

SENATE JUDICIARY COMMITTEE

HEARING ON
“OVERSIGHT OF THE ENSURING PATIENT ACCESS AND EFFECTIVE DRUG
ENFORCEMENT ACT”

DECEMBER 12, 2017

QUESTIONS FOR THE RECORD FROM

SENATOR DIANNE FEINSTEIN

**RESPONSE FROM BRIAN E. FROSH, ATTORNEY GENERAL OF MARYLAND
(JANUARY 24, 2018)**

Questions for Attorney General Brian Frosh, State of Maryland

1. Using Data to Prevent Diversion

The Automation of Reports and Consolidated Orders System, commonly known as ARCOS, is a data collection system maintained by DEA in which drug manufacturers and distributors report their controlled substance transactions. These reports can help identify the diversion of controlled substances in to illicit channels.

- a. Would sharing de-identified data with registrants that only includes information such as the total number and type of opioids going to specific pharmacies and the total number of distributors serving specific pharmacies help prevent diversion?*

Pharmaceutical distributors contend that they would be better able to track suspicious orders if they received access to total opioid data for individual pharmacies. While this claim may seem plausible, it seems equally plausible that this data might provide distributors with a tremendous competitive advantage that ultimately could increase – not decrease – distribution. This may be why the DEA has repeatedly rejected distributor attempts to gain access to this data. Ultimately, state attorneys general do not possess the broad access to and expertise concerning DEA ARCOS data that the DEA possesses. I therefore defer to the DEA’s judgment and suggest that, given the vast over-distribution of opioids in the United States over the last two

decades, Congress should receive any request to overrule the DEA in these matters with healthy skepticism.

2. Opioid Quotas

The Attorney General, acting through DEA, is responsible for limiting the amount of a controlled substance that can be produced, distributed, and purchased by drug manufacturers. This is mandated by the Controlled Substances Act. Based on a number of factors, DEA gives each manufacturer a quota for the amount of a controlled substances it can produce, distribute, or buy to make prescription drugs. Importantly, these factors do not include abuse and overdose rates for particular substances or classes of substances, like opioids.

- a. Would legislation amending the Controlled Substances Act to explicitly authorize DEA to consider abuse and overdose rates when setting quotas be helpful?*

Yes. The DEA's practice has been to set quotas that far exceed the amount of legitimate need. While the DEA has very recently moved in the right direction by reducing quotas, the quotas remain far in excess of what is necessary to meet the country's legitimate needs. Americans across the country would benefit substantially if Congress provided a clear mandate to the DEA to use quotas to constrain the flood of pills that has enabled so much addiction, abuse, and avoidable death.

We must always ensure, of course, that the supply of opioids is sufficient to meet legitimate medical needs. There remains ample room, however, to curb abuse by implementing further reductions in production quotas, while still ensuring that individuals with medical illnesses are able to obtain the medicines they need.