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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

October 7, 2016

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Mr. Andrew Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Attention: CMS-1656-P  
7500 Security Blvd.  
Baltimore, MD 21244-1850

Dear Acting Administrator Slavitt:

I write regarding a proposed rule by the Centers for Medicare and Medicaid Services (CMS) to remove the pain management dimension from the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey for the hospital Value-Based Purchasing Program beginning in Fiscal Year (FY) 2018.<sup>1</sup> I support this proposal, and I write to highlight the numerous other comments that were filed in this proceeding also supporting such an approach. I also write to request regular briefings on CMS's progress in evaluating the comments and implementing the rule change.

The National Institute on Drug Abuse (NIDA) reports that “[o]ver 2 million people in the United States suffer from substance use disorders related to prescription opioid pain relievers,” and that while the “causes are complex . . . they include overprescription of pain medications.”<sup>2</sup> This is particularly alarming, as the current drug czar recently testified to my Committee that “four out of five newer users to heroin started by misusing prescription pain medication.”<sup>3</sup> Thus, the overprescription of pain medication has led to an opioid epidemic in this country.

As a result of this epidemic, my home state of Wisconsin has seen a spike in overdose deaths. According to a witness at a Committee field hearing convened in Wisconsin, in 2015 “Milwaukee County alone reported 109 heroin-related overdose deaths,” up from 31 in 2008.<sup>4</sup> Fentanyl, a stronger opioid than heroin, has already been responsible for 30 deaths in Milwaukee County,

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<sup>1</sup> Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Procurement Organization Reporting and Communication; Transplant Outcome Measures and Documentation Requirements; Electronic Health Record (EHR) Incentive Programs; Payment to Certain Off-Campus Outpatient Departments of a Provider; Hospital Value-Based Purchasing (VBP) Program, 81 Fed. Reg. 4503 (proposed July 14, 2016) (to be codified at 42 CFR 416, 419, 482, 486, 488, 495).

<sup>2</sup> *DrugFacts: Prescription and Over-the-Counter Medications*, National Institute on Drug Abuse (last updated Dec. 2014), available at <http://www.drugabuse.gov/publications/drugfacts/prescription-over-counter-medications>.

<sup>3</sup> *America's Insatiable Demand for Drugs: Assessing the Federal Response: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2016) (statement of Michael P. Botticelli, Director, Office of National Drug Control Policy).

<sup>4</sup> *Border Security and America's Heroin Epidemic: The Impact of the Trafficking and Abuse of Heroin and Prescription Opioids in Wisconsin: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2016) (statement of James Bohn, Executive Director, Wisconsin High Intensity Drug Trafficking Area (HIDTA) Program).

Wisconsin, in the first three months of 2016.<sup>5</sup> To address this epidemic, on April 7, 2016, I, along with Senators Manchin, Barrasso, and Blumenthal, introduced S. 2758, the Promoting Responsible Opioid Prescribing (PROP) Act to reduce the pressure doctors currently face that may lead to overprescribing.<sup>6</sup> Specifically, the PROP Act prohibits pain management questions on patient surveys from being factored into Medicare reimbursement calculations.<sup>7</sup> In July 2016, CMS recognized the importance of this proposal and proposed to remove pain management questions from hospital payment calculations.<sup>8</sup>

CMS suggested that this change was proposed “in an abundance of caution” to remove any potential incentive for health professional to over-prescribe pain medication in order to receive a higher score from patients.<sup>9</sup> CMS’s reluctance to recognize this as a problem has motivated me, and others, to emphasize the facts in this proceeding. As one commenter wrote, “I would disagree with the assertion that there is no published data regarding the correlation between patient satisfaction metrics and provider behavior.”<sup>10</sup> He went on to explain: “there is most definitely a perception in the practicing community that withholding opiate prescriptions when demanded by the patient will lead to consequences on patient satisfaction metrics.”<sup>11</sup>

Comments to CMS’s proposed rule were due on September 6, 2016. Upon review of these comments, there appears to be overwhelming support at every level of the healthcare profession for CMS to move forward in eliminating pain management questions from the HCAHPS survey. As one pain management physician pointed out, these questions “ABSOLUTELY result[] in increased narcotic prescribing in the inpatient and outpatient setting, and also contributes to higher rates of adverse patient events due to narcotics.”<sup>12</sup> A nurse of 21 years elaborated: “Physicians will give pain meds to patients so they don’t receive negative patient satisfaction scores. Their pay is often directly related to that scoring system. Our nation has raised a whole new generation of people who expect a pill to fix them.”<sup>13</sup> Similarly, a neurosurgeon wrote “we need to treat our patients’ pain, but within reason.”<sup>14</sup> Finally, a hospitalist explained that these questions, “led to increased opiate prescribing at

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<sup>5</sup> Crocker Stephenson, *Fentanyl-Related Deaths Spike to 30 in Milwaukee County in '16*, Milwaukee Journal Sentinel (Apr. 7, 2016), <http://www.jsonline.com/news/health/fentanyl-related-deaths-spike-to-30-in-milwaukee-county-in-16-b99701948z1-374873441.html>.

<sup>6</sup> PROP ACT of 2016, S.2578, 114th Cong. (2015-2016).

<sup>7</sup> *Id.*

<sup>8</sup> Medicare Program, *supra* note 1.

<sup>9</sup> *Id.*

<sup>10</sup> Brian Hiestand, Comment CMS-2016-0115-1221 (Sept. 22, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016) (citing S. Kelly et al., “*Pressured to Prescribe: The Impact of Economic and Regulatory Factors on South-Eastern ED Physicians When Managing the Drug Seeking Patient*,” U.S. National Library of Medicine, National Institutes of Health (Apr.-June 2016), <https://www.ncbi.nlm.nih.gov/pubmed/27162437>; AC Pomerleau et al., *The Impact of Prescription Drug Monitoring Programs and Prescribing Guidelines on Emergency Department Opioid Prescribing: A Multi-Center Survey*, U.S. National Library of Medicine, National Institutes of Health (Mar. 2016), <https://www.ncbi.nlm.nih.gov/pubmed/27162437>).

<sup>11</sup> *Id.*

<sup>12</sup> Jason Hennes, Comment CMS-2016-0115-0015 (July 26, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016) (emphasis in original).

<sup>13</sup> Julie Ann Morse, CGH Medical Center, Comment CMS-2016-0115-0757 (Sept. 20, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>14</sup> Anthony DiGiorgio, Comment CMS-2016-0115-0113 (Sept. 16, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

our facility and inappropriate prescribing at that.”<sup>15</sup> This commenter went on to explain: “The number of times I have heard from physicians at not just our facility but other facilities throughout the city, that they feel forced into prescribing opiates in spite of their better judgment due to patient satisfaction surveys is astounding.”<sup>16</sup>

Not only did the medical community weigh in with your proposal, but concerned parents did as well. A commenter from North Carolina explained how his daughter was prescribed opioids after she had to have eight teeth pulled in preparation for braces.<sup>17</sup> The parent asked the doctor why an opioid was prescribed over ibuprofen.<sup>18</sup> The doctor responded that “he prescribed the opioids not because it was the right choice for the patient but rather because he was concerned about dissatisfaction among patients and their parents if opioids were not prescribed.”<sup>19</sup> As this commenter concluded “Perception by the patients of what was best, not what the research found most effective ruled the day.”<sup>20</sup>

Beyond individual testimonials, a host of hospitals and associations across the country also weighed in in support of the CMS proposal. The American Academy of Physician Assistants noted such a reform “helps mitigate the country’s severe opioid addiction problem by reducing over-prescribing.”<sup>21</sup> The Emergency Nurses Association, American Association of Orthopedic Surgeons, Association of American Medical Colleges, American College of Physicians, PhRMA, American College of Surgeons, American Hospital Association, National Rural Health Association, and the American Medical Association also filed comments supporting the proposed rule.<sup>22</sup>

Finally, at a state and local level there is also broad support for this approach. For example, the Rural Wisconsin Health Cooperative wrote: “By removing this metric from VBP calculations, the providers can implement their best judgment about managing the patient’s pain . . . . Our goal is that over time we will see a reduction in opiate use in the rural population while simultaneously

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<sup>15</sup> Anonymous, Comment CMS-2016-0115-0156 (Sept. 19, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>16</sup> *Id.*

<sup>17</sup> Lawrence Greenblatt, Comment CMS-2016-0115-0875 (Sept. 20, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Michael Powe, American Academy of Physicians Assistants, Comment CMS-2016-0115-1221 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>22</sup> Rob Kramer, Emergency Nurses Association, Comment CMS-2016-0115-2096 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Anonymous, American Association of Orthopaedic Surgeons, Comment CMS-2016-0115-2097 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Ayeisha Cox, Association of American Medical Colleges, Comment CMS-2016-0115-1993 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Brooke Rockwern, American College of Physicians, Comment CMS-2016-0115-2021 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Kelsey Lang, PhRMA, Comment CMS-2016-0115-2285 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Molly Peltzman, American College of Surgeons, Comment CMS-2016-0115-2186 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Thomas Nickels, American Hospital Association, Comment CMS-2016-0115-2120 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Diane Calmus, National Rural Health Association, Comment CMS-2016-0115-2185 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Anonymous, American Medical Association, Comment CMS-2016-0115-1754 (Sept. 28, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

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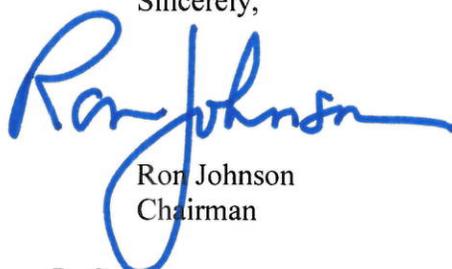
improving pain management.”<sup>23</sup> This sentiment was echoed by the Hospital and Healthsystem Association of Pennsylvania, California Medical Association, Healthcare Association of New York State, New Hampshire Hospital Association, New Jersey Hospital Association, and Missouri Hospital Association.<sup>24</sup>

One commenter eloquently concluded, “Removing this sword of Damocles will help to alleviate the perverse incentive created by regulatory bodies to over-prescribe.”<sup>25</sup> I agree with this assessment. Based on the record described above, I urge CMS to quickly move forward to adopt a final rule in this proceeding that pursues the same goals as my bill, the PROP Act.

During the Committee’s field hearing in Wisconsin, Dr. Timothy Westlake, the Vice Chairman of the State of Wisconsin Medical Examining Board, testified that the PROP Act is “the single-most important piece of legislation reform that [federal policymakers] could do.”<sup>26</sup> I will continue to work in Congress to advance this bill. Given the importance of this rule in stemming the tide of opioid abuse in Wisconsin and across the country and the overwhelming support for the change among doctors, administrators, and patients, I respectfully urge you to implement the rule as soon as possible and provide the Committee with regular briefings on your progress.

Thank you for your prompt attention to this matter. If you have any questions about this request, please contact Brooke Ericson of the Committee staff at (202) 224-4751.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

<sup>23</sup> Jeremy Levin, Rural WI Health Cooperative, Comment CMS-2016-0115-2308 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>24</sup> Susan Weltmer, The Hospital and Healthsystem Association of PA, Comment CMS-2016-0115-2112 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Elizabeth McNeil, California Medical Association, Comment CMS-2016-0115-1949 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Kevin Krawiecki, Healthcare Association of New York State, Comment CMS-2016-0115-2171 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Anonymous, New Hampshire Hospital Association, Comment CMS-2016-0115-2245 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Roger Sarao, New Jersey Hospital Association, Comment CMS-2016-0115-2126 (Sept. 29, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016); Daniel Landon, Missouri Hospital Association, Comment CMS-2016-0115-1532 (Sept. 28, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>25</sup> Brian Hiestand, Comment CMS-2016-0115-1221 (Sept. 22, 2016), 81 Fed. Reg. 4503 (proposed July 14, 2016).

<sup>26</sup> *Border Security and America’s Heroin Epidemic: The Impact of the Trafficking and Abuse of Heroin and Prescription Opioids in Wisconsin: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2016) (statement of Timothy Westlake, Vice Chairman, State of Wisconsin Medical Examining Board, and Chairman, Controlled Substance Committee).