

February 9, 2018

Secretary Alex M. Azar
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

We the undersigned organizations are writing to express our deep concern about Centers for Medicare and Medicaid Services' (CMS) recent decision to approve Medicaid waivers that allow states to deny Medicaid benefits to individuals who fail to comply with a "work requirement" or "community engagement" provision. These provisions will have a significant and disproportionately harmful effect on individuals with chronic health conditions, especially those struggling with substance use disorders (SUDs) and mental health disorders, as well as those with conviction and arrest records.

Although CMS's policy guidance states that work requirements are intended for people who are eligible for Medicaid on a basis other than disability, many individuals with chronic illness and disability would nevertheless remain subject to work requirements because they do not satisfy the rigorous federal Social Security disability requirements. Accordingly, this exemption alone would not protect the tens of thousands of individuals whose health condition prevents them from gaining or retaining employment. Individuals may be caught in a bitter catch-22, where they cannot qualify for Medicaid because they do not have documentation of disability, but they cannot get their disability documented because they do not have health coverage.

CMS's policy guidance also could jeopardize health care access provided by Medicaid to Americans who struggle with substance use disorders by giving states the ability to make it even more difficult for Americans to access vital SUD treatment through Medicaid. This is deeply troubling given the devastating and escalating opioid overdose crisis that President Trump has designated as a national public health emergency.

CMS's guidance fails to acknowledge how difficult it can be to access SUD care. According to the most recent SAMHSA data, in 2016, only approximately 10 percent of the nearly 20 million adults who needed SUD treatment actually received it. Over a quarter of the individuals needing SUD treatment who sought but did not receive care cited lack of health care coverage and an inability to afford the cost of treatment as the reason they did not receive care. For individuals who struggle with a SUD, having health care coverage can improve access to evidence-based care, including medication-assisted treatment, which reduces overdose risk and other drug-related harm. Medicaid presently covers three out of every ten individuals with opioid use disorder and has provided lifesaving SUD treatment services and medications. CMS allowing states to make it difficult for Americans to access vital SUD care through Medicaid likely will increase the devastating impact of the opioid epidemic nationwide, starting with some of the hardest hit jurisdictions, such as Kentucky.

While CMS's guidance directs states to take steps that enable people diagnosed with a SUD to make Medicaid and treatment available, CMS fails to bind states to specific requirements for ensuring compliance. For

example, the CMS guidance suggests that states could elect to count time spent in certain types of SUD treatment toward work requirements; however, CMS does not require states to do so.

The CMS guidance also fails to recognize the stigma, discrimination, and related legal and policy barriers to employment confronting people with criminal records. Over 70 million Americans, or nearly one in three U.S. adults, have an arrest or conviction record. With over 85 percent of employers conducting background checks, it is extremely challenging for people with records to secure employment or even engage in volunteer activities. A [nationwide inventory](#) of collateral consequences also documents over 26,000 state and federal laws and regulations that restrict the employment options of people with records. [Research](#) suggests that 60 to 75 percent of formerly incarcerated individuals are unemployed a year after being released. CMS's policy will make it even more difficult for people with criminal records to obtain needed physical and mental health care services and medications critical to successful reentry.

Individuals interfacing with the criminal justice system often have an extremely high need for health care. For example, [incarcerated individuals' rates of HIV infection are four to six times higher than the general population](#), and [one in three incarcerated individuals are estimated to have hepatitis C](#). The rates of mental illness also are extremely high: in 2005, according to U.S. Department of Justice data, more than half of all people incarcerated in prisons and jails had a mental illness. If left untreated, these conditions may increase the odds of recidivism and reduce the odds of successful reentry. Imposing work requirements on Medicaid will impair access to vital health care, making it even more difficult for formerly incarcerated people to successfully reenter the community and increasing costs to the corrections system and rates of recidivism.

An evaluation of Medicaid expansion in Ohio by that state's Department of Medicaid explains how Medicaid expansion has paid off for workers and taxpayers. Besides covering more people, Ohio's expansion increased access to crucial health services, including treatment for mental health and substance use disorders. Because people received needed care, the report found that they were able to work more steadily. In fact, more than half of Medicaid expansion enrollees reported that health coverage has made it easier for them to maintain employment. Among those looking for work, nearly three-quarters reported that Medicaid helped. Putting obstacles in the way of access to health care does not support work but instead puts a critical support for work at risk. When people are not healthy or able to get needed medications they are less likely to be able to work.

CMS's Medicaid work requirements policy is directly at odds with bipartisan efforts to curb the opioid crisis and to improve reentry from prisons and jails. We urge CMS to withdraw the January 11 guidance and to immediately discontinue waiver approvals for state waivers that include work requirements. Please contact Gabrielle de la Gueronniere (gdelagueronniere@lac-dc.org) if you have any questions or if we can be of further assistance.