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Eliot Fishman

Director

Center for Medicaid and CHIP Services (CMCS)
Centers for Medicare & Medicaid Services
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Re: Proposed 1115 Medicaid waiver authorizing Federal Medicaid matching funds for certain transitional services provided within 30 days of release to incarcerated people with serious behavioral and physical health conditions

Dear Mr. Fishman:

The Corrections and Community Reentry Committee (“the Committee”) of the New York City Bar Association strongly supports the New York State Department of Health’s current proposal to seek a Section 1115 waiver from the federal Centers for Medicare & Medicaid Services (“CMS”). A waiver would authorize federal Medicaid matching funds for certain transitional services provided within 30 days of release to incarcerated people with serious behavioral and physical health conditions, who are eligible for Health Homes under the Affordable Care Act § 2703.

The New York City Bar Association (“the Association”) is an organization of over 24,000 members dedicated to improving the administration of justice. The Committee includes prosecutors, criminal defense attorneys and academics who analyze laws and policies that affect people in jails, prisons and detention facilities as well as people on probation and parole and with conviction histories. Our position on this waiver is informed by the experience of our members in working with incarcerated and formerly incarcerated people, as well as the work of the Legal Action Center, which advocates for sound public policy in support of people with substance abuse disorders, HIV/AIDS, and criminal histories.¹

The period of reentry into free society after a period of incarceration—whether for weeks in a local jail or decades in a state prison—is always difficult. People who have been locked up may face a myriad of problems stemming from imprisonment and upon release,

¹ See Letter from Sebastian Solomon, Director of New York State Policy, the Legal Action Center, dated November 14, 2016.

including loss of income or job loss; difficulty paying for housing or eviction; interrupted education; disrupted childcare arrangements, strained family relationships or severed family ties; stress and psychological trauma; and ongoing obligations to the criminal justice system. Health care can easily get lost in this thicket of challenges during reentry.

Reentry is a particularly dangerous period for people with substance abuse disorders. According to one study, the risk of death for people leaving incarceration is nearly 13 times higher in the first two weeks after release as compared to the population as a whole.² Reentry is also a period in which newly-released people experience many prompts, explicit and implicit, to return to illegal activity. Access to timely and appropriate health care allows newly-released individuals afflicted with mental and physical health problems to obtain necessary treatment and services, thereby reducing the likelihood of further criminal justice involvement.³

With so many people confined in, and released from, incarceration in New York, and so many of them suffering from mental illness, substance abuse disorders, and chronic diseases, an initiative such as this one can make a significant improvement in public health and safety.⁴ Such innovation could also serve as a model for better practices in other states. For these reasons, as well as those presented in the Legal Action Center's November 14th letter, we respectfully request that New York's waiver request be granted.

Respectfully submitted,

Alex Lesman
Chair, Corrections and Community Reentry Committee
New York City Bar Association

² Ingrid A. Binswanger, et al., "Release from Prison—A High Risk of Death for Former Inmates," *New England Journal of Medicine* 356, no. 2 (2007): 157–165.

³ See, for example, Burke, C., & Keaton, S. (2004). *San Diego County's Connections Program, Board of Corrections final report*. San Diego, CA: San Diego Association of Governments (showing a reduction in new arrests, convictions, and jail time for mentally ill probationers who received coordinated case management, with linkages to community-based mental health care, substance abuse treatment, and other services). Similarly, diversion to treatment following New York's 2009 Rockefeller Drug Law reforms was associated with an 18% drop in re-arrests within two years of treatment and a 50% drop in re-arrests for violent crimes. See Jim Parsons et al., *End of an Era? Impact of Drug Law Reform in New York City*. New York: Vera Institute of Justice, 2015.

⁴ At midyear 2013 there were 731,208 people in jails across the United States, either awaiting trial or serving short sentences. Todd Minton and Daniela Golinelli, "Jail Inmates at Midyear 2013 – Statistical Tables." Washington, DC: Bureau of Justice Statistics, 2014. There were 637,400 releases from prisons nationwide in 2012. E. Ann Carson and Daniela Golinelli, "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012." Washington, DC: Bureau of Justice Statistics, 2013. Incarcerated people are three to seven times more likely than the general population to experience mental illness, substance use disorders, and other chronic conditions. National Institute of Corrections, "Solicitation for a Cooperative Agreement—Evaluating Early Access to Medicaid as a Reentry Strategy," *Federal Register* 76, no. 129 (2011): 39438-39443.