

**Congress of the United States**  
Washington, DC 20510

November 16, 2020

Michael Carvajal  
Director  
Federal Bureau of Prisons  
320 First Street, NW  
Washington, DC 20534

The Honorable William Barr  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Director Carvajal and Attorney General Barr:

We write to request that the Department of Justice (DOJ) and the Federal Bureau of Prisons (BOP) provide us with information on the use of medical copayments, or copays, in federal prisons during the coronavirus disease 2019 (COVID-19) pandemic.

The COVID-19 pandemic has led to over 10 million infections and 245,000 deaths in the U.S., and the infection rate is only expected to rise in the coming months.<sup>1</sup> More than 252,000 cases have been reported among people in jails and prisons, with prisons experiencing a disproportionate number of COVID-19 cases and deaths.<sup>2</sup> Earlier this year, 29 of the top 40 coronavirus hotspots were prisons or jails, with 80% of incarcerated individuals in one prison having tested positive for COVID-19.<sup>3</sup> The few prisons that have opted to test widely have detected widespread infections.<sup>4</sup> In fact, a study analyzing data on COVID-19 cases between March 31<sup>st</sup> and June 6<sup>th</sup> found that incarcerated people were infected at a rate more than five

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<sup>1</sup> Centers for Disease Control and Prevention, "CDC COVID Data Tracker," Updated November 16, 2020, <https://covid.cdc.gov/covid-data-tracker/#cases>; Nature, "Why COVID outbreaks look set to worsen this winter," Smriti Mallapaty, October 23, 2020, <https://www.nature.com/articles/d41586-020-02972-4>.

<sup>2</sup> The New York Times, "Covid in the U.S.: Latest Map and Case Count," Updated November 8, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>; National Conference of State Legislatures, "COVID-19 in U.S. Prisons and Jails," Erin McMillen, August 5, 2020, <https://www.ncsl.org/blog/2020/08/05/covid-19-in-us-prisons-and-jails.aspx>.

<sup>3</sup> The Appeal, "Coronavirus in Jails and Prisons," Kelly Davis, June 09, 2020, <https://theappeal.org/coronavirus-in-jails-and-prisons-10/>; The Columbus Dispatch, "Marion prison's virus outbreak seeps into public," Sarah Volpenhein, Marion Star, and USA Today Network, April 25, 2020, <https://www.dispatch.com/news/20200425/marion-prisons-quot-virus-outbreak-seeps-into-public>.

<sup>4</sup> The Marshall Project, "These Prisons Are Doing Mass Testing For COVID-19—And Finding Mass Infections," Cary Aspinwall and Joseph Neff, April 24, 2020, <https://www.themarshallproject.org/2020/04/24/these-prisons-are-doing-mass-testing-for-covid-19-and-finding-mass-infections>.

times higher than the nation’s overall rate.<sup>5</sup> Prisons, like other congregate settings, are hotspots for the rapid spread of this virus “because they are often overcrowded, unsanitary places where social distancing is impractical, bathrooms and day rooms are shared by hundreds of inmates, and access to cleaning supplies is tightly controlled.”<sup>6</sup>

In federal prisons and most state correctional facilities, incarcerated people must pay medical copays for medications, physician visits, dental treatments, and other health services.<sup>7</sup> Under federal law, federal prisons may charge certain incarcerated people \$2 for health care services received from “a health care visit that [the incarcerated person] request[ed].”<sup>8</sup> Fees charged by states range from \$2-\$5 copays for physician visits, medications, and other health services.<sup>9</sup> These fees are intended to partially reimburse federal, state, and county governments for the high cost of medical care among this population and discourage incarcerated people from seeking unnecessary doctor’s visits.<sup>10</sup>

The fees, however, often fail to fulfil their purported purpose of recouping costs and instead deter incarcerated people who are sick from receiving the care they need, possibly increasing expenses. The fees are often exorbitant compared to the average incarcerated person’s salary: incarcerated people typically earn 14 to 63 cents per hour—thus, a copay is the equivalent of charging a minimum wage worker more than \$200 for a medical visit.<sup>11</sup> These fees can therefore lead to worsened long-term health outcomes and increased spread of infectious diseases—like COVID-19. For example, in 2003, the Centers for Disease Control and Prevention directly identified copays as one of the factors contributing to an outbreak of Methicillin-resistant *Staphylococcus aureus* (MRSA) among imprisoned people in several states.<sup>12</sup> Furthermore, while copays allow prison systems to partially recover healthcare costs, the amount recouped is often minimal relative to costs.<sup>13</sup> For example, Texas, until recently,<sup>14</sup> charged an annual copay of

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<sup>5</sup> The Journal of the American Medical Association, “COVID-19 Cases and Deaths in Federal and State Prisons,” Brendan Saloner, PhD, Kalind Parish, MA, Julie Ward, MN, RN, et al., July 8, 2020, [doi.org/10.1001/jama.2020.12528](https://doi.org/10.1001/jama.2020.12528).

<sup>6</sup> The New York Times, “Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide,” Timothy Williams, Libby Seline, and Rebecca Griesbach, June 16, 2020, <https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html>.

<sup>7</sup> Prison Policy Initiative, “The steep cost of medical co-pays in prison puts health at risk,” Wendy Sawyer, April 19, 2017, <https://www.prisonpolicy.org/blog/2017/04/19/copays/>.

<sup>8</sup> U.S. Department of Justice, Federal Bureau of Prisons, “2020 COVID Memos,” *see Nicole C. English March 30, 2020 Memorandum on National Waiver to Health Services policy on pages 53-56*, [https://www.bop.gov/foia/docs/2020\\_COVID\\_memos.pdf](https://www.bop.gov/foia/docs/2020_COVID_memos.pdf); U.S. Department of Justice, Federal Bureau of Prisons, “Inmate Copayment Program,” August 15, 2005, [https://www.bop.gov/policy/progstat/6031\\_002.pdf](https://www.bop.gov/policy/progstat/6031_002.pdf).

<sup>9</sup> Prison Policy Initiative Blog, “The steep cost of medical co-pays in prison puts health at risk,” Wendy Sawyer, April 19, 2017, <https://www.prisonpolicy.org/blog/2017/04/19/copays/>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The Marshall Project, “The \$580 Co-pay,” Beth Schwartzapfel, May 30, 2018, <https://www.themarshallproject.org/2018/05/30/the-580-co-pay>; Centers for Disease Control and Prevention, “Methicillin-Resistant *Staphylococcus aureus* Infections in Correctional Facilities --- Georgia, California, and Texas, 2001—2003,” October 17, 2003, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5241a4.htm>.

<sup>13</sup> The PEW Charitable Trusts, “No Escaping Medical Copayments, Even in Prison,” Michael Ollove, July 22, 2015, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/07/22/no-escaping-medical-copayments-even-in-prison>.

<sup>14</sup> Prison Policy Initiative Blog, “Momentum is building to end medical co-pays in prisons and jails,” Wanda Bertram, August 8, 2019, <https://www.prisonpolicy.org/blog/2019/08/08/copays-update/>.

\$100 per incarcerated person for medical care—a policy that, in 2013, generated just \$2.4 million to help offset a total medical budget for corrections of \$871.8 million.<sup>15</sup> Acknowledging that this system is exacerbating negative health outcomes for this population and possibly increasing states’ prison healthcare costs by delaying care, several states, including California, have opted to eliminate these copays.<sup>16</sup>

The first known COVID-19 death of an incarcerated person occurred on March 26.<sup>17</sup> On March 30, the BOP issued a memorandum waiving the requirement that incarcerated individuals pay “copay fee[s] for inmate requested visits to health care providers.”<sup>18</sup> That waiver expired on October 1, and it is unclear whether that waiver has been extended, given the continued spread of COVID-19 throughout the nation and in federal prisons.<sup>19</sup> It is also unclear whether the BOP has considered making its copay waiver permanent.

It is also unclear what analysis, if any, the BOP has conducted both before and during the COVID-19 pandemic to assess the impact of copayments on incarcerated people’s access to health care services. In 2017, the Government Accountability Office (GAO) issued a report concluding that the BOP “lacks or does not analyze certain health care data necessary to understand and control its costs,” including “data on the health care services it provides to inmates, known as health care utilization data.”<sup>20</sup> This lack of data has prevented the BOP from understanding its health care costs and the factors driving up costs.<sup>21</sup> It also means the BOP cannot research the efficacy of the copays it charges at either deterring incarcerated individuals from misusing the medical system or defraying health care costs. In fiscal year 2016, BOP officials attempted to create a method to collect health care utilization data from each institution but, after receiving feedback from personnel in at least one institution that it would be “too burdensome on them to implement,” they did not move forward with this method.<sup>22</sup> GAO issued a series of recommendations to the BOP to improve its collection and analysis of health care data, but it is unclear whether the BOP has implemented any of those recommendations.<sup>23</sup>

In order to better understand how the BOP has adjusted its policies in response to the COVID-19 pandemic, the degree to which copays may have fueled COVID-19 outbreaks in federal prisons,

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<sup>15</sup> Vice, “How Medical Copays Haunt Prisoners and Their Loved Ones,” Max Rivlin-Nadler, January 18, 2017, [https://www.vice.com/en\\_us/article/kbba8n/how-medical-copays-haunt-prisoners-and-their-loved-ones](https://www.vice.com/en_us/article/kbba8n/how-medical-copays-haunt-prisoners-and-their-loved-ones).

<sup>16</sup> Prison Legal News, “Prisoner Co-payments for Health Care Services Eliminated in California,” January 9, 2020, Chad Marks, <https://www.prisonlegalnews.org/news/2020/jan/9/prisoner-co-payments-health-care-services-eliminated-california/>.

<sup>17</sup> The Marshall Project, “A State-by-State Look at Coronavirus in Prisons,” September 04, 2020, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

<sup>18</sup> U.S. Department of Justice, Federal Bureau of Prisons, “2020 COVID Memos,” see Nicole C. English March 30, 2020 Memorandum on National Waiver to Health Services policy on pages 53-56, [https://www.bop.gov/foia/docs/2020\\_COVID\\_memos.pdf](https://www.bop.gov/foia/docs/2020_COVID_memos.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> Government Accountability Office, “Bureau of Prisons: Better Planning and Evaluation Needed to Understand and Control Rising Inmate Health Care Costs,” June 2017, <https://www.gao.gov/assets/690/685544.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Government Accountability Office, “BUREAU OF PRISONS: Better Planning and Evaluation Needed to Understand and Control Rising Inmate Health Care Costs—Recommendations,” June 29, 2017, <https://www.gao.gov/products/GAO-17-379>.

and the data that has been collected on incarcerated individuals using the medical system both prior to and during the pandemic, please respond to the following questions no later than November 30, 2020:

- 1) How much does the BOP spend annually on medical care for incarcerated individuals? Please provide data on annual health care spending for the past five years, including 2020 to date.
- 2) How much does the BOP receive annually from the fees it charges incarcerated individuals for medical care? Please provide data on annual fee revenue for the past five years, including 2020, to date.
- 3) Does the BOP currently collect utilization data showing how much it is spending on each incarcerated individual's health care or how much it is spending on a particular health care service? If not, what is the BOP's justification for not collecting this data? If this data is collected, what steps, if any, has the BOP taken to make this data public?
- 4) What is the BOP's policy for collecting debt and providing care to individuals who are in debt?
  - a. How many incarcerated individuals are currently in debt to the BOP for medical copays? What is the amount of that debt?
  - b. How many formerly incarcerated individuals are currently in debt to the BOP for medical copays? What is the amount of that debt?
- 5) How many cases of COVID-19 among incarcerated people have been identified in federal prisons, including among incarcerated people participating in the Federal Location Monitoring program, incarcerated people supervised under the USPO, and incarcerated people being held in privately managed prisons?
  - a. How many originated from incarcerated individuals seeking out individual paid medical appointments?
  - b. How many were discovered through other means, such as widespread testing or screening?
- 6) What was the daily number of incarcerated individuals seeking medical care between March 30, 2020, and October 1, 2020?
  - a. How does this number compare to the number of incarcerated individuals seeking medical care during the same period for the past five years?
- 7) Has the BOP extended its waiver of medical copay requirements for COVID-19 symptoms past October 1<sup>st</sup>? If not, why not? If so, has the BOP considered extending its waiver of medical copay requirements to all medical conditions, not just COVID-19? If not, why not?

- 8) Please provide an update on the BOP's efforts to comply with GAO recommendations that it improve its health utilization data collection and analysis.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren  
United States Senator

Richard Blumenthal  
United States Senator

Cory A. Booker  
United States Senator

Tammy Duckworth  
United States Senator

Richard J. Durbin  
United States Senator

Mazie K. Hirono  
United States Senator

Edward J. Markey  
United States Senator

Bernard Sanders  
United States Senator

Tina Smith  
United States Senator

Chris Van Hollen  
United States Senator

Deb Haaland  
Member of Congress

Ayanna Pressley  
Member of Congress

Eleanor Holmes Norton  
Member of Congress

Jahana Hayes  
Member of Congress

André Carson  
Member of Congress