

United States Senate

WASHINGTON, DC 20510

December 5, 2019

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

Dear Attorney General Barr:

As the substance misuse crisis continues to devastate communities across the United States, it is critical that we take a comprehensive approach to addressing this epidemic, including among individuals in the criminal justice system. Addressing crime, reducing recidivism, and combating substance misuse are all inextricably intertwined, and our response to this crisis must recognize this reality. Accordingly, we write to request an update on the Department of Justice's (DOJ's) efforts to ensure that incarcerated individuals battling substance use disorder have access to medication-assisted treatment.

During the 115th Congress, we took an important step to strengthen treatment, prevention, and recovery services for opioid use disorder by passing the bipartisan SUPPORT for Patients and Communities Act (P.L. 115-271), which the President signed into law in October 2018. The SUPPORT for Patients and Communities Act, among other things, provided greater access to medication-assisted treatment, the gold standard for treating opioid use disorder, in all three of its forms – methadone, buprenorphine, and naltrexone.

In the criminal justice system, however, many individuals with opioid use disorder are denied access to life-saving medication-assisted treatment because of economic constraints, perceived security and diversion concerns, and stigma.¹ Changes are needed to ensure that justice-involved individuals receive medication-assisted treatment to get on the road to recovery.

Last year, Congress passed the First Step Act of 2018 (P.L. 115-391), which made a range of changes and reforms to our criminal justice system including efforts to expand treatment options for individuals struggling with substance use disorders. The First Step Act required that the Director of the Bureau of Prisons (BOP) assess, and submit to Congress a report on, “the availability of and capacity of the BOP to treat heroin and opioid abuse through evidence-based programs, including medication-assisted treatment where appropriate.”² It further required that such report “include a description of plans to expand access to evidence-based treatment for

¹ See Noa Krawczyk, Caroline E. Pincher, Kenneth A. Feder, and Brendan Saloner, *Only One in Twenty Justice-Referred Adults in Specialty Treatment for Opioid Use Receive Methadone or Buprenorphine*, 36 HEALTH AFFAIRS 2046 (2017), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0890>.

² First Step Act of 2018, Pub. L. 115-391, § 607 (2018).

heroin and opioid abuse for prisoners, including access to medication-assisted treatment in appropriate cases.”³

Former Acting Director Hugh J. Hurwitz submitted the aforementioned report on March 22, 2019. In it, the Bureau of Prisons identified medication-assisted treatment for opioid use disorder as one of its “top priorities,” recognizing that “effective medication-assisted treatment programs decrease opioid use, opioid-related overdose deaths, criminal activity, and infectious disease transmission.”⁴ The report further explained that the current medication-assisted treatment program offered by the Bureau of Prisons is voluntary, and combines the use of naltrexone “with counseling and behavioral therapies, to provide a ‘whole patient’ approach to the treatment of substance use disorders.”⁵

However, the report failed to include all pertinent and required information. It did not address the use of methadone or buprenorphine, nor did it include a description of any plan to expand access to medication-assisted treatment, as required by the First Step Act.

We write to request that the Department provide its plan to expand medication-assisted treatment for incarcerated individuals. Please provide written responses to the following questions by January 17, 2020:

1. Three medications are currently approved by the Food and Drug Administration for helping treat opioid use disorder: Methadone, buprenorphine, and naltrexone. In its report to Congress, however, the BOP did not address the use of methadone or buprenorphine in its current medication-assisted treatment program, with the exception of continuing medication pregnant offenders “had previously been subscribed,” including methadone or buprenorphine.⁶ Has the BOP taken any action to provide access to methadone or buprenorphine to non-pregnant offenders?
 - a. If yes, what actions has the BOP taken?
 - b. If no, why not?
2. The First Step Act required that the BOP, in its report to Congress, “include a description of plans to *expand* access to evidence-based treatment for heroin and opioid abuse for prisoners, *including* access to medication-assisted treatment in appropriate cases.”⁷ The BOP did not provide this information in its report to Congress. Please describe this plan in detail.
3. The aforementioned report states that, as of March 22, 2019, “the BOP has screened over 400 inmates, spanning over 9 states, 50 BOP institutions, and 23 [Residential Reentry Center] locations” for medication-assisted treatment program enrollment.⁸

³ *Id.*

⁴ FED. BUREAU OF PRISONS, U.S. DEP’T OF JUSTICE, REPORT ON EVIDENCE-BASED TREATMENT FOR OPIOID AND HEROIN ABUSE (2019).

⁵ *Id.*

⁶ *Id.*

⁷ First Step Act of 2018, Pub. L. 115-391, § 607 (2018) (emphasis added).

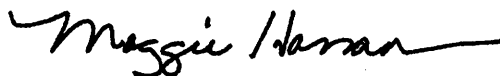
⁸ *Id.*

- a. What factors or criteria does the BOP consider in screening inmates for medication-assisted treatment program enrollment? How did the BOP select which factors or criteria to consider in the screening process?
 - b. Of the 400 inmates who were screened prior to March 22, 2019, how many inmates qualified for medication-assisted treatment program enrollment?
 - i. How many of the inmates who qualified for medication-assisted treatment program enrollment enrolled?
 - ii. Please describe the medication-assisted treatment program(s) in which these inmates enrolled.
4. On July 19, 2019, the DOJ published a fact sheet entitled, “First Step Act Implementation Fact Sheet.” In it, the DOJ stated, “Every inmate within 15 months of release who might qualify for medication-assisted treatment has been screened.” The DOJ further stated, “171 have met the criteria.”⁹
- a. How many inmates have been screened for medication-assisted treatment program enrollment?
 - b. What does it mean that the DOJ screened only those inmates who “might” qualify for medication-assisted treatment?
 - i. What factors or criteria “might” qualify an inmate for medication-assisted treatment? How did the Department of Justice determine these factors or criteria?
 - ii. By limiting medication-assisted treatment program enrollment screening to inmates who “might” qualify for medication-assisted treatment, has the DOJ excluded inmates who would otherwise benefit from medication-assisted treatment but “might” not qualify for medication-assisted treatment according to the factors or criteria identified in Question 3(b)(i)?
 - c. Why did the DOJ choose to screen only those inmates within 15 months of release who might qualify for medication-assisted treatment?
 - d. Does the DOJ intend to extend medication-assisted treatment program enrollment screening to inmates beyond 15 months of release? If so, please describe how and when the DOJ intends to do so. If not, please explain why not.
 - e. Of the 171 inmates who “met the criteria” for medication-assisted treatment programs, how many enrolled in a medication-assisted treatment program? Please describe the medication-assisted treatment program(s) in which these inmates enrolled.

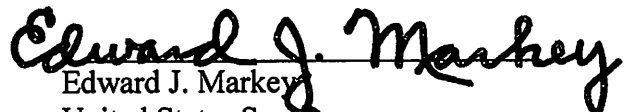
⁹ Press Release, U.S. Dep’t of Justice, First Step Act Implementation Fact Sheet (July 19, 2019), available at <https://www.justice.gov/opa/press-release/file/1184766/download>.

- f. If an inmate is not selected for medication-assisted treatment qualification screening, is there another mechanism for that inmate to enroll in a medication-assisted treatment program or otherwise be considered for such a program?
5. Incarcerated individuals who have been denied access to their physician-prescribed treatments, including medication-assisted treatment, have begun to challenge these policies under the Eighth Amendment to the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act. Individual courts and judges have been receptive to these arguments.¹⁰
- a. Has the DOJ intervened on behalf of justice-involved individuals who have sued to maintain their access to medication-assisted treatment in custody?
- i. If so, on how many occasions? Has the DOJ considered expanding or formalizing this process?
- ii. If not, has the DOJ considered this practice?
- b. Please provide the DOJ's legal basis for the medication-assisted treatment program's compliance with the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act.
- c. What guidance, if any, has the DOJ issued to assist state and local institutions with complying with the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act as they relate to medication-assisted treatment for justice-involved individuals? Would the DOJ consider releasing more guidance that clearly describes the obligations of state and local institutions on this issue?
6. Does the DOJ include stipulations in relevant grant funding to states and localities that require recipients to adopt policies regarding access to medication-assisted treatment? Has the DOJ enforced these stipulations? If so, please provide evidence of this enforcement.

Sincerely,



Margaret Wood Hassan
United States Senator



Edward J. Markey
United States Senator



Jeanne Shaheen
United States Senator



Elizabeth Warren
United States Senator

¹⁰ See generally AKIN GUMP STRAUSS HAUER & FELD, A LEGAL RIGHT TO ACCESS TO MEDICATIONS FOR THE TREATMENT OF OPIOID USE DISORDER IN THE CRIMINAL JUSTICE SYSTEM (2018), available at https://americanhealth.jhu.edu/sites/default/files/inline-files/Initiative_Memo_Opioids_012319_0.pdf.