January 27, 2015

DHCS Waiver Renewal
Attn: Mari Cantwell
PO Box 997413, MS 0000
Sacramento, CA 95899-7413

Re: ACLU of California Comments on California's Proposed Initial Eligibility Criteria for Housing and Housing-Based Services in the Section 1115 Medicaid Waiver Renewal Proposal

Dear Chief Deputy Director Cantwell,

The American Civil Liberties Union of California (ACLU of CA) appreciates the opportunity to provide input on California's Section 1115 Medicaid Waiver Renewal proposal. Although we strongly support the inclusion of Medicaid funded shelter in the State's proposal, we are concerned that the proposed initial eligibility criteria for housing and housing-based services is too restrictive in that it does not consider incarceration as a qualifying form of institutionalization.

As you are most likely aware, individuals in jails and prisons are significantly more likely than the general population to experience serious psychiatric disabilities and/or substance use disorders. The Bureau of Justice Statistics estimates that nationwide, 56 percent of people in state prison and 64 percent of people in local jails had a psychiatric disability in the past 12 months.[1] Furthermore, 14.5 percent of men and 31 percent of women in local jails have a serious psychiatric disability; three to six times the rate of serious psychiatric disability in the general population.[2] Substance use disorders are also highly prevalent in correctional institutions. Nationwide, about 65 percent of individuals in state prisons and local jails have a substance use disorder.[3] The Substance Abuse and Mental Health Services Administration (SAMHSA) estimated that 72 percent of individuals with serious psychiatric disabilities in jails have a co-occurring substance use disorder.[4]

Individuals in correctional settings also experience physical health problems at a much higher rate than the general population. For example, compared to the general population, the prevalence of

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[1] James, D. J. & Glaze, L. E., Bureau of Justice Statistics. (September 2006). *Mental Health Problems of Prison and Jail Inmates*, p. 1. Retrieved from http://www.bjs.gov/content/pub/pdf/mhppji.pdf.
[2] Council of State Governments Justice Center. (June 1, 2009). *Justice Center Study Brief: Prevalence of Serious Mental Illness among Jail Inmates*, p. 1. Retrieved from http://csgjusticecenter.org/wp-content/uploads/2012/12/MH_Prevalence_Study_brief_final-1.pdf.
[3] National Center on Addiction and Substance Abuse at Columbia University. (February 2010). *Behind Bars II: Substance Abuse and America's Prison Population*, p. 25. Retrieved from www.casacolumbia.org/download/file/fid/487.
[4] Substance Abuse and Mental Health Services Administration, GAINS Center. (2004). *The Prevalence of Co-Occurring Mental Illness and Substance Use Disorders in Jails*, p. 2. Retrieved from http://gainscenter.samhsa.gov/pdfs/disorders/gainsjailprev.pdf.

HIV infection among incarcerated people is eight to nine times higher, hepatitis C is nine to 10 times higher, and tuberculosis is four times higher.[5] Given the much higher prevalence of both physical and behavioral health conditions among incarcerated people, it is reasonable to believe that costs to Medi-Cal (for which a majority of justice-involved individuals will qualify)[6] will be high following release if people are not connected to appropriate services.

Homelessness prevalence is high among incarcerated people as well. Of all people in jail, 15.3 percent were homeless at some point during the year prior to their incarceration, with 10 percent experiencing homelessness immediately prior to incarceration. Among incarcerated people with psychiatric disabilities, 20 percent were homeless prior to incarceration.[7] In turn, incarceration has been demonstrated to increase the likelihood of homelessness after release, partially due to imposition of barriers that a criminal history adds to securing housing and employment.[8]

Due to Medi-Cal expansion, a majority of individuals will be eligible to access full-scope Medi-Cal benefits after release from incarceration. Without addressing the underlying necessity of housing, many people's health conditions will worsen, ultimately increasing utilization of emergency services and driving up Medi-Cal costs. Inclusion of incarceration as a qualifying type of institutionalization for purposes of eligibility for supportive housing will reduce Medi-Cal costs by linking individuals with the necessary services that reduce the likelihood of utilizing high-cost healthcare services.

Although it would be most beneficial to include all individuals released from incarceration in the supportive housing criteria (so long as they meet the other criteria), if that is not included, we ask you to consider including individuals who incurred Medi-Cal costs while incarcerated. Federal regulations specify that Medicaid can reimburse inpatient expenses incurred by individuals who are otherwise eligible for Medicaid services but are incarcerated when those services are received in a non-correctional facility (such as a hospital) for a period of over 24 hours.[9]

With Medi-Cal expansion, a larger proportion of hospitalizations of the incarcerated population can be reimbursed. According to the Legislative Analyst's Office, 72 percent of incarcerated people with offsite medical services are estimated to qualify for Medi-Cal reimbursement after Medi-Cal expansion.[10] In 2013, prior to Medi-Cal expansion, there were 2,905 inpatient stays that were eligible for Medi-Cal reimbursement (representing about 2.3 percent of all incarcerated people in California). Federal matching funds totaled $38.5 million for these expenses alone.[11] As more inpatient stays

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[5] RAND Corporation. (2009). *Understanding the Public Health Implications of Prisoner Reentry in California: Phase One Report*, pp. 18-19. Retrieved from http://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR687.pdf.
[6] About 17 percent of newly eligible Medicaid enrollees will have a prison or jail stay within the past year. Solomon, J., Center on Budget and Policy Priorities. (June 25, 2014). *The Truth About Health Reform's Medicaid Expansion and People Leaving Jail*, p. 2. Retrieved from http://www.cbpp.org/files/6-25-14health.pdf.
[7] Substance Abuse and Mental Health Services Administration. (July 2011). *Current Statistics on the Prevalence and Characteristics of People Experiencing Homelessness in the United States*, p. 17. Retrieved from http://homeless.samhsa.gov/ResourceFiles/hrc_factsheet.pdf.
[8] National Healthcare for the Homeless Council. (November 2013). *Incarceration and Homelessness: A Revolving Door of Risk*, p. 1. Retrieved from http://www.nhchc.org/wp-content/uploads/2011/09/infocus_incarceration_nov2013.pdf.
[9] 42 U.S.C. § 1396d(a)(29)(A).
[10] Legislative Analyst's Office. (2013). *The 2013-2014 Budget: Obtaining Federal Funds for Inmate Medicaid Care—A Status Report*, p. 6. Retrieved from http://csgjusticecenter.org/wp-content/uploads/2013/06/inmate-medical-care-020513.pdf.
[11] U.S. Government Accountability Office. (September 5, 2014). *Medicaid: Information on Inmate Eligibility and Federal Costs for Allowable Services*, p. 6. Retrieved from http://www.gao.gov/assets/670/665552.pdf.

become eligible for reimbursement due to Medi-Cal expansion, costs to Medi-Cal costs will increase above this already significant amount.

One or more hospitalizations during incarceration may indicate a need for specialized services after release. The costs incurred to Medi-Cal by hospitalizations of incarcerated people should be considered in the cost analysis for the waiver proposal. Connection to necessary services will likely reduce the need for hospitalization after release, lowering Medi-Cal costs.

We strongly encourage you to include incarceration as a qualifying form of institutionalization for purposes of eligibility to receive housing and housing-based services in the proposed waiver. If it is not a consideration for all released individuals (who meet the rest of the criteria), then at least it should be for individuals who incurred Medi-Cal reimbursable costs while incarcerated. Doing so will increase the health of these beneficiaries while also reducing costs to the Medi-Cal program.

Thank you again for the opportunity to participate in the stakeholder process. Please do not hesitate to contact me if you have any questions.

Sincerely,

Kellen Russoniello
Staff Attorney, ACLU of San Diego and Imperial Counties
krussoniello@aclusandiego.org
619-398-4489

cc: Toby Douglas, Director, California Department of Health Care Services
Housing and Shelter Expert Stakeholder Workgroup