United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

July 27, 2017

The Honorable Daniel R. Levinson
Inspector General
Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20530-0001

Dear Mr. Levinson:

Late last week, in preparation for the Senate's deliberation on the Affordable Care Act (ACA), I requested a few examples of individuals prosecuted for selling opioids obtained using Medicaid cards. In just four days, using open-source databases, instead of "a few" examples my office shockingly identified 261 people who had been convicted—in states ranging from Pennsylvania to Vermont—of exploiting Medicaid cards to obtain opioids, which were often resold at enormous profit. These data appear to point to a larger problem: that the Medicaid expansion may be fueling the opioid epidemic in communities across the country. Internal Department of Health and Human Services (HHS) data shows that overdose deaths, largely from opioids, are surging much faster in Medicaid expansion states than in non-expansion states. I write to request that the Department of Health and Human Services (HHS) Office of Inspector General (OIG) review this matter and its implications for our nation's health.

The ACA expanded Medicaid eligibility to include adults under 65 with incomes up to 133% of the federal poverty level. The expansion took effect on January 1, 2014 in most states that adopted the expansion. In the years since, drug overdose deaths have risen at an alarming rate. Overdose deaths nationwide spiked 11.4 percent in 2015, Centers for Disease Control and Prevention (CDC) data show.[1] In 2016, *The New York Times* calculated, deaths surged another 19 percent, what the paper said was the largest one-year increase in U.S. history. The *Times* called it a "modern plague."[2]

Medicaid expansion states have been hardest hit. According to the attached data compiled by HHS, drug overdose deaths rose twice as fast per one million people in expansion states, compared to non-expansion states, between 2013 and 2015.[3] While not indicative of causation, the information suggests a correlation between Medicaid expansion and opioid overdoses. By

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[1] *See* Ctrs. for Disease Control & Prevention, *Web-based Injury Statistics Query and Reporting System,* https://webappa.cdc.gov/sasweb/ncipc/mortrate.htmll (last visited July 24, 2017) (Drug overdose data was obtained by searching this interactive CDC database).

[2] Josh Katz, *Drug Deaths in America Are Rising Faster Than Ever,* N.Y. TIMES (June 5, 2017), https://www.nytimes.com/interactive/2017/06/05/upshot/opioid-epidemic-drug-overdose-deaths-are-rising-faster-than-ever.html?_r=0.

[3] HHS produced this analysis to me. It is unclear when HHS created this analysis. HHS staff insisted that HHS markings on the document be removed before producing it to me.

2015, the latest CDC data shows, the five states with the highest rate of overdose deaths were all Medicaid expansion states: West Virginia, New Hampshire, Kentucky, Ohio, and Rhode Island.[4] As a result, Medicaid spending to treat ever-more victims is escalating, especially in expansion states. Spending on a single anti-opioid overdose medication increased an astonishing 90,205 percent between 2011 and 2016, a recent study found, with costs rising "most notably after 2014."[5] In Kentucky, another just-released study shows, Medicaid payments for substance abuse treatment for people newly enrolled under the ACA shot up 700 percent between the first quarter of 2014 and the second quarter of 2016.[6]

The growing epidemic has played out in courtrooms across the country, as prosecutors are increasingly focusing on health care fraud tied to opioids. By searching open-source court files and news articles, my office identified 261 defendants—three quarters of whom were in Medicaid expansion states—convicted in recent years for improperly using Medicaid cards to obtain prescription opioids.[7] The drugs were often resold illegally at a handsome profit. Law enforcement officials say, for example, that as many as 240 oxycodone pills can be purchased through Medicaid with only a $1 co-pay and resold for up to $4,000 on the street.[8] Here are a few examples that demonstrate the problem:

- In Wisconsin, more than 60 people were convicted post-Medicaid expansion in a conspiracy that flooded 10 Milwaukee-area counties with oxycodone. Half of the defendants paid for fraudulent prescriptions with their Wisconsin Medicaid cards.[9]

- Earlier this month, a 65-year-old Army veteran was sentenced to eight years in prison for selling thousands of Oxycodone pills through phony doctor prescription pads forged at a printing shop. This veteran and a co-conspirator, who also pleaded guilty, paid for the prescriptions with Medicaid cards or cash. "Those pills are more serious than cocaine and heroin," a judge scolded at sentencing. "People are dying from opioids."[10]

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[4] Ctrs. for Disease Control & Prevention, *Drug Overdose Death Data*, https://www.cdc.gov/drugoverdose/data/statedeaths.html (last visited July 24, 2017).
[5] Lisa Clemans-Cope, Marni Epstein & Genevieve M. Kenney, *Rapid Growth in Medicaid Spending on Medications to Treat Opioid Use Disorder and Overdose*, URB. INST. (June 2017), http://www.urban.org/sites/default/files/publication/91521/2001386-rapid-growth-in-medicaid-spending-on-medications-to-treat-opioid-use-disorder-and-overdose_1.pdf.
[6] MEDICAID AND CHIP PAYMENT AND ACCESS COMM'N, JUNE 2017 REPORT TO CONGRESS ON MEDICAID AND CHIP 60-97 (2017).
[7] This number is based on open-source search of court files and news articles. It is likely a conservative estimate.
[8] My office spoke with a police detective from Greenfield, Wisconsin, who is a Department of Justice task force officer focused on drug enforcement.
[9] Bruce Vielmetti, *50 Charged in Massive Oxycodone Trafficking Conspiracy*, J. SENTINEL (Oct. 16, 2014), http://archive.jsonline.com/news/crime/massive-pain-killer-trafficking-case-leads-to-charges-again-50-b99372363z1-279441862.html/.
[10] Paul Frangipane, *Brooklyn Judge Scolds Pill Peddler for Contributing to Opioid Crisis, Gets Eight Years*, BROOKLYN DAILY EAGLE (June 28, 2017), http://www.brooklyneagle.com/articles/2017/6/28/brooklyn-judge-scolds-pill-peddler-contributing-opioid-crisis-gets-eight-years.

- A former doctor sentenced last year billed Medicaid up to $1,037 per fraudulent oxymorphone prescription. Some of the pills—purchased with New York State Medicaid cards—were then sold at a Native American reservation near Niagara Falls.[11]

- A Connecticut doctor stands accused of writing fraudulent prescriptions for opioids—paid for with Medicaid cards and resold—and hiding some of the proceeds in a Swiss bank account. The case is part of charges the Justice Department announced this month against more than 400 people in an investigation focused on doctors prescribing excessive opioids. The scams caused more than $1 billion in false billing, much of it to Medicaid and Medicare.[12]

In addition, the following excerpt from an article written by American Enterprise Institute demographer Nicholas Eberstadt further describes this phenomenon, using demographic statistics:

> In the fall of 2016, Alan Krueger, former chairman of the President's Council of Economic Advisers, released a study that further refined the picture of the real existing opioid epidemic in America: According to his work, nearly half of all prime working-age male labor-force dropouts—an army now totaling roughly 7 million men—currently take pain medication on a daily basis.
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> We already knew from other sources (such as BLS "time use" surveys) that the overwhelming majority of the prime-age men in this un-working army generally don't "do civil society" (charitable work, religious activities, volunteering), or for that matter much in the way of child care or help for others in the home either, despite the abundance of time on their hands. Their routine, instead, typically centers on watching—watching TV, DVDs, Internet, hand-held devices, etc.—and indeed watching for an average of 2,000 hours a year, as if it were a full-time job. But Krueger's study adds a poignant and immensely sad detail to this portrait of daily life in 21st-century America: In our mind's eye we can now picture many millions of un-working men in the prime of life, out of work and not looking for jobs, sitting in front of screens—stoned.
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> But how did so many millions of un-working men, whose incomes are limited, manage en masse to afford a constant supply of pain medication? Oxycontin is not cheap. As *Dreamland* carefully explains, one main mechanism today has been the welfare state: more specifically, Medicaid, Uncle Sam's means-tested health-benefits program. Here is how it works (we are with [*Dreamland* author Sam] Quinones in Portsmouth, Ohio):

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[11] Press Release, U.S. Att'y Off. W. Dist. of N.Y., Former Doctor Sentenced for Illegally Prescribing Pain Medication (Jan. 25, 2016), https://www.justice.gov/usao-wdny/pr/former-doctor-sentenced-illegally-prescribing-pain-medication.

[12] Press Release, U.S. Dep't of Just., National Health Care Fraud Takedown Results in Charges Against Over 412 Individuals Responsible for $1.3 Billion in Fraud Losses (July 13, 2017), https://www.justice.gov/opa/pr/national-health-care-fraud-takedown-results-charges-against-over-412-individuals-responsible.

> [The Medicaid card] pays for medicine—whatever pills a doctor deems that the insured patient needs. Among those who receive Medicaid cards are people on state welfare or on a federal disability program known as SSI. . . . If you could get a prescription from a willing doctor—and Portsmouth had plenty of them—Medicaid health-insurance cards paid for that prescription every month. For a three-dollar Medicaid co-pay, therefore, addicts got pills priced at thousands of dollars, with the difference paid for by U.S. and state taxpayers. A user could turn around and sell those pills, obtained for that three-dollar co-pay, for as much as ten thousand dollars on the street.

In 21st-century America, "dependence on government" has thus come to take on an entirely new meaning.

You may now wish to ask: What share of prime-working-age men these days are enrolled in Medicaid? According to the Census Bureau's SIPP survey (Survey of Income and Program Participation), as of 2013, over one-fifth (21 percent) of all civilian men between 25 and 55 years of age were Medicaid beneficiaries. For prime-age people not in the labor force, the share was over half (53 percent). And for un-working Anglos (non-Hispanic white men not in the labor force) of prime working age, the share enrolled in Medicaid was 48 percent.

By the way: Of the entire un-working prime-age male Anglo population in 2013, nearly three-fifths (57 percent) were reportedly collecting disability benefits from one or more government disability program in 2013. Disability checks and means-tested benefits cannot support a lavish lifestyle. But they can offer a permanent alternative to paid employment, and for growing numbers of American men, they do. The rise of these programs has coincided with the death of work for larger and larger numbers of American men not yet of retirement age. We cannot say that these programs caused the death of work for millions upon millions of younger men: What is incontrovertible, however, is that they have financed it—just as Medicaid inadvertently helped finance America's immense and increasing appetite for opioids in our new century.

It is intriguing to note that America's nationwide opioid epidemic has not been accompanied by a nationwide crime wave (excepting of course the apparent explosion of illicit heroin use). Just the opposite: As best can be told, national victimization rates for violent crimes and property crimes have both reportedly dropped by about two-thirds over the past two decades. The drop in crime over the past generation has done great things for the general quality of life in much of America. There is one complication from this drama, however, that inhabitants of the bubble may not be aware of, even though it is all too well known to a great many residents of the real America. This is the extraordinary expansion of what some have termed America's "criminal class"—the population sentenced to

> prison or convicted of felony offenses—in recent decades. This trend did not begin in our century, but it has taken on breathtaking enormity since the year 2000.[13]

Clearly, those who are suffering from opioid misuse deserve treatment, and our nation must fight the scourge of illicit drugs. The number of convictions for improperly using Medicaid to obtain opioids, identified through such a cursory search, suggests a larger systemic problem. Because opioids are so available and inexpensive through Medicaid, it appears that the program has created a perverse incentive for people to use opioids, sell them for large profits, and stay hooked. I respectfully ask that the HHS OIG conduct a comprehensive review of controls in place to prevent the further abuse or improper use of the Medicaid program to obtain opioids.

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,"[14] Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices . . . ."[15]

If you have any questions, please contact Jerry Markon of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,

Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

Attachment

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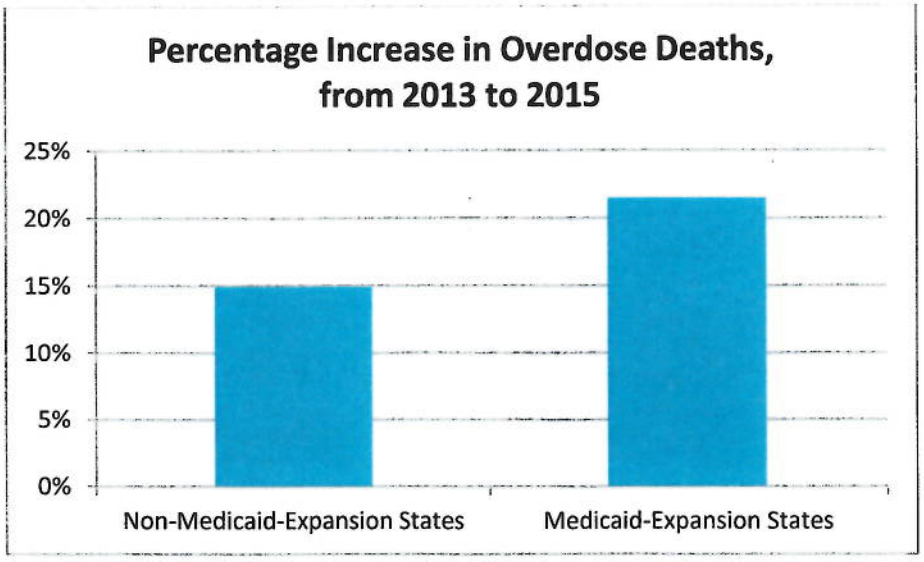
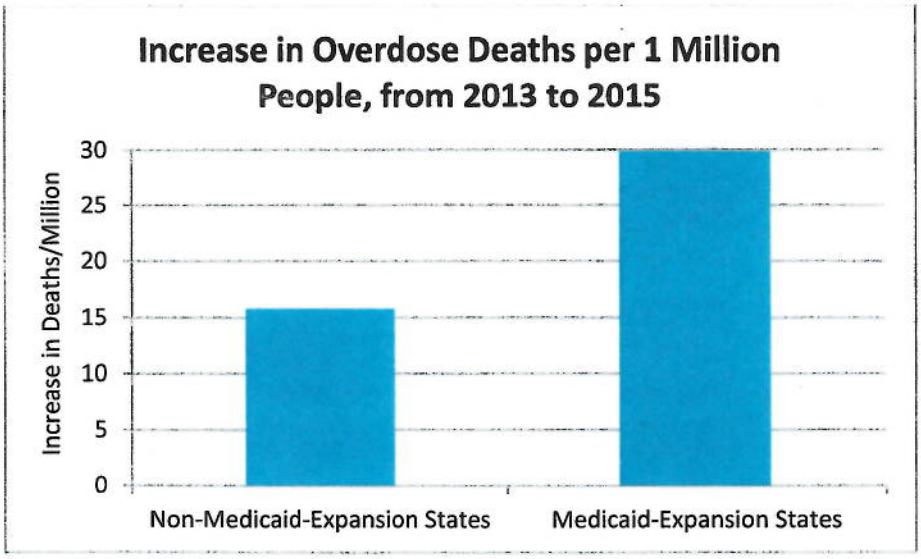
[13] Nicholas N. Eberstadt, *Our Miserable 21st Century,* COMMENTARY MAG. (Feb. 15, 2017) (internal footnotes omitted), https://www.commentarymagazine.com/articles/our-miserable-21st-century/; Alan B. Krueger, *Where Have All the Workers Gone?* (Oct. 4, 2016) (Princeton U. & Nat'l Bureau of Econ. Res., Paper).
[14] S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).
[15] S. Res. 62 § 12, 115th Cong. (2017).

Medicaid Expansion Has Not Mitigated the Opioid Crisis

Overdose Deaths Have Increased Far More in States That Implemented Obamacare's Medicaid Expansion than in Those That Didn't:





- In the 29 states (plus Washington, D.C.) that expanded Medicaid under Obamacare (by December 31, 2015), there were 27,937 drug-overdose deaths in 2013 and 33,958 in 2015—an increase of 22%.
- In the 21 non-expansion states, there were 16,045 drug-overdose deaths in 2013 and 18,446 in 2015—an increase of 15%.
- Overdose deaths per one million people increased by 30 deaths (from 147 to 177) in Medicaid-expansion states, while they increased by 16 deaths (from 127 to 143) in non-expansion states.

Sources:

Drug-overdose deaths by state are from the CDC: https://www.cdc.gov/drugoverdose/data/statedeaths.html
Population figures are from the U.S. Census: https://www.census.gov/data/datasets/2016/demo/popest/state-total.html

Percentage Increase in Overdose Deaths from 2013 to 2015—Selective Comparisons of Similar States

Maine (non-Medicaid-expansion state under Obamacare): 55%
New Hampshire (Medicaid-expansion state under Obamacare): 108%

South Dakota (non-expansion state): 18%
North Dakota (expansion state): 205%

Louisiana (non-expansion state (as of 12/31/15)): 6%
Arkansas (expansion state): 23%

Virginia (non-expansion state): 22%
Maryland (expansion state): 44%

Wisconsin (non-expansion state): 3%
Ohio (expansion state): 41%

Mississippi (non-expansion state): 11%
West Virginia (expansion state): 27%