December 7, 2022

The Honorable Bill Cassidy
U.S. Senate
520 Hart Senate Office Building
Washington, DC 20510

The Honorable David Trone
U.S. House
1110 Longworth House Office Building
Washington, DC 20515

The Honorable Jeff Merkley
U.S. Senate
313 Hart Senate Office Building
Washington, DC 20510

The Honorable Tom Emmer
U.S. House
315 Cannon House Office Building
Washington, DC 20510

The Honorable Ed Markey
U.S. Senate
255 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael Turner
U.S. House
2368 Rayburn House Office Building
Washington, DC 20510

The Honorable Paul Tonko
U.S. House
2369 Rayburn House Office
Washington, DC 20510

Dear Senators and Representatives:

The undersigned addiction, mental health, recovery support, harm reduction, and healthcare professional organizations in the Coalition to Stop Opioid Overdose (CSOO) write to voice our strong support for S.2697/H.R.6636 – the Due Process Continuity of Care Act. CSOO brings together a diverse range of organizations united around common policy goals to advocate for meaningful and comprehensive policy change to reduce opioid overdose deaths.

As you know, the Medicaid Inmate Exclusion Policy (MIEP) in federal law severely limits Medicaid from paying for healthcare services for individuals who are incarcerated. This includes individuals who are incarcerated pending disposition of charges against them, otherwise known as pretrial detainees. Your bill, the Due Process Continuity of Care Act, would amend the MIEP to allow these otherwise eligible individuals to receive their full Medicaid benefits while incarcerated at the option of the state.

Individuals who are incarcerated have high rates of chronic diseases, including substance use and mental health disorders, and disproportionately low incomes, meaning many of these individuals
qualify for Medicaid coverage. About 65% of individuals who are incarcerated in jails in the U.S. – an estimated 490,000 people -- were awaiting court action on a current charge in 2019. Of note, in the same year, Black Americans were incarcerated in jails at a rate more than three times the rate for White Americans. Healthcare coverage while in pretrial detention affects the lives of a considerable number of Americans with substance use disorder (SUD), including opioid use disorder (OUD), and Medicaid coverage for pretrial detainees can save lives from overdose deaths. For these reasons, this is an important area for policy intervention.

Ensuring pretrial detainees maintain their Medicaid coverage is not only commonsense, but it represents an important social justice issue as many pretrial detainees remain in jails simply because they cannot afford financial bail - and would otherwise have access to their healthcare coverage. In this sense, the policy is discriminatory because it allows only those who can post financial bail to maintain their healthcare coverage. Additionally, the application of the MIEP to pretrial detainees puts significant pressure on already strapped local and state budgets, because U.S. jails and prisons have a constitutional obligation to provide inmates with adequate medical care. The denial of Medicaid coverage to pretrial detainees collectively burdens local and state governments with billions of dollars in additional healthcare costs to care for a vulnerable population eligible for federal Medicaid coverage.

Further complicating the problem, individuals who are incarcerated in the U.S. frequently cannot access medications for OUD. For example, studies show that individuals who received buprenorphine in jails had less involvement with the criminal legal system post-incarceration. Passage of the Due Process Continuity of Care Act would likely increase access to these lifesaving medications in jails and reduce recidivism. Your legislation also carefully implements its amendment to the MIEP with the authorization of $50 million in planning grant dollars to states.

3 Ibid.
5 See Estelle v. Gamble, 429 U.S. 97, 103, 97 S. Ct. 285, 290, 50 L. Ed. 2d 251, 256 (1976) (“These elementary principles establish the government’s obligation to provide medical care for those whom it is punishing by incarceration.”).
In sum, the Due Process Continuity of Care Act is an important step towards reducing rising SUD-related mortality. Its enactment will save lives. The undersigned members in CSOO strongly support the inclusion of this legislation in an end-of-year legislative package and thank you for your leadership in addressing this important issue.

Sincerely,

American Association for the Treatment of Opioid Dependence
American College of Emergency Physicians
American College of Medical Toxicology
American Foundation for Suicide Prevention
American Osteopathic Academy of Addiction Medicine
American Psychiatric Association
American Society of Addiction Medicine
Behavioral Health Association of Providers
CADA of Northwest Louisiana
Faces & Voices of Recovery
HIV Alliance
International Certification & Reciprocity Consortium (IC&RC)
National Alliance for Medication Assisted Recovery
National Association of Addiction Treatment Providers
National Commission on Correctional Health Care
National Council for Mental Wellbeing
National Health Care for the Homeless Council
Shatterproof
SMART Recovery

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Stop Stigma Now
Student Coalition on Addiction
The Kennedy Forum