

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

January 17, 2018

The Honorable Eric D. Hargan
Acting Secretary
Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave S.W.
Washington, D.C. 20202

Dear Acting Secretary Hargan and Administrator Verma:

As the opioid epidemic continues to affect communities across America, policy-makers and the public must understand the root causes of this public health crisis. While there is clearly no single cause to the epidemic, evidence has emerged that Medicaid is playing a perverse and unintended role in helping to fuel and fund the opioid epidemic. I write to provide the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) with the results of an examination into the perverse incentives created by Medicaid that contribute to the opioid crisis. I respectfully request information and material about what the Department is doing to prevent improper use of the Medicaid program to obtain opioids.

In February 2017, demographer Nicholas N. Eberstadt wrote in *Commentary* magazine about how Medicaid helps to finance “America’s immense and increasing appetite for opioids in our new century.”¹ To examine this issue, my staff searched court files and open-source databases and interviewed experts and law enforcement officials, who are increasingly focused on Medicaid fraud involving opioids. The inquiry found:

- Medicaid is a well-intentioned program that has inadvertently contributed to the nation’s opioid epidemic because it incentivizes the abuse and sale of dangerous drugs.
- Growing evidence indicates that Obamacare’s Medicaid expansion may be fueling the epidemic even more. Drug overdose deaths per one million people are rising nearly twice as fast in expansion states as non-expansion states,² while Medicaid-funded hospital stays related to opioids in the fourth quarter of 2014 jumped 37 percent as compared to the same period the prior year.³

¹ Nicholas N. Eberstadt, *Our Miserable 21st Century*, COMMENTARY MAG. (Feb. 15, 2017), <https://www.commentarymagazine.com/articles/our-miserable-21st-century/>.

² HHS produced an analysis to me showing internal data on drug overdose death rates in expansion versus non-expansion states between 2013 and 2015. It is unclear when HHS created the analysis.

³ See Healthcare Cost & Utilization Project, *Opioid-Related Hospital Use*, AGENCY FOR HEALTHCARE RES. & QUALITY, <https://www.hcup-us.ahrq.gov/faststats/OpioidUseServlet?location1=US&characteristic1=06&setting1=IP&location2=&characteristic2=06&setting2=IP&expansionInfoState=hide&dataTablesState=hide&efinitionsState=hide&exportState=hide> (last modified Dec. 13, 2017).

- In our nation's courts, prosecutors have convicted or charged at least 1,072 people in recent years with abusing Medicaid to obtain or sell prescription opioids. The numbers of criminal defendants increased 18 percent in the four years after Medicaid expanded compared to the previous four years, while the number of criminal cases jumped 55 percent post-expansion.
- The cases range from large-scale fraud schemes involving major drug rings to individual nurses and doctors stealing or over-prescribing pills, all at Medicaid's expense.
- Other federal programs, including Medicare, are also being exploited to obtain or sell opioids. In preliminary research, Committee staff found 243 instances of opioid-related Medicare fraud in recent years.

We do not represent that this is a scientific examination, and also acknowledge that the large numbers of defendants and court cases are not necessarily indicative of causation. Nor does this examination imply that Medicaid is the sole cause of the opioid epidemic; the problem has many causes and numerous possible solutions. The examination also does not imply that all opioid use is bad; clearly, opioids are an important pain management tool when used appropriately. But the data uncovered in this examination point to a larger systemic problem—because opioids are easily obtained and inexpensive through Medicaid, the structure of the program itself creates a series of incentives for beneficiaries to use opioids and sell them for potentially enormous profits. The data also likely represents a conservative estimate of Medicaid fraud involving opioids, because health care fraud is often not prosecuted⁴ and crime overall is significantly under-reported.⁵

President Trump declared the opioid epidemic as a Nationwide Public Health Emergency in October 2017.⁶ Although there are many factors contributing to the epidemic, and while Medicaid undoubtedly assists in treating opioid abuse, this examination presents evidence that the Medicaid program is also playing a role in funding the opioid epidemic. This facet of the opioid epidemic should not be ignored. Therefore, I respectfully ask that HHS and CMS review this report and please provide the following information and material:

1. Please provide a detailed accounting of how much the Medicaid program has spent on prescription opioids over the past 10 years, including the amounts spent on prescriptions for beneficiaries and for treatment for opioid addiction and overdoses.

⁴ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-216, HEALTH CARE FRAUD: INFORMATION ON MOST COMMON SCHEMES AND THE LIKELY EFFECT OF SMART CARDS (2016), <https://www.gao.gov/assets/680/674771.pdf>.

⁵ See Jennifer L. Truman, et al., *Criminal Victimization, 2015*, U.S. DEP'T OF JUST. BUREAU OF JUST. STAT. (Oct. 2016), <https://www.bjs.gov/content/pub/pdf/cv15.pdf>.

⁶ The White House, President Donald J. Trump Is Taking Action on Drug Addiction and the Opioid Crisis (Oct. 26, 2017).

2. Please provide a detailed accounting of how much the Medicare program has spent on prescription opioids over the past 10 years, including the amounts spent on prescriptions for beneficiaries and for treatment for opioid addiction and overdoses.
3. Please provide a full and complete explanation of the Department's efforts to address Medicaid's role in contributing to the opioid epidemic, including any new initiatives since the beginning of the Administration in January 2017 and since the President's declaration that the opioid crisis is a Nationwide Public Health Emergency in October 2017.
4. Please provide a full and complete explanation of the Department's work to improve the structure of the Medicaid program to limit the perverse incentives that lead to opioid abuse.
5. Please produce all data, documents, studies, or other analyses referring or relating to each of the following topics:
 - a. Medicaid's role in the opioid epidemic;
 - b. Opioid prescription rates for Medicaid beneficiaries as compared to non-Medicaid beneficiaries, broken down by state;
 - c. Opioid overdoses and overdose death rates for Medicaid beneficiaries as compared to non-Medicaid beneficiaries, broken down by state;
 - d. The effectiveness of Medicaid spending on treatment for opioid abuse; and
 - e. The potential for abuse of medications designed to treat opioid abuse—such as suboxone—and whether treatment drugs are themselves being abused to defraud Medicaid.
6. Please provide a full and complete explanation of the Department's efforts to oversee state Medicaid programs and Medicaid fraud control units to prevent Medicaid fraud involving opioid abuse.
7. Please provide a full and complete explanation of the Department's efforts to support federal, state, and local prosecutors in addressing Medicaid fraud involving opioid abuse.
8. In July 2017, I asked the Department of Health and Human Services Office of Inspector General to examine data suggesting a correlation between Medicaid and opioid overdoses.⁷ Please provide a full and complete explanation of the Department's efforts to cooperate with the Inspector General's ongoing review.

⁷ Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Daniel R. Levinson, Off. of Inspector Gen., Dep't of Health & Human Servs. (July 27, 2017).

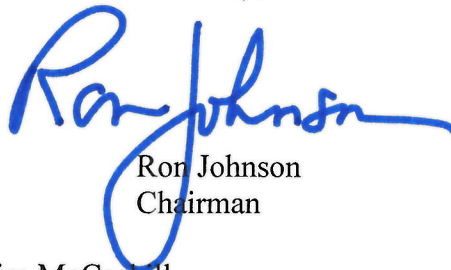
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Please provide this information as soon as possible but no later than 5:00 p.m. on January 31, 2017.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”⁸ Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.”⁹ When delivering the information, please produce to the Majority staff in room 340 of the Dirksen Senate Office Building and to the Minority staff in room 442 of the Hart Senate Office Building.

If you have any questions, please feel free to contact me directly or ask your staff to contact Jerry Markon at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

⁸ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

⁹ S. Res. 62 § 12, 115th Cong. (2017).