February 15, 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. Additionally, children of parents who are struggling with these conditions, or parents who have conviction and arrest records, will be significantly and negatively affected by the disproportionately harmful effect upon their parents.

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.

ADAP Advocacy Association (aaa+)
Addiction Policy Forum
Advocacy Center of Louisiana
AIDS United
Alameda County Community Food Bank
American Association on Health and Disability
American Association of People with Disabilities

American Association for the Treatment of Opioid Dependence (AATOD)
American Civil Liberties Union
American Federation of State, County & Municipal Employees (AFSCME)
American Foundation for Suicide Prevention
American Group Psychotherapy Association
American Psychological Association
American Society of Addiction Medicine
Association for Ambulatory Behavioral Healthcare
Bailey House, Inc.
Board for Certification of Nutrition Specialists
Brooklyn Defender Services
CADA of Northwest Louisiana
California Consortium of Addiction Programs & Professionals
California Hepatitis Alliance
Caring Across Generations
Caring Ambassadors Program
CASES
Center for Civil Justice
Center for Employment Opportunities (CEO)
Center for Health Law and Policy Innovation
Center for Law and Social Policy (CLASP)
Center for Medicare Advocacy
Center for Public Representation
Charlotte Center for Legal Advocacy
CHOW Project
Coalition of Medication Assisted Treatment Providers and Advocates
Colorado Center on Law and Policy
Community Access National Network (CANN)
Community Catalyst
Community Health Councils
Community Legal Services of Philadelphia
Community Oriented Correctional Health Services
Community Service Society
Connecticut Legal Services
Consumer Health First
C.O.R.E. Medical Clinic, Inc.
Council on Social Work Education
CURE (Citizens United for Rehabilitation of Errants)
DC Coalition Against Domestic Violence
Desert AIDS Project
Disability Rights Arkansas
Disability Rights Wisconsin

Drug Policy Alliance
EAC Network (Empower Assist Care)
EverThrive Illinois
Facing Addiction with NCADD
Faces & Voices of Recovery
FedCURE
First Focus
Florida Health Justice Project, Inc.
Food & Friends
The Fortune Society
Forward Justice
Friends of Recovery - New York
Futures Without Violence
God's Love We Deliver
Greater Hartford Legal Aid
Greenburger Center for Social and Criminal Justice
Harm Reduction Coalition
Health Law Advocates
Hep Free Hawaii
Hepatitis C Support Project/HCV Advocate
Heartland Alliance
HIV Medicine Association
Horizon Health Services
Hunger Free America
ICCA
Illinois Association of Behavioral Health
The Joy Bus
JustLeadershipUSA
Katal Center for Health, Equity, and Justice
The Kennedy Forum
Kentucky Equal Justice Center
Kitchen Angels
Justice in Aging
Justice Consultants, LLC
Lakeshore Foundation
Law Foundation of Silicon Valley
Legal Action Center
The Legal Aid Society
Legal Council for Health Justice
Life Foundation
Live4Lali
Liver Health Connection

Maine Equal Justice Partners
MANNA (Metropolitan Area Neighborhood Nutrition Alliance)
Massachusetts Law Reform Institute
McShin Foundation
Mental Health America
Mental Health Association in New York State, Inc. (MHANYS)
Michigan Poverty Law Program
Minnesota Recovery Connection
Mississippi Center for Justice
NAACP
The National Alliance to Advance Adolescent Health
National Alliance on Mental Illness
NAMI-NYS
National Alliance of State & Territorial AIDS Directors
National Association of Addiction Treatment Providers
National Association of County Behavioral Health & Developmental Disability Directors
National Association for Rural Mental Health
National Association of Social Workers
National Center for Law and Economic Justice
National Coalition Against Domestic Violence
National Council on Alcoholism and Drug Dependence, Phoenix
National Council for Behavioral Health
National Council of Churches
National Disability Rights Network
National Employment Law Project
National Federation of Families for Children's Mental Health
National Health Care for the Homeless Council
National Health Law Program
National HIRE Network
National Juvenile Justice Network
National LGBTQ Task Force
National Low Income Housing Coalition
National Organization for Women
The National Viral Hepatitis Roundtable
NC Justice Center
New Haven Legal Assistance Association
New York Association of Alcoholism and Substance Abuse
New York Association of Psychiatric Rehabilitation Services
New York Lawyers for the Public Interest
New York State Council for Community Behavioral Healthcare
Open Hands Legal Services
Osborne Association

Outreach Development Corp.
The Partnership for Drug Free Kids
PICO National Network
The Poverello Center, Inc.
Project Inform
Public Justice Center
Root & Rebound
Ryan White Medical Providers Coalition
Safer Foundation
Sargent Shriver National Center on Poverty Law
School Social Work Association of America
Sea Island Action Network, South Carolina
The Sentencing Project
Shatterproof
Society of General Internal Medicine
Southern Center for Human Rights
Southern Poverty Law Center
Students for Sensible Drug Policy
TASC of the Capital District, Inc.
Tennessee Justice Center
Three Square Food Bank
Transitions Clinic Network
Treatment Action Group
Treatment Alternatives for Safe Communities (TASC) - Illinois
Treatment Communities of America
Virginia Poverty Law Center
Western Center on Law & Poverty