



Navigating the Storm: Strategic Responses to the Evolving Federal Policy Landscape

October 27, 2026

Our Program

12:00 P.M.	Welcome & Introductions	<i>Julie Burns</i>
12:05 P.M.	Presentation	<i>Leo Beletsky, JD, MPH Zane McNeill, JD, MA</i>
12:55 P.M.	Audience Q&A	<i>Leo Beletsky, JD, MPH Zane McNeill, JD, MA Julie Burns</i>
1:10 P.M.	Closing Remarks	<i>Julie Burns</i>

Housekeeping

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Webinar Learning Objectives

1

Distinguish between actual legal obligations and anticipatory compliance.

2

Identify practical steps to assess legal exposure and protect their organizations before making operational changes.

3

Apply lessons learned from real organizations that have developed and implemented crisis response plans.

Presenters



Leo Beletsky

Professor of Law and Health Sciences, Director of the Action Lab, Northeastern University



Zane McNeill

Staff Attorney, Lawyers for Good Government (L4GG)

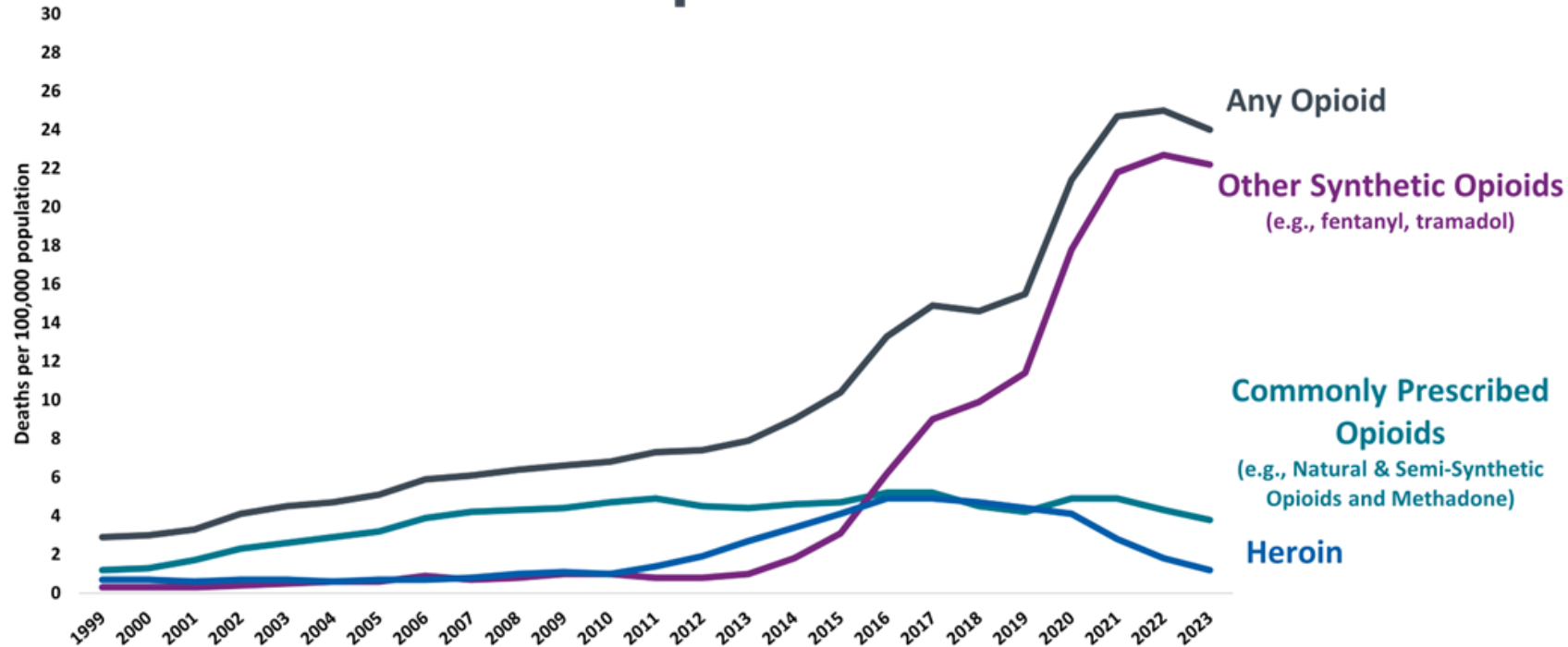
Overview

- 1 Funding policy landscape
- 2 Compliance challenges
- 3 Response options and next steps

Balancing imperatives to protect organizations and individuals with duty to continue caring for vulnerable people, in view of considerable uncertainty.

Context: Ongoing Crisis

Three Waves of Opioid Overdose Deaths



Wave 1: Rise in Prescription Opioid Overdose Deaths Started in the 1990s

Wave 2: Rise in Heroin Overdose Deaths Started in 2010

Wave 3: Rise in Synthetic Opioid Overdose Deaths Started in 2013

SOURCE: CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER, Atlanta, GA: US Department of Health and Human Services, CDC; 2024. <https://wonder.cdc.gov/>.



Defining “Harm Reduction”

- Historical legacy of harm reduction.
- Set of tools, but also a philosophy—and a theology.
- Federal statements about harm reduction are externally and internally inconsistent.
- Historical and scientific records speak for themselves.
- Specific language on harm reduction has not been challenged in the courts (contrast with DEI and gender-affirming care).
- Applying harm reduction principles to this moment.

Landscape: Funding Restrictions on HR

EO 14321 "Ending Crime and Disorder on America's Streets"

(July 24, 2025)

- Directs agencies to restrict support for certain harm reduction activities and prioritize funding.
- Directs HHS to ensure SAMHSA discretionary grants **"do not fund programs that fail to achieve adequate outcomes, including so-called 'harm reduction' or 'safe consumption' efforts that only facilitate illegal drug use and its attendant harm."**
- Directs AG, HHS, HUD, and DOT to "assess whether priority can be given" for funding to cities and states that enforce bans on public drug use, encampments, loitering and squatting, and expand civil commitment.
- Targets recipients of federal housing and homelessness assistance that also offer harm reduction services.

Source of Confusion: Doesn't apply directly to any grantees, but language shows up later in: SAMHSA, HRSA, and other materials

Landscape: Funding Restrictions on HR

SAMHSA Dear Colleague Letter (July 2025)

- Lists supplies and services that may or may not be paid for with SAMHSA funds.
 - Test strips are listed as allowable.
 - Adopts language from EO 14321 in “agency priorities.”
 - Clarifies, through a list, which supplies and services can and cannot be supported.

Source of Confusion: Not clear what is new - these services already cannot be supported with SAMHSA funds - but it is framed as a change (“will no longer be used”). Does this change what I’m allowed to do right now, or only once it shows up in something official (terms and conditions, reporting requirements, applications, program-specific guidance, etc.)?

Landscape: Funding Restrictions on HR

SAMHSA 2025 Terms and Conditions

- "...using Federal funds, directly or indirectly, including through cost-sharing, matching funds, or subsequent reimbursement, to support so called 'harm reduction' or 'safe consumption' efforts," including using "grant funds...to purchase [or] distribute...syringes, needles, pipes, or other supplies used for the injection, inhalation, or ingestion of illicit drugs...[and] sterile water, saline, or ascorbic acid when intended to facilitate drug use."
- "...comply with all all applicable executive orders."

Landscape: Funding Restrictions on HR

SAMHSA Dear Colleague Letter (April 2026)

- Test strips are described as not allowable, with unclear exceptions.
- States that HHS funding cannot be used to purchase or distribute test strips, with exceptions in Footnote 6: "This prohibition does not apply to law enforcement, emergency medical services, public health officials, or healthcare professionals using drug testing technologies in the regular course of discharging their professional duties, or as specifically authorized by the program statute."
- Some states have decided to stop paying for test strips, some states have shifted test strips to state dollars, some states have decided not to make any changes yet and to address it if/when they receive more specific guidance or language.

Source of Confusion:

- Does the exception apply to staff at harm reduction programs?
- "Using drug testing technologies in the regular course of discharging their professional duties;" does "using" include distribution?
- May 2026 White House National Drug Control Strategy praises test strips as an "important tool that should be legal."

Landscape: Funding Restrictions on HR

HUD Restrictions: Continuum of Care Competition and Youth Homeless Demonstration Program Grant FY 2025 NOFO

(March 2026)

- Set aside by a federal district court as unlawful under the Administrative Procedure Act (APA). [*National Alliance to End Homelessness v. Turner*](#), No. 1:25-cv-00447 (D.R.I. Sep. 11, 2025), Memorandum and Order (March 31, 2026) ([*Docket #31*](#)).

Source of Confusion: How does ongoing litigation in other domains impact compliance with requirements in behavioral health provision?

DEI/"Unlawful Discrimination"

- **July 29, 2025 (DOJ):** Guidance for federal funding recipients on "unlawful discrimination."
 - Flags "lived experience" and "cultural competence" criteria as potentially "unlawful proxies" under federal anti-discrimination law.
- **August 7, 2025 (EO 14332):** "Improving Oversight of Federal Grantmaking."
 - Political review of grants; termination when awards no longer serve "agency priorities."
 - Echoes "proxy" language from DOJ memo.
- **September 2025 (OMB):** Memo to heads of federal agencies instructing them to follow the guidance when overseeing recipients.
- **October 2025 (HHS):** Grants Policy Statement (GPS) update with new anti-discrimination certifications and False Claims Act warning; termination based on "agency priorities."

Source of Confusion: How to assess compliance and funding risk as agency priorities, oversight expectations, and award criteria evolve?

Proposed OMB Rule “Regulation for Federal Financial Assistance”

Proposed rule: May 29, 2026; Anticipated effective date: December 11, 2026.

- Document 2026-10817 (91 FR 32198)
- Comments submitted: 496,606

Proposals:

- Shifts Uniform Guidance to Uniform Grants “Regulation.”
- **Pre-award (application and award selection)**
 - “Merit review” of applications conducted by senior political appointees. (200.205)
 - Expansion of factors agencies should consider to assess applicant “risk.” (200.206)
- **Post-award (ongoing compliance, program implementation, subrecipient oversight)**
 - Agencies and pass-through entities must ensure federal awards are not used towards “DEI” or “gender ideology.” (200.300)
 - Agencies have discretion to terminate awards at any point “when in the agency’s interest,” non-compliance not required. (200.340, 200.342, 200.332)
 - “Transparency” in award data. (200.329 - 200.332)
 - Agencies may add conditions mid-award. (200.208)

Compliance vs. “Pre-compliance”

- **Compliance:** meeting legal obligations.
- **“Pre-compliance:”** going above and beyond.
- Highly fact-dependent.
- Murky in view of various administrative and legal uncertainties: no easy answers.
- The difference between prudent risk management and unnecessary self-censorship.
- Shaped by organizational attitudes and other contextual factors.

Compliance vs. “Pre-compliance”



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February 2, 2026

Dear Colleagues:

This letter is intended to provide information to Massachusetts Department of Public Health (DPH) related to funding for harm reduction services. I related to harm reduction activities, but there are comprehensive harm reduction services to people who use drugs, DPH will continue to utilize both state and federal funds to support these services, which are crucial, life-saving interventions that remain a priority for the Commonwealth.

On July 24, 2025, the Trump Administration issued a “Dear Colleague” letter regarding the Substance Abuse and Mental Health Services Administration’s (SAMHSA) position on harm reduction practices. In the letter, the Administration instructed the Department of Health and Human Services (HHS) to take action to ensure that the Substance Abuse and Mental Health Service (SAMHSA) programs that fail to achieve adequate outcomes for harm reduction efforts that only facilitate illegal drug

On July 29, 2025, SAMHSA published a “Dear Colleague” letter regarding the Administration’s position on harm reduction practices. The letter states that the Administration’s position on harm reduction practices is that supplies and services can and cannot be supported by federal funds.

In September 2025, the Health Resources and Services Administration (HRSA) published a webpage to include a webpage entitled “Advancing Harm Reduction: A National Accountable Action.”³ The webpage states that the Administration’s position on harm reduction activities, consistent with SAMHSA’s

DPH implements its HRSA and SAMHSA grants in a manner that is consistent with federal guidance related to harm reduction activities.⁴ DPH does not authorize subcontractor or subrecipient use of SAMHSA funds for the non-supportable supplies or services identified in the “Dear Colleague” letter and does not allow HRSA funds to be used to purchase syringes, safer smoking kits, or related harm reduction materials.⁵

DPH will continue to work with federal grant subrecipients to ensure that federal funds are used only to support allowable costs and activities, including the use of funds for allowable services of “life-saving overdose prevention and response services” and “infectious disease prevention services” in alignment with federal guidance.

If you have questions regarding your agency’s compliance with federal guidance, we encourage you to consult your agency legal counsel as DPH is unable to provide legal advice regarding the interpretation of these directives.

DPH is committed to helping ensure that Massachusetts residents have access to a comprehensive set of services that is responsive to their needs, and we appreciate your partnership. DPH will continue to utilize state and non-federal funds to support these aims.

Beyond Loss of Funding

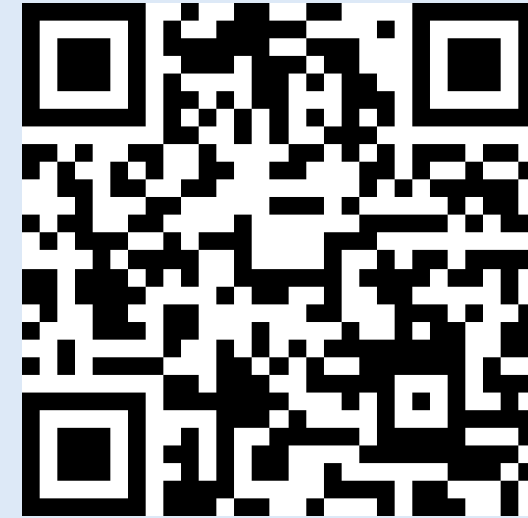
- Costs to respond to investigation and legal action.
- Treble Damages.
- Criminal Liability.
- Future bar.

Risk Management Process

Balancing imperatives to protect organizations and individuals with duty to continue care for vulnerable people, in view of uncertainty and instability

1. Understand requirements.
2. Assess how expectations apply to your work.
3. Weigh options to mitigate risk.
4. Deploy available options.

Program Compliance Tip Sheet



Review Requirements

- Carefully review terms and conditions of funding.
- Do not certify to anything you do not understand.
- Do not check a box or refrain from certifying to a condition without careful review.
- Consult legal counsel.
- Consider how this impacts other programs and funders.
- Help is available through L4GG clinic.

Assure Consistency

- Language used to describe programs should be consistent with funding requirements and contract provisions.
- Budgets and accounting are important.
- Document compliance actions.

Challenge Requirements

- Challenge provisions in court.
- Qualifying certifications.
- Submit a written objection.
 - L4GG Clinic may be able to provide one-on-one consultation
- Listservs (National Advocates for Harm Reduction, OSNN, BSAS Harm Reduction Programs, etc.)
- **January 2026 (SAMHSA):** Grant terminations.
 - \$2 billion cut for “agency priorities.” Swell of advocacy helped reverse the next day.

Structural Change

- In some cases, major changes may be needed.
- Shifting programming to other entities.
- Refusing federal funds.

Help is Available: L4GG Fund Protection Clinic

- Organizations receiving funding from the U.S. Department of Health and Human Services (“HHS”), including SAMHSA and HRSA.
- HUD, through its Housing Opportunities for Persons With AIDS (“HOPWA”) program may be eligible.
- One-on-one legal assistance from a pro bono attorney on compliance and investigations matters.
- L4GG, working with pro-bono attorney network, have challenged funding provisions in other areas.



Key Points

- Review language carefully.
- Be consistent about language and accounting.
- Be careful about checking boxes and agreeing to requirements that are clearly misaligned.
- Ask for help:
 - your counsel.
 - L4GG clinic.
- Challenge requirements: advocacy, qualification, or legal action.
- Applying harm reduction principles to this moment.

Thank You!

Thank you to RIZE Massachusetts for supporting and convening this session, and to all of those who contributed and continue to do the work despite considerable turbulence.

L4GG Clinic Intake Form



Program Compliance Tip Sheet



Questions/Comments

