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People Who Use Drugs in the Crosshairs: Old Policy Made New Again

The Trump Administration has taken aim at several public health tools that seek to address the very issues on which the Administration predicates its attacks. Beginning with another Executive Order, the Trump administration has made several policy moves toward reviving decades old rhetoric linking substance use, homelessness, and crime in an effort to justify stricter, more punitive policies. Aspects of this policy shift are alarming, especially the promotion of controversial and extreme tools to control drug use like involuntary commitment, but others are simply a restatement of longstanding federal policy or much more complicated to implement than the initial order suggests. The new Executive Order takes an explicit stance against harm reduction and some of the tools to protect public health that traditionally fall within that umbrella. It also takes aim at certain models of low-barrier housing, and instructs federal resources to be utilized for law enforcement and other criminal legal system responses. Read on to understand these attacks and the potential impacts of this old-but-new policy shift.

Harm Reduction

The National Harm Reduction Coalition defines harm reduction as "a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use. Harm Reduction is also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs… [It] incorporates a spectrum of strategies that includes safer use, managed use, abstinence, meeting people who use drugs 'where they're at,' and addressing conditions of use along with the use itself."

The Executive Order on Crime and Disorder

In late July the White House released an Executive Order directing agency leaders—namely the Attorney General (AG) and the Secretaries of Health and Human Services (HHS), Housing and Urban Development (HUD), and Transportation—to take steps to address what President Trump characterized as "Crime and Disorder on America's Streets." The order asserts that U.S. cities are rife with drug addiction, unaddressed behavioral health issues, and immediate risks to public safety stemming from an increase in the number of people struggling to maintain safe and stable housing. Relying on these justifications, the order promotes a series of punitive and potentially dangerous methods for resolving these purported crises. The chart below summarizes these policies:

Key Policies in Executive Order 14321, "Ending Crime and Disorder on America's Streets"	
Involuntary Civil Commitment	Involuntary civil commitment is a form of forced hospitalization that is sometimes used to treat behavioral health and substance use issues, though it raises significant due process issues. The order encourages HHS and the AG to support state and local governments in expanding their mandated treatment programs.
Restructuring Grant Priorities	All four agency leaders are instructed to assess discretionary grant funding within their agency and identify opportunities to prioritize funding for localities that more strictly enforce prohibitions on public substance use, camping and loitering, and that enforce standards for involuntary civil commitment for people with serious mental illness or who use drugs.
Enhancing Law Enforcement Response and A Renewed Focus on "Treatment"	The order affirms an already existing bar on the use of federal funds for "safe consumption," an internationally-recognized drug treatment intervention known more commonly in the United States as overdose prevention centers. The order also bans the use of funds for "harm reduction," without defining this term, and imposes more stringent requirements for people returning from incarceration with housing needs. At the same time, the order allows the Substance Abuse and Mental Health Services Administration (SAMHSA) to continue funding for evidence-based programs and calls for increased use of crisis intervention services.
Abstinence-Only in Housing	HHS and HUD are directed to cease support for policies under the "Housing First" model, which provides permanent stable housing to people who are experiencing homelessness without requiring behavioral health conditions to be successfully managed beforehand. Instead, the agencies are to promote treatment compliance as a condition of program participation and encourage stronger data-reporting requirements for HUD-funded organizations. The order also reiterates a pre-existing policy against the distribution or use of illicit substances in federally funded housing assistance programs.

The Fallout: Agency Guidance, Litigation, and Practical Impacts

In the few months since the release of the Executive Order, HHS, SAMHSA, and HUD have each taken some form of action to implement the above policies—with varying degrees of success. On July 29, SAMHSA released a Dear Colleague Letter that further reinforces the idea of a binary policy choice between embracing harm reduction principles and effectively responding to substance use disorder through prevention and treatment. In early September, HUD released a Notice of Funding Opportunity that required grantees to

contractually agree to enforce the priorities outlined in this Executive Order and others. HHS priorities updated September 30 state that the effort to end "crime and disorder" are among their top focuses.

Together, these policies do not largely alter federal law regarding the legality of interventions to protect the health of people who use drugs or alcohol. Harm reduction, despite an explicit restriction on the use of federal funds for such efforts, encompasses many public health interventions that remain legal or subject to state and local control. For example, naloxone, the overdose reversal drug, continues to be available over-the-counter, and syringe service programs, which largely operate under state-specific legal carveouts that protect them from bans on drug paraphernalia, remain intact regardless of the proposed ban on using federal funds for such programming. Overdose prevention centers, or "safe consumption" sites, which typically provide a supervised setting in which to engage in substance use, have always been in a legal gray area because of a federal law that restricts the opening of a facility for the purpose of illicit drug consumption.

Additionally, the tools which the Administration seems to most heavily favor—involuntary civil commitment and the use of law enforcement to control and confine people with serious mental illness or who use substances—are typically controlled at the state level, where there is significant discretion whether to advance those particular policies. Federal and state constitutional rights, such as the right to due process, also place important limits on the use of highly restrictive interventions like involuntary civil commitment. Finally, the new order and related guidance do not provide additional funding for law enforcement or the expansion of involuntary commitment, which will make it difficult for those tools to be expanded.

While the legal impact of these policies may be less striking than the rhetoric itself, the real-world impact may still be notable. The Executive Order threatens criminal penalties for organizations that distribute safer use supplies, such as syringes or pipes, and safe consumption sites. Although the Administration has yet to pursue this legal avenue, safe consumption sites could be at greatest risk because of their unclear legality and their explicit mention in the order. On the other hand, at least one subsequent guidance document has become the subject of litigation. On September 14, a district court judge in Rhode Island granted a temporary restraining order enjoining the Secretary of HUD from conditioning eligibility for the Continuum of Care Builds housing assistance program on compliance with new funding restrictions until the matter has been resolved in court.

How Advocates are Pushing Back

Harm reduction proponents will continue to advance and utilize evidence-based medical practices to protect the health of people who use drugs (although the phrase "harm reduction" may be used less frequently in spaces that could draw the ire of the federal government). Advocates are also organizing to oppose these harmful actions. In mid-September, the newly formed Legal Advocates for Harm Reduction convened attorneys and supporters of harm reduction principles to discuss their role in promoting a future in which compassionate services for people who use drugs once again can grow. Organizations and coalitions have also taken strong stances against the Administration's actions in this area.

The public health movement toward harm reduction started in response to very similar punitive policies to the ones the Administration has chosen to prioritize. While funding restrictions and policy guidance are powerful tools to prevent or discourage progress, no administration can regulate away the primary rule of the movement: compassion for people who use drugs.

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