations Act of 2023 and urge close attention to the availability of both new and existing categories of mental health and substance use disorder treatment providers. However, simply allowing providers to enroll in and be reimbursed by Medicare is not enough; we urge CMS to consider ways to extend outreach and education to new and existing provider types, as well as potential increases to payment levels within statutory limits for provider types that are underrepresented in Medicare.

CMS can further expand access to MH and SUD care by working with Congress to apply the Mental Health Parity and Addiction Equity Act to all parts of Medicare.¹ The absence of this protection causes significant harm to beneficiaries.²

We also urge attention to a gap in Medicare coverage affecting people who have been incarcerated. Drug overdose is the leading cause of death after release from prison, and studies suggest that recently incarcerated people are 10-40 times more likely to die from an overdose than the general public.³ When older adults and people with disabilities are released from a correctional facility, it is critical that they have insurance to pay for care so that they can continue SUD and any other treatment they received while incarcerated or initiate medically necessary treatment.⁴

But coverage is currently not available to some of these individuals due to an overbroad custody exclusion preventing individuals who are living in the community but who are under the presumed aegis of the criminal legal system—such as those who are on parole, probation, bail, or supervised release—

¹ “The Path to Parity: Applying the Parity Act to Medicare to Improve Access to Substance Use Disorder and Mental Health Care,” Legal Action Center (June 23, 2022), <https://www.lac.org/assets/files/Path-to-Parity-MAPP-2022.06.14.pdf>.

² “Out of Reach: How Gaps in Medicare Coverage of Substance Use Disorder Care Harm Beneficiaries,” Legal Action Center (June 2023), <https://www.lac.org/assets/files/MAPP-Stories-2023.06.14-final-1-1.pdf>.

³ See Daniel M. Hartung et al., “Fatal and Nonfatal Opioid Overdose Risk Following Release from Prison: A Retrospective Cohort Study Using Linked Administrative Data,” *Journal of Substance Use Addiction Treatment* (Apr. 2023), <https://www.sciencedirect.com/science/article/abs/pii/S2949875923000218?via%3Dihub>; Elizabeth N. Waddell et al., “Reducing Overdose After Release from Incarceration (ROAR): Study Protocol for an Intervention to Reduce Risk of Fatal and Non-Fatal Opioid Overdose Among Women After Release from Prison,” *Health Justice* (Dec. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7349469/>; Shabbar I. Ranapurwala et al., “Opioid Overdose Mortality Among Former North Carolina Inmates: 2000-2015,” *Am. J. Public Health* (Sept. 2018), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2018.304514>.

⁴ Georgia Burke et al., “Reducing Barriers to Reentry for Older Adults Leaving Incarceration,” *Justice in Aging* 7 (May 2022), <https://justiceinaging.org/wp-content/uploads/2022/05/Reducing-Barriers-to-Reentry-for-Older-Adults-Leaving-Incarceration.pdf>.

from receiving Medicare benefits.⁵ As we outlined in our comments on proposed rule for the BENES Act provisions of Consolidated Appropriations Act of 2021,⁶ this definition of custody is inconsistent with CMS’s policies that eliminated similar exclusions in Medicaid and Federally-facilitated Marketplace plans in 2016⁷ and should be updated. This definition-mismatch also undermines the impact of the recently promulgated SEP providing for access to Premium-Part A and Part B for people recently released from custody.

In addition to coming into better alignment with the Biden-Harris administration’s health equity and access policies, clarifying that the Medicare custody exclusion does not apply to people who are under community supervision would also promote the administration’s goals of successful reentry and community integration for people in the criminal legal system.⁸ Research has shown that health coverage and access to care, including for those with unaddressed SUD and MH conditions, has a positive impact on recidivism. For example, a study examining the impact of the Medicaid expansion on arrest rates found that Medicaid expansion produced a 20-32% decrease in overall arrest rates in the first three years, with the largest reduction (25-41%) for drug arrests.⁹ Ensuring people who are under community supervision have access to their Medicare coverage, and, accordingly, to effective community-based health care services, supports, and medications, would improve health and well-being while decreasing the likelihood of re-arrest and re-incarceration.

Proposals on Medicare Parts A and B Payment for Dental Services Inextricably Linked to Specific Covered Medical Services (section II.K.)

We applaud CMS’s proposal to clarify coverage related to both cancer treatment and cardiac medical services. These are important modernizations that could help people with these diagnoses obtain more effective treatment and better outcomes.

There is no whole-body health without dental health, and Medicare’s lack of dental coverage is a barrier to care for millions of beneficiaries. It not only leaves oral health care unaffordable, but also exacerbates

⁵ 42 CFR. § 411.4.

⁶ Medicare Rights Center, “Re: CMS-4199-P—Medicare Program; Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules” (June 27, 2022), <https://www.medicarerights.org/policy-documents/comments-on-cao-benes-act-proposed-rule>.

⁷ Centers for Medicare & Medicaid Services, “SHO # 16-007 Re: To Facilitate Successful Re-entry for Individuals Transitioning from Incarceration to Their Communities,” Q2 and Q3 (April 28, 2016), <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/sho16007.pdf>; Centers for Medicare & Medicaid Services, “Incarceration and the Marketplace: Frequently Asked Questions” (May 3, 2016), <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Incarceration-and-the-Marketplace-FAQs-05-03-2016.pdf>.

⁸ The White House, “FACT SHEET: Biden-Harris Administration Expands Second Chance Opportunities for Formerly Incarcerated Persons” (April 26, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/26/fact-sheet-biden-harris-administration-expands-second-chance-opportunities-for-formerly-incarcerated-persons/>.

⁹ Jessica T. Simes & Jaquelyn L. Jahn, “The consequences of Medicaid expansion under the Affordable Care Act for police arrests.” PLoS One (Jan. 12, 2022), <https://pubmed.ncbi.nlm.nih.gov/35020737/>.

underlying racial, geographic, and disability-related health and wealth disparities.¹⁰ Improved Medicare coverage for medically necessary dental care would help people with significant health concerns avoid impossible financial tradeoffs and access the care they need to treat their conditions. Given the importance of oral health care CMS must ensure the “medically necessary” coverage policy keeps pace with growing clinical evidence and evolving standards of care in order to be meaningful.

In particular, we urge CMS to consider ways that oral health care, or the lack of such care, creates a feedback loop for other bodily systems. Diabetes mellitus, for example, may spur conditions such as periodontitis, and conditions such as periodontitis may spur diabetes in a cycle that can only be interrupted by comprehensive treatment of both conditions.¹¹ Effective medical treatment must take into account all of the ways conditions may manifest themselves, as well as all of the ways lack of treatment of one bodily system may create ripple effects for other bodily systems.

Modifications Related to Medicare Coverage for Opioid Use Disorder (OUD) Treatment Services Furnished by Opioid Treatment Programs (OTPs) (section III.F.)

CMS proposes to extend current flexibilities for audio-only periodic assessments in Opioid Treatment Programs (OTPs) through the end of 2024. We support this proposal and urge CMS to make it permanent, based on the agency’s rationale in the proposed rule that “...minimizing disruptions to care for audio-only periodic assessments may further promote health equity and minimize disparities in access to care.”¹² Audio-only telehealth is effective, common, and particularly essential for beneficiaries who are older, low-income, racial and ethnic minorities, dually-enrolled in Medicaid, living in rural areas, experiencing low broadband access, and/or not speaking English as their primary language.

Conclusion

Thank you again for the opportunity to provide comment. As we applaud these important proposals, we recognize the work that remains. More must be done to build coverage, access to care, and systems of assessment. Looking ahead, we will continue to advocate for stronger regulatory safeguards and legislative change. This includes urging Congress to adopt comprehensive dental, vision, and hearing care under Medicare Part B, and to enact parity for Medicare mental health and substance use disorder treatment. All Americans should have access to coverage and care that reflects the true needs and interconnectedness of the human body.

10 Georgia Burke, Amber Christ & Jennifer Goldberg, “Adding a Dental Benefit to Medicare: Addressing Racial Disparities” (October 2019), <https://justiceinaging.org/wp-content/uploads/2019/10/Addressing-Oral-Health-Equity-by-Adding-a-Dental-Benefit-to-Medicare.pdf>.

11 Ira Lamster, et al., “The relationship between oral health and diabetes mellitus” (October 2008), [https://jada.ada.org/article/S0002-8177\(14\)63883-6/pdf](https://jada.ada.org/article/S0002-8177(14)63883-6/pdf).

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For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Counsel for Federal Policy at JCarter@medicarerights.org or 202-637-0962.

Sincerely,

A handwritten signature in black ink that reads "Fred Riccardi". The signature is written in a cursive style with a large initial "F" and "R".

Fred Riccardi
President
Medicare Rights Center