National Advisory Council on Migrant Health

July 21, 2020

The Honorable Secretary Azar, J.D.
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

Established 45 years ago, The National Advisory Council on Migrant Health (NACMH, hereby referred to as "The Council") continues to advise, consult with, and make recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS), The Honorable Alex Azar, and to the Administrator of the Health Resources and Services Administration (HRSA), Mr. Thomas Engels.

In adherence to safety measures and travel restrictions related to the COVID-19 public health emergency (PHE), The Council was unable to hold its regularly scheduled in-person meeting in May 2020. The May meeting was re-scheduled to July 2020 and was canceled again due to the PHE. However, The Council would like to fulfill its charge by making recommendations regarding the health care concerns of migrant and seasonal agricultural workers (MSAW), as well as towards the organization, operation, selection, and funding of migrant health centers (MHC) and other entities assisted under section 330(g) of the Public Health Service Act as amended, 42 USC 254(b), *specifically with regard to concerns involving the COVID-19 pandemic*, with the goal of improving health services and conditions for MSAWs and their families.

In the sections below, please find for your consideration The Council's recommendations toward improving services for MSAWs and their families during the continually evolving circumstances related to the COVID-19 pandemic.

Recommendation I

COVID-19 TESTING: The U.S Centers for Disease Control (CDC) and U.S. Department of Labor (DOL) partnered to provide interim, joint guidance to agricultural workers and employers regarding COVID-19. However, this assessment lacks federal or state-level mandates for prevention of risks related to COVID-19. Most surprisingly, the guidance does not mandate regular testing to any extent, and it only asks for considerations of circumstances that may mitigate risks related to the spread of COVID-19 among workers. Without mandatory testing and enforcement, the number of cases of COVID-19 among farmworkers will likely continue to rise, and the responsibility to care for the

increasing number of farmworkers who are infected with COVID-19 will undoubtedly fall disproportionately on the shoulders of community and migrant health centers (CHC, MHC) that serve MSAWs and their families. To protect the health of MSAW's during the COVID-19 pandemic, regular testing is required. Further, testing will have the related benefit of ensuring that health centers serving MSAWs will not be overwhelmed with COVID-19 cases. The Council recommends the following:

1. In lieu of a guideline-only approach, we urge the Bureau of Primary Health Care (BPHC), HRSA to form a strategic partnership with the CDC and DOL to formulate uniform, federally-mandated and enforceable policies and procedures, including COVID-19 testing, for MSAW's.
2. Procedures and policies should be developed in consultation with state and local health officials, and occupational medicine professionals.
3. Federally-mandated policies and procedures should require, at minimum, free, weekly worksite COVID-19 testing for all employees.
4. Policies and procedures be regularly enforced in order to ensure basic provision of safety and health protections for MSAW's.

Background for Recommendation I

The Problem:

The nature of agricultural work predisposes MSAW's to an increased risk of contracting the COVID-19 virus as a result of their unavoidable close contact with others at work. Without testing, the risks of mounting exposures are unknown, and this in turn causes more exposures. The importance of regular COVID-19 testing at agricultural worksites is further justified by the below examples in recent news:

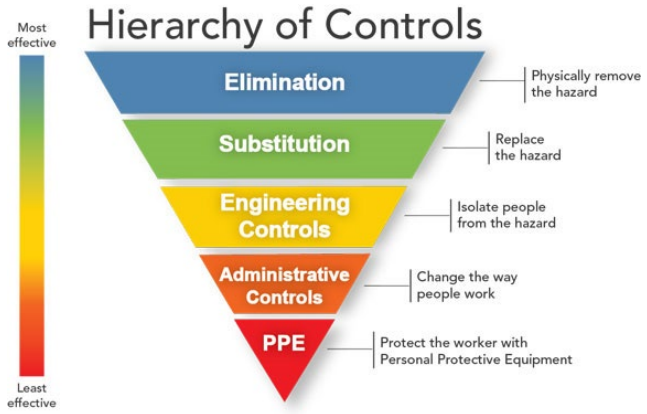
- A watermelon farm in Alachua County, FL tested 100 farmworkers and found 90 confirmed positive cases, but only 1 had symptoms.[i],[ii]
- On June 25th 2020, farmworkers living at a housing facility for farmworkers in Oxnard, CA were tested after 2 residents tested positive. By July 7th 2020, 204 out of 216 tested positive at the dorm-style facility.[iii]
- Every MSAW among 200 workers at a Tennessee farm tested positive for COVID-19.[iv]

These examples underscore the COVID-19 pandemic threat to farmworkers' safety and health, and illustrate the importance of testing beyond mere screening for signs and symptoms of COVID-19 including temperature checks. Thus, The Council recommends uniform, mandated and enforceable policies and procedures for regular and systematic screening for COVID-19 in the form of testing that should be available at all worksites for farmworkers.

The Explanation:

The Centers for Disease Control (CDC) and Department of Labor (DOL) partnered to provide interim, joint guidance to agricultural workers and employers regarding COVID-19.[v] The guidance refers employers to Occupational Safety and Health Administration guidance for general hazard identification work assessment.[vi] Although background information is provided regarding areas of risk as it relates to pandemic flu for agricultural worksites, it does not include specific guidance on conducting testing for COVID-19, as a part of the assessment. The guidance further recommends that "prevention practices should follow the hierarchy of controls"[vii] as recommended by the National

Institute of Occupational Safety and Health, which broadly recommends engineering and administrative controls, and personal protective equipment as a last resort as shown below. Unfortunately, the information provided by the CDC and DOL does not include critical information regarding elimination, substitution or engineering controls that are specific to testing services for COVID-19.



Source: National Institute for Occupational Safety and Health

Instead, the joint CDC and DOL guidance suggests mere "considerations" regarding screening for farmworkers including temperature checks and monitoring for COVID-19 signs and symptoms.[viii] Evidence suggests that employers are unlikely to voluntarily implement protections for their employees, and that voluntary safety management has little critical control, narrow content, and inferior outcomes compared to mandated programs. Without a mandate, states and employers can choose whether to implement considerations, which they are less likely to do. Moreover, when and if farmworkers and their families become ill, the responsibility of care will fall disproportionally on CHCs and MHCs, as MSAW's are an underinsured population and lack access to other sources of care.[ix],[x]

Opportunities and Impact:

Unavoidable close contact among farmworkers contributes to the COVID-19 virus's spread among coworkers. The addition and implementation of required weekly testing to the existing CDC and DOL guidelines at MSAW worksites, will have a substantial impact on prevention of further COVID-19 spread, as well as health centers. Regular, mandatory first-line prevention screening will also aid in ensuring that CHCs and MHCs are not overwhelmed.

Recommendation II

SUPPORT MSAW SERVING HEALTH CENTERS: Secretary Azar recently provided much needed efforts to "cut red tape" through a Paperwork Reduction Act waiver which helps collect information about HRSA-funded health center involvement in the COVID-19 response.[xi] This effort will aid HHS and HRSA to support CHCs and MHCs as they respond to the evolving circumstances surrounding MSAWs. The Health Center Program (HCP) has been on the front lines of the nation's response to the PHE, and grantees and look-alikes have been recipients of several funding efforts, as detailed in the background for this recommendation. This funding has enabled health centers to address screening and testing needs, to acquire medical supplies and to support telehealth response. However, MHCs need

additional support and technical assistance to address the increasing COVID-19-related unique needs of MSAW's. The Council recommends the following:

1. HRSA funding for health centers who serve the increasing and unique MSAW needs.
2. Reimbursement to health centers that incur extra COVID-19 related costs as a result of:
   a. Taking preventive measures to protect on site patients during the pandemic.
   b. Assistance with acquisition of personal protective equipment (PPE) to protect health center staff.
   c. Availability of COVID-19 testing kits to address testing needs for staff and patients.
   d. Use of mobile response units to address the increasing access to care needs of MSAWs and their families.
   e. Telehealth adoption to increase access.
3. Because of shortages in care, we ask that closing of health centers and reductions in funding to health centers be suspended until the after the COVID-19 pandemic is resolved.

Background for Recommendation II

The Problem:

Often health centers are under resourced as they attempt to meet COVID-19 needs. We acknowledge HRSA's strong, ongoing commitment to the HCP in these ever-changing circumstances, and thank both The Secretary and Administrator for their efforts. However, the examples cited as the background for *Recommendation I* unfortunately indicate that large numbers of MSAWs remain underserved.

The Explanation:

HRSA-funded health centers provide high-quality primary care services to over 28 million people in the United States, including close to a million MSAW patients annually.[xii] The number of COVID-19 cases is increasing daily among MSAWs, who are under-resourced and underinsured[xiii]. As MSAWs continue working as essential employees under less than ideal safety circumstances,[xiv] CHCs and MHCs that serve MSAWs will require increased funding, reimbursement, or both in order to meet their increasing demands.

Opportunities and Impact:

The Council reiterates the Secretary's response demonstrated through the increased sources of funding. We are hopeful that as costs increase, CHCs and MHCs will continue to be resourced to continue with the critical care provision. The Council also thanks the Secretary for the funding opportunities listed below.

- July 9, 2020, HRSA awarded more than $21 million to support health centers' COVID-19 response efforts.[xv]
- May 7, HRSA announced the release of approximately $583 million in fiscal year 2020 Expanding Capacity for Coronavirus Testing (ECT) funding provided by the Paycheck Protection Program and Health Care Enhancement Act.[xvi]
- April 8, HRSA announced the release of more than $1.3 billion in fiscal year 2020 funding provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.[xvii]
- On March 24, 2020, HRSA awarded $100 million to 1,381 Health Centers across the country to

aid in their COVID-19 response.[xviii]

Recommendation III

SAFE HOUSING AND CHILD CARE: July 15, 2020 the Santa Barbara County Public Health Department confirmed a COVID-19 outbreak at a housing location for temporary agricultural workers on H-2A visas in Santa Maria, CA, reporting one death and at least 14 infected workers.[xix] On June 25th 2020, farmworkers living in farmworker-designated housing in Oxnard, CA were tested after 2 residents tested positive, by July 7th 2020, 204 out of 216 tested positive at the dorm-style facility.[xx] Crowding and prolonged close contact with their living mates and potentially infectious individuals increases the risk of COVID-19 transmission in farmworker-designated housing. This is especially relevant in the case of H-2A workers, for whom housing provision is conditioned with their work visa. Children living in farmworker designated housing are especially vulnerable to close contact with others.[xxi]

In addition to living in crowded spaces, school and daycare closures resulting from the PHE, are impacting MSAW children disproportionately, across the country. MSAWs are essential employees, and school and daycare closures has made parents dependent on private informal care providers, which results in provision of care from untrained professionals who are unable to implement CDC safety recommendations and healthy meals. The Council recommends the following:

1. In order to reduce potential exposures to COVID-19 in farmworker housing, The Council urges HRSA to collaborate and formalize efforts with the U.S. Department of Agriculture's (USDA) Rural Housing Services for safe migrant worker group housing. Specifically, we urge the Secretary to ensure that the USDA's Rural Housing Service should provision emergency funding (at no additional costs to MSAWs) that:
   a. Allows spacing of farmworker beds, living areas, kitchens, bathroom, etc.
   b. Housing capacity limits are informed by best practices from medical and public health standards.
   c. Housing maintains proper ventilation and disinfection protocols in compliance with CDC guidance.
   d. Provides separate accommodations for farmworkers in the same family, or have high-risk conditions making them vulnerable to COVID-19.
   e. Create temporary housing for farmworkers who are ill or who test positive with COVID-19.
   f. Create access to supplemental housing in cases where existing facilities do not allow for social distancing.
2. HRSA has a strong and fruitful partnerships with Migrant and Seasonal Head Start. We urge the Secretary and HRSA to leverage this partnership to provide no-cost, critically needed safe childcare, at all necessary hours. Because farmworkers are considered essential, and often working overtime, this is critical. HRSA incentivize MHCs to consider migrant child care as another line of business.

Background for Recommendation III

The Problem:

Crowded housing, preexisting chronic disease and continued contact with potentially infectious individuals are risk factors for COVID-19 transmission.[xxii] Moreover, often farmworker housing facilities offer dormitory-style living where social distancing is not possible. For example, bunk beds are common in sleeping quarters for farmworkers, but they are less than ideal for preventing transmission of COVID-19 if a fellow resident is ill. Often farmworkers sleep 6-8 persons to one bedroom (see image below), and also share kitchen and bathroom facilities with 11 or more persons.[xxiii] It is impossible for MSAWs self-isolate or social distance in housing of this size, which recently led to a COVID-19 outbreak.

Source: Accommodations to H-2A workers. *(VC Star Magazine 2020; Villa Las Brisas/ AL Photography)*

The Explanation:

Poor, substandard farmworker housing is well-documented.[xxiv] Even when federal, state or locally-regulated housing is provided to farmworkers as a condition of their employment, housing quality is inadequately enforced.[xxvi], [xxvii] Moreover, housing conditions may become worse across the agricultural season, and have 11 or more residents living under poor conditions.[xxviii] Current housing policies have been proven inadequate to provide safe housing for farmworkers. [xxx], [xxxi] Federal, state, and local governments may regulate safety and health requirements in farm worker housing, depending on the type of housing provided. But because of the lack of uniform requirements, farmworker housing regulations may vary significantly depending on the state and regulatory agency, the number of workers, the type of worker (H-2A), permanent or migrant and seasonal.[xxxii]

The exact number of workers who reside in provisioned housing in unknown. However, estimates suggest that upward of 1 million workers live in some form of farmworker housing. States struggle to meet such demand.[xxxiii] For example, recognizing the critical need to increase the supply of clean, safe, and affordable housing for MSAWS, in 2002, WA State estimated a need for approximately 46,549 new units of farmworker housing.[xxxiv] In some cases, substandard housing without ventilation, running water, and proper sanitation are normative types of housing provided to MSAWs.[xxxv] No matter the type, provision of housing to MSAWs and their families must uphold the highest legal and ethical responsibilities to initiate and maintain healthy and safe living conditions in the face of COVID-19.

And because many migrant workers live in employer-provided group housing, employers must guarantee that housing is properly ventilated, compliant with capacity limits, and thoroughly disinfected in compliance with CDC guidance.

Opportunities and Impact:

Crowded housing will continue to contribute to the spread of the COVID-19 virus among coworkers. Adding and enforcing compulsory housing guidelines for all farmworker housing will aid in prevention efforts to suppress infection among the MSAW population. Safe and emotionally healthy care for the children of essential workers who play a critical role in preserving the food supply chain of the nation, is not only critical, but a worthy investment towards the future.

Recommendation IV

PRIORITIZE H-2A WORKERS HEALTH AND SAFETY NEEDS. H-2A workers have long been left at the margins of the federal health system. The National Agricultural Workers Survey (NAWS) provides important insights into the demographic conditions of the crop workers in America. However, it does not include H-2A workers. However, even under the COVID-19 pandemic, the U.S. is reliant upon the H-2A program to hire essential seasonal agricultural workers from other countries to enhance the workforce needed to maintain the food supply.[xxxvi]

Congress made free COVID-19 testing available to the uninsured through the Families First Coronavirus Response Act (FFCRA). However, the free testing is not available to categories of immigrants, including undocumented immigrants, H-2A workers, and Temporary Protected Status holders. Thus, workers who supply and help guarantee our food source, are essential employees, and who face COVID-19 transmission risks do not have access to testing. As the numbers of H-2A workers increase, HRSA collaboration with governmental agencies such the DOL will be necessary to address their health care needs. The Council recommends the following:

1. HRSA partner with DOL to expand the coverage of the NAWS to include H-2A and all MSAWs that meet the Office of Management and Budget definition of agriculture all its branches, based on the North American Industry Classification System (NAICS).
2. HRSA make targeted outreach efforts to support COVID-19 testing, and follow-up healthcare needs of H-2A workers.

Background for Recommendation IV:

The Problem:

DOL data indicates a tremendous growth in the H-2A temporary foreign agricultural worker program, which approved almost a quarter of a million H-2A positions in fiscal year 2018. The program has tripled in size in the last decade: in 2008, 82,000 positions were certified. The expansion of the H-2A program has not been accompanied by increasing resources for documenting H-2A worker health and welfare, and enforcement of employers' obligations.[xxxvii] Currently, the sampling design of the NAWS excludes crop workers with an H-2A visa, as a result, there is no mechanism for gathering data and information on the health status of H-2A farmworkers.

The Explanation:

The COVID-19 pandemic experiences of H-2A guest workers are ripe with risks of infection, including the initial international travel, crowded housing, mask shortages, lack of testing, and unknown employer safety protections.[xxxviii] Information provided to guest workers by the H-2A program (DOL) does not include the eligibility process for health insurance through the marketplace as well as eligibility for financial assistance and cost-sharing reductions that can lower the cost of health insurance. HRSA published "A Guide for Rural Health Care Collaboration and Coordination.[xxxix]" This resource discusses how rural providers can work together to identify health needs in their communities, create partnerships to address those needs, and develop a "community minded" approach to health care. HCP should promote the use this guide widely, to encourage health centers to connect with industry leaders, and growers, to create partnerships to reach farmworkers and allow them access during work hours.

Opportunities and Impact:

The inclusion of H-2A workers in essential health programs related to COVID-19 resources, should mirror their role as essential workers. Moreover, services that enhance access to H-2A workers will also help best meet the needs of the general farmworker population.

Recommendation V

MSAW HAZARD PROTECTIONS DURING PANDEMIC: In addition to protections related to COVID-19, farmworkers who mix, load, apply and come into regular contact with pesticides will also require masks and respiratory protection to work safely. However, the pandemic has led to personal protective equipment (PPE) shortages, which has made it difficult for farms to provide the PPE, such as respiratory masks, to MSAWs.[xl]

Additionally, the Families First Coronavirus Response Act (FFCRA) entitles employees to 80 hours of emergency paid sick leave and at least 10-12 weeks of paid emergency child care leave.[xli] The FFCRA is inclusive of H-2A visa holders, but for other farmworkers, the entitlements are limited to employers with workforce of 50-500 employees. The Council recommends the following to ensure these protections for all MSAWs:

1. The Secretary/HRSA draw Congress' attention to the critical need to overcome shortages in personal protective equipment (PPE) such as respiratory masks related to COVID-19, to enable hazard protection for MSAWs.
2. Urging HRSA to strategically draw attention to the farmworker health needs, and the urgent need to extend federal emergency paid leave protections related to COVID-19 to cover farmworker employees regardless of the size their employer's farm.

Background for Recommendation V

The Problem:

Despite the hazards that farmworkers face, and unlike other industries where hazard pay is available under COVID-19, farmworkers are not entitled to overtime pay.[xlii] The lack of sufficient federal legal protections leaves farmworkers more vulnerable to not having hazard protections.

The Explanation:

As mentioned above, shortages in PPE are making it difficult for farms to provide the equipment their employees need due to the stress of the COVID-19 pandemic.[xliii] Additionally, the FFCRA fails to benefit MSAWs employed on farms with less than 50 or more than 500 fellow employees.[xliv]

Opportunities and Impact:

Even before the COVID-19 pandemic, farmworkers were key to our Nation's food source stability, and to the health of residents in the U.S., dependent on food security. Going forward, we recommend that federal agencies implement measures to protect essential workers who work on farms of all sizes, through ample hazard protections.

In closing, The Council recognizes the essential role that agricultural workers play in our economy and in our country's domestically produced food supply. To ensure that our communities have a stable food supply, farms need to stay in business, towards this end it is critical that the nation prioritize farmworker health, so they can continue to do their jobs.

We thank the Secretary for your service and your consideration of our recommendations on behalf of those we serve.

Sincerely,

/Shedra Amy Snipes, PhD/
Vice-Chair, National Advisory Council on Migrant Health

cc:
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