To: Ms. Judith Cash, Director State Demonstrations Group, Centers for Medicare and Medicaid Services

From: Tracie Gardner, Senior Vice President of Policy Advocacy, Legal Action Center (LAC); Jeffrey Coots, Director, From Punishment to Public Health (P2PH) at John Jay College of Criminal Justice, City University of New York

Subject: Comments to the New York State Health Equity Medicaid Redesign 1115 Waiver Amendment application

Date: October 17, 2022

Thank you for the opportunity to provide comments on the New York State Medicaid Section 1115 Demonstration Medicaid Redesign Team Waiver amendment proposal focused on improving health equity for vulnerable populations, including individuals and families impacted by the criminal legal system.

We commend the Centers for Medicare and Medicaid Services and New York State Department of Health for recognizing that access to medical and pharmaceutical care along with health care coordination and peer support services will greatly increase outcomes and help curb the opioid and substance use epidemic throughout the State. New York State's decision to include pre-release Medicaid services in its waiver application demonstrates its continued far-sighted policymaking and national leadership in addressing one of the most pressing social justice issues of our time: ensuring that people leaving incarceration with opioid and other substance use disorders, mental health and other health problems are appropriately assessed and provided needed care.

Legal Action Center (LAC) and the From Punishment to Public Health (P2PH) initiative based at John Jay College of Criminal Justice are pleased to submit joint comments in order to focus the opportunity of the waiver amendment on resolving the most significant barriers to providing robust discharge planning and care continuity for individuals leaving jails and prisons and returning to the community.

LAC and P2PH maintain strong working relationships with key stakeholders operating at the intersections of criminal justice and public health, and we regularly convene colleagues through the NYC Health & Justice Working Group. The members of this group are drawn from fields of healthcare delivery, care management, addiction and mental health services, managed care, housing and shelter, education, alternative to incarceration and reentry, as well as staff members from city, county and state public safety and public health agencies. We frequently welcome

presentations from local and state government stakeholders committed to improving policy and practice surrounding the criminal legal system and individuals with chronic behavioral and physical health issues.

Based on this and other work in this space, we highlight three key opportunities to further strengthen to the waiver application:

1) Expand the pre-release Medicaid target population to include all those at risk of emergency room utilization, including clients discharged to homeless shelters;
2) Further broaden the criminal legal system focus by requiring all HEROs and SDHNs to articulate specific priorities and plans to improve health access and outcomes for individuals and families impacted by the criminal legal system.
3) Highlight the potential for the Enhanced Transitional Housing Initiative (ETHI) to improve health outcomes for individuals and families impacted by the criminal legal system

Details on how these adjustments can strengthen the existing waiver application and improve outcomes upon implementation are included below.

1) Expanding the pre-release Medicaid target population to address risk of ED utilization
The current framing of the waiver amendment rightly focuses on some of the most vulnerable populations passing through the criminal justice system, but it leaves out other groups that are at high risk for emergency room utilization in the days and weeks following release. To ensure this waiver amendment has the best chance of reaching the most medically vulnerable populations, and reducing their emergency room utilization upon release, LAC and P2PH recommend the following adjustments to the current draft:

- Include as priority populations those at high risk for emergency room utilization, including those likely to be **discharged to homeless shelters**. These clients, along with those with SMI diagnoses and OUD, are the most likely to require emergency medical services or suffer a health-related fatality in the days and weeks following discharge from incarceration. Jail-based providers report that upwards of 60% of their clients have an SUD diagnosis and 20% of their clients self-report homelessness.
- Highlight the successful utilization of federal funding in the **Ryan White HIV/AIDS** Program to support pre-release care coordination for incarcerated populations that leads to better post-release outcomes.
- Separate **discussions of medications for SMI and SUD**, since existing policy frameworks make SMI medications much more accessible than those for SUD. Additionally, long-acting/depot medications may not be appropriate for everyone with SUD and it is critical to ensure continuity of the indicated form of MAT as part of the services available under this waiver by making all FDA approved drugs in all formulations available.
- Focus on enrolling clients into **Medicaid Managed Care** plans prior to release. This is especially critical for individuals who may need residential SUD treatment upon reentry, which is not covered by Fee for Service (FFS) Medicaid.

- Allow for the **presumption of Medicaid eligibility** to accelerate the delivery of core services prior to release. Clients who lack insurance at the time of their arrest and incarceration are highly likely to be eligible for Medicaid based on their income or lack thereof.
- For this new policy framework to thrive, New York must continue to improve **collaboration between the Department of Health and the Department of Corrections**. Despite legislation already mandating these agencies to ensure that clients leave state correctional facilities with active Medicaid coverage, it still takes 24-48 hours for that coverage to kick in, and clients continue to leave state facilities without proper documentation that will enable them to access care in community settings. During COVID, our members reported this lag time in Medicaid activation stretched as long as 10 days for some clients.

2) Further broadening the criminal legal system focus

- Require that **each HERO and SDHN submit a detailed plan** to improve health access and health outcomes for individuals and families impacted by the criminal legal system. It is not enough to simply include this as an option – under DSRIP we saw very few PPSs choosing to focus on this highly vulnerable population.
- Acknowledge the development of the **Medicaid Reentry Act** at the federal level, and the evolution of CMS' viewpoint and guidance on the Medicaid Inmate Exclusion Policy (MIEP). If approved, New York would be positioned as a leader among early adopter states, having the resources and policy frameworks in place to take full advantage of new federal legislation and regulation designed to enhance care continuity for individuals returning to the community following periods of incarceration and/or detention.
- Further highlight the importance of **Peer Engagement Specialists** and peer-led activities as billable services in the hours and days following discharge from incarceration (i.e. not just in-reach). This growing field of health promotion practitioners with lived experience is a crucial element to the success of care continuity for justice-involved populations faced with complex health and behavioral health challenges.

3) Highlight CLS Impacts of Transitional Housing and Addiction Recovery Housing

- Similar to above, each HERO should be required to articulate a focus on clients involved in the criminal legal system in their **Enhanced Transitional Housing Initiative (ETHI)** regional plan, including how many clients could avoid jail if adequate transitional housing were available in their community.
- The ETHI framework should also incorporate the **Addiction Recovery Housing** facilities that were recently signed into law in New York State. Despite the vital role that recovery housing plays in building a foundation for long term recovery, it has been chronically underfunded and has historically received little recognition in our state. Allowing Medicaid coverage for recovery housing would ultimately reduce Medicaid spending, as studies have shown that recovery housing improves outcomes, leading to fewer Medicaid covered detox and inpatient treatment stays.

LAC and P2PH have worked extensively at the intersection of health and the criminal legal system and we have developed these recommendations based on numerous conversations with a wide variety of experts, stakeholders, and people working directly in the field. We are certain that this waiver amendment, with the above recommendations incorporated, will make a substantial impact in the health and lives of individuals involved in the criminal legal system. We thank you for the opportunity to provide this comment on the Medicaid Redesign 1115 Waiver amendment application.