



July 10, 2023

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

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

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

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

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

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 state attorneys general urge you to support critical policies included in the *Reentry Act (S. 1165/H.R. 2400)* and *Due Process Continuity of Care Act (S. 971/H.R. 3074)* to increase the availability of substance use disorder treatment for incarcerated individuals, decrease overdose deaths, and better protect public health and safety. We are proud to join the National Association of Counties, National Sheriffs' Association, Major Cities Chiefs

Association, Major County Sheriffs of America, and a wide array of healthcare and public health stakeholders in calling for these commonsense changes to federal law.

Last year, we lost more than 110,000 Americans to overdose. As attorneys general, we have prioritized reducing overdose deaths and mitigating the impact of the opioid epidemic in our respective states. However, there are outdated federal barriers that must be addressed so our state and local governments can fight the scourge of fentanyl in our communities and make treatment more widely available. By granting more flexibilities for Medicaid-eligible incarcerated individuals, the *Reentry Act* and *Due Process Continuity of Care Act* will increase access to addiction treatment and services, reduce recidivism rates, save lives, and remove unnecessary financial burdens from our correctional facilities.

Sec. 1905(a)(A) of the Social Security Act established the “Medicaid inmate exclusion policy” (MIEP) by prohibiting the use of federal funds and services for medical care for “inmates of a public institution.” This prohibition restricts Medicaid-eligible incarcerated individuals, regardless of whether they have been convicted, from receiving services funded by Medicaid, and prevents the Department of Veterans Affairs from providing hospital and outpatient care to incarcerated veterans in local jails.

This exclusionary policy has posed a significant barrier to accessing substance use disorder treatment in correctional facilities. While nearly two-thirds of the incarcerated population has a substance use disorder, a large majority of this population goes untreated.¹ In 2021, just 12% of jails and prisons offered medications for opioid use disorder (MOUD).² The most frequently cited barrier to providing MOUD in correctional facilities is a lack of funding.³ It has been estimated that the cost of Medicaid qualifying pre-trial incarcerated individuals’ health expenditures is \$3.34 billion per year.⁴ The added cost of substance use disorder treatment is burdensome for local jails and prisons to cover without additional funding support for medication, staffing, training requirements, and other treatment considerations.⁵ Oftentimes, this leads to no MOUD treatment being provided for this population and devastating health consequences.

These barriers to treatment have also had a negative impact on our nation’s recidivism rates. When treatment is unavailable in a correctional setting or there is not a plan to ensure continuity of care post-release, the probability of an individual reoffending increases. For example, research has shown that providing buprenorphine, one of three FDA-approved medications for opioid use disorder, not only reduces mortality rates among formerly incarcerated individuals with an opioid use disorder but also can lead to a 32% reduction in

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

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

³ <https://www.ncchc.org/medications-for-opioid-use-disorder-in-state-prisons-a-look-at-current-delivery-status/>.

⁴ <https://www.naco.org/sites/default/files/documents/Cost%20One-Pager.pdf>.

⁵ https://store.samhsa.gov/sites/default/files/d7/priv/pep19-matbriefcjs_0.pdf.

recidivism rates.⁶ The MIEP creates unnecessarily burdensome barriers that have negatively impacted public safety in our communities.

The *Reentry Act* allows Medicaid-eligible individuals to resume receiving Medicaid benefits thirty days prior to their release. According to the *New England Journal of Medicine*, individuals reentering society post incarceration are 129 times likelier to die of a drug overdose than the general population during the two weeks following their release.⁷ Though most jails and prisons do not provide methadone or buprenorphine for opioid use disorders, receiving these medications has been associated with an 80% reduction in overdose mortality risk for the first month post-release.⁸ By allowing eligible individuals to resume benefits prior to release, this legislation will reduce overdose deaths and recidivism rates.

The *Due Process Continuity of Care Act*, which has had bipartisan support in the House and Senate for the previous Congress, would permit incarcerated individuals to remain eligible for Medicaid prior to conviction. Stripping incarcerated individuals of a federal benefit before they have been convicted of any crime is a troubling practice. Moreover, because more than two-thirds of all incarcerated individuals in local jails are being held pre-trial, the practice imposes a significant financial burden on those jails and the taxpayers that support them.

These pieces of legislation represent one of the 118th Congress' strongest opportunities to increase public safety and improve public health outcomes nationwide. We urge leadership on both sides of the aisle to act swiftly in passing the *Reentry Act* and *Due Process Continuity of Care Act*. Thank you for your consideration.

The four co-sponsors of this letter – Ohio, North Carolina, New York, and Oklahoma – are joined by the undersigned attorneys general across the U.S. states and its territories.

Sincerely,



Letitia James
New York Attorney General



Josh Stein
North Carolina Attorney General

⁶ 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>.

⁷ 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>.

⁸ 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.



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