Nominations Hearing

November 13, 2014

Questions for the Record from Senator Dianne Feinstein

for

Michael Botticelli, Acting Director, Office of National Drug Control Policy

1. As you know, despite Congressional action two years ago that outlawed several synthetic drugs, manufacturers and distributors have managed to stay one step ahead of the law by slightly altering the chemical structures that produce "controlled substance analogues," which mimic the psychoactive effects of drugs like ecstasy, cocaine, PCP, and LSD. These slight changes have enabled manufacturers and distributors to avoid prosecution and have led to overdoses and deaths, primarily amongst our nation's youth.

    - *My staff has repeatedly heard from the Drug Enforcement Administration, Department of Homeland Security and others that a more efficient, permanent scheduling process is crucial to staying ahead of synthetic drug manufacturers. In your view, would legislation that enables synthetic substances to be scheduled more expeditiously help address the import, manufacture, and distribution of these dangerous synthetic drugs?*

ANSWER: While the existing procedure to control substances is sufficient with respect to known substances (e.g., chemical entities approved for medical use), legislation that enables new psychoactive substances to be permanently controlled quickly would help address the import, manufacture, and distribution of these dangerous drugs. Currently, the Controlled Substances Act (CSA) requires the Drug Enforcement Administration to wait for the next new psychoactive substance to be synthesized, identified, and sold in retail environments with labeling designed to circumvent the Analogue Act. As a result, individuals who abuse substances and unsuspecting youth have been exposed to dangerous substances and, in many instances, have even suffered adverse health consequences, including death. We would be happy to work with your office on legislation to address this concern.

2. In 2012, Colorado and Washington legalized the production, distribution, possession, and use of marijuana for recreational purposes. Recently, Oregon and Alaska approved similar initiatives, while the District of Columbia approved the possession, use, and production of marijuana.

    - *Does ONDCP believe that these laws are in conflict with the United States' obligations under the U.N. Conventions, which require state parties to limit the production, distribution, possession, and use of marijuana to scientific and medical purposes?*

ANSWER: We respect the democratic process, but the evidence pointing to serious health risks associated with cannabis use, particularly by children and young adults, remains unchanged. This is why the Office of National Drug Control Policy (ONDCP) is spearheading an effort by the Federal Government to monitor cannabis use in the United States so that we may scientifically examine its effects. We believe that the policies set forth in the U.N. drug conventions limiting access to controlled substances for medical and scientific purposes are sound, and based on valid health concerns. The United States is firmly committed to upholding our obligations under the three U.N. drug conventions, as well as working with international partners to promote the goals of those conventions. These conventions are the foundation of international cooperation for dealing with all aspects of the drug problem, and we support them unwaveringly.

Under U.S. Federal law, marijuana remains a Schedule I drug under the CSA, subject to a high level of control, with criminal penalties for its illegal distribution and sale.

The Federal Government is committed to enforcement of the CSA. The Department of Justice (DOJ) articulated eight Federal enforcement priorities with respect to cannabis (see Memorandum from Deputy Attorney General Cole dated August 29, 2013) and is currently investigating and has prosecuted criminal enterprises involved in marijuana trafficking and violence in all areas of the country. Additionally, ONDCP and its Federal partners are monitoring the implementation of state-level initiatives.

While the consequences of legalization measures in four states are a serious concern, U.S. compliance with the Conventions has not changed.

- *The State Department recently called for a flexible interpretation of the U.N. Conventions. Does ONDCP support a flexible interpretation of the U.N. Conventions? If so, what does ONDCP's interpretation look like?*

ANSWER: The U.S. Government strongly supports the U.N. drug control conventions that have been the foundation of global anti-drug efforts since the initial opium convention in 1912. The three modern conventions (1961, 1971, and 1988) continue to serve as the essential guiding documents to help all governments forge strong and effective drug policies. The United States opposes efforts to alter the Conventions.

Per the requirements of the Conventions, as well as our domestic laws, the U.S. Government heavily emphasizes proactive enforcement of laws against drug production and trafficking, as well as related money laundering, violence, and other illegal activities that impact the safety of our citizens. We lead the world in efforts against international drug cartels wherever they operate, and have – with the strong support of the Congress over many years – provided training, technical assistance, and other aid to key partners around the world, especially in the Western Hemisphere to help them disrupt and dismantle these organizations.

ONDCP supports what the Department of State has termed a "flexible" interpretation of the conventions, which addresses the range of responses to drug problems that the conventions envision, rejecting a rigid "prosecute and imprison" stance that some have argued is required under the conventions. As the International Narcotics Control Board has observed, the Conventions are highly respectful of domestic law, and each country's unique circumstances affect how it implements its Convention obligations. In particular, article 36 of the Single Convention acknowledges "constitutional limitations" as a constraint. The Conventions, as they have evolved in practice, show the capacity to permit variations in national law and policy. In the case of the United States, constitutional limitations are a major factor, given the interplay of Federal and state-level laws and authorities on drug control issues.

The Conventions also explicitly authorize countries to provide alternatives to prison for drug users and low level drug-involved offenders. Thus, for example, inherent in the Conventions is sufficient flexibility for countries like the United States to differentiate sentencing policy between significant drug traffickers and violent criminals and drug-involved nonviolent offenders, who are more appropriately directed into alternatives to incarceration that can concurrently address substance use problems and protect public safety.

3. In August 2013, the Department of Justice issued "the Cole Memorandum" which delineated eight priority enforcement areas related to marijuana. This memo also emphasized that states must implement "strong and effective regulatory and enforcement systems" to ensure that their laws legalizing marijuana "do not undermine federal enforcement priorities."

    - *Is ONDCP working with its federal counterparts to ensure that states have implemented strong and effective regulatory and enforcement systems? If so, what metrics are being used to make this determination? If not, why not?*

ANSWER: ONDCP, with its Federal partners, is monitoring the consequences to public health and safety of state laws that legalize marijuana.

We are also in contact with Colorado and Washington and have encouraged them to enhance their ability to track the impacts of their legislation. For example, we have encouraged them to work with their community hospitals to obtain data on marijuana-related emergency department visits to assess the degree to which marijuana use may result in acute health problems. We also have asked that they maintain and make publicly available data on sales and tax receipts for use in econometric analyses of the consumption of marijuana and related consequences.

As sales of state-regulated marijuana and marijuana-containing products began in Colorado in January 2014 and in Washington in July 2014, it is too early to assess the public health and safety impact of such sales in these two states.

Most of the data systems the Government is relying upon to assess the impact of these laws collect data on an annual cycle. In most cases, results for 2014 will not be available until 2015. Neither state has yet to release data from their own data systems on the post-implementation period.

- *It is my understanding that data related to the public health and criminal justice impacts of marijuana legalization in Colorado and Washington State can be culled from a number of existing sources. As the federal agency responsible for national drug control, is ONDCP working with its counterparts to create a singular document that will provide a complete picture of the public health and criminal justice impacts of the laws in these states? If not, why not?*

ANSWER: ONDCP and its partners will be collecting and analyzing data for the entire country, for the states in question, and for states that border those that have implemented commercialization programs that increase access to marijuana, to the extent that the data systems permit analysis at the state level.

For example, the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health permits state-level estimates of many variables, including the prevalence of use of marijuana and perceptions of harm and disapproval. These data can be analyzed by age and other demographic variables. The National Highway Traffic Safety Administration's Fatal Analysis Reporting System provides state-level data on fatal traffic crashes, including whether drugs were involved.

ONDCP does not anticipate producing a "singular document" report on the impact on public health and safety of these laws. All of the relevant Federal data systems are on different collection and reporting cycles. ONDCP and its Federal partners will report on the data, including those relevant to assessing the impact of these state marijuana legalization laws, as the data are available for release. This process will provide more timely information on the potential impact of these laws.

4. As Chairman of the Senate Caucus on International Narcotics Control, it is clear to me that the United States needs more effective drug treatment programs. However, experts have stated said that only a fraction of the Americans who show signs of substance abuse get the treatment they need. One of the causes for this gap may be the 16 bed limit on treatment centers that accept Medicaid patients.

    - *Do you believe that the 16 bed limit for substance abuse treatment facilities that accept Medicaid patients should be lifted?*

This issue is very important as we work to expand substance use disorder services and increase patient access. A major consideration of whether or not the limit should be lifted is recognizing that the demand for substance use disorder services continues to increase, while the number of providers in many communities is lacking. Given this, the 16-bed patient limit creates a barrier for people to access the care they need to treat their substance use disorders.

People need to have the opportunity to receive the right care at the right time, and in the right setting to treat their substance use disorder. Medicaid beneficiaries with substance use disorders are a vulnerable population, often have low incomes, and have complex chronic illnesses and medical comorbidities needing access to a range of healthcare services. Therefore, efforts to expand, and not limit, services and patient access is critical to address substance use disorders and the health of the people with these disorders across our Nation.

The Centers for Medicare and Medicaid Services (CMS) is conducting a study to assess the impact the 16-bed limit may have on treatment access. A report on the study's findings will be released in the coming months.

In addition to addressing treatment capacity, it is also necessary to establish industry standards for placement, continued stay, and transfer/discharge of patients with substance use disorders and co-occurring conditions. Once standards are formulated and adopted, accrediting and licensing entities need to work with service delivery providers to ensure compliance.

- *While this limit remains in place, is there a way to work administratively to ensure that more Americans who seek treatment receive it?*

To support substance use disorder treatment efforts across the Nation, ONDCP has created and leads an interagency workgroup, the Treatment Coordination Group (TCG). The TCG is charged with the following:

- Coordinating and synchronizing efforts of Federal partners who play a role in supporting the substance use disorder treatment services described in the *National Drug Control Strategy*;
- Increasing comprehension of the landscape of treatment for substance use disorders;
- Ensuring the adoption of quality evidence-based services and systems of care across Federal agencies and contractors;
- Developing and promoting opportunities among Federal partners to expand access to treatment services for substance use disorders;
- Ensuring that agency, programmatic, and interagency data (performance, research, etc.) inform discussions and decisions; and
- Sharing insight and experience to address issues pertaining to treatment for substance use disorders.

The Federal partners in the TCG have agreed to synchronize individual agency efforts to:

- Ensure access to substance use disorder treatment, including medication-assisted treatment, is improved,
- Increase in the quality of treatment services delivered; and
- Have systems in place to monitor adequately the outcome of these services.

Each TCG agency has reported to ONDCP on short-term and long-term activities and progress on expanding access to treatment and on ensuring that people have access to the continuum of recovery and support services.

An example of the efforts of a partner in the TCG is CMS's Medicaid Innovation Accelerator Program (IAP). Based on its work with states and stakeholders, CMS identified substance use disorders as an area of focus for IAP efforts. As part of a strategy to improve the care and outcomes for individuals with substance use disorders, CMS works with states to leverage IAP resources to introduce system reforms that better identify individuals with substance use disorders, expand coverage for effective substance use disorder treatment, and enhance substance use disorder practices delivered to beneficiaries.

Finally, we cannot forget that the Affordable Care Act (ACA) allows expanded access to substance use disorder services. This is a significant change to the way services for substance use disorders can be delivered, which historically has been through a separate delivery system only for the most chronic patients. Full implementation of the ACA gives many more Americans in need of substance use treatment an opportunity to be treated.