



January 24, 2024

Dear State Medicaid Administrators and Other Interested Parties:

The Departments of Justice (DOJ) and Health and Human Services (HHS) jointly write to encourage state Medicaid administrators to make sure that their Medicaid programs allow people who have both Hepatitis C (HCV) and substance use disorder (SUD) to access life-saving HCV medications called direct-acting antivirals (DAAs).

DOJ and HHS both enforce the Americans with Disabilities Act (ADA) with respect to state Medicaid programs. The ADA requires that states, in administering their services, programs, and activities, such as their Medicaid programs, avoid discriminating against individuals with disabilities, including SUD. This includes providing individuals with disabilities equal opportunity to participate in and benefit from a state's Medicaid program. While the ADA ordinarily does not prohibit discrimination based on a person's current illegal use of drugs, it does prohibit states from denying health services on that basis, if a person is otherwise entitled to the services.¹

DOJ entered into a [settlement agreement](#) with the state of Alabama's Medicaid Agency (Alabama Medicaid) to address a policy that denied Medicaid coverage for DAAs to patients who had consumed any alcohol or illicit drugs within the six months prior to starting treatment. HCV can result in a range of serious health conditions including liver disease, liver cancer, and death. However, highly effective DAA medications cure HCV in more than 95% of cases.² Alabama Medicaid's policy meant that people with HCV and SUD (who also had evidence of recent use of alcohol and/or illicit drugs) were denied potentially life-saving medication. Following the initiation of an investigation by DOJ, Alabama Medicaid withdrew this policy and entered into an agreement. The agreement requires Alabama Medicaid to notify Medicaid recipients and providers in Alabama of these changes and promptly remedy any case where coverage for DAAs was denied because of a person's SUD.

We urge all state Medicaid administrators to review their current and forthcoming policies and practices, including those on HCV treatment, to determine if any changes are necessary to comply with the ADA. In the years that DAAs have been available, information and research regarding these products have increased. Prior authorization criteria and policies should be reviewed in light of these developments. While states have the authority to manage their Medicaid programs in accordance with their State Plans, and have the flexibility to set prior authorization criteria based on their state program needs, those plans and criteria must be consistent with other applicable laws including the ADA.

Thank you for your attention to this important issue.

¹ 28 C.F.R. § 35.131(a), (b); *see also* 42 U.S.C. § 12132.

² *See* World Health Organization, [Hepatitis C Fact Sheet](#) (July 2023).

For more information on the Department of Justice Civil Rights Division, please visit www.justice.gov/crt. For more information on the ADA, please call the department's toll-free ADA Information Line at 800-514-0301 (TTY 833-610-1264) or visit www.ada.gov. ADA complaints may be filed online at <https://civilrights.justice.gov/report/>.

For more information on the Department of Health and Human Services Centers for Medicare & Medicaid Services, see www.cms.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kristen Clarke". The signature is written in a cursive style.

Kristen Clarke
Assistant Attorney General for Civil Rights

A handwritten signature in blue ink that reads "Chiquita Brooks-LaSure". The signature is written in a cursive style.

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services