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March 13, 2020

VIA ELECTRONIC TRANSMISSION

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Mr. Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street, NW
Washington, D.C. 20534

Dear Attorney General Barr and Director Carvajal:

I write to you today concerning the Department of Justice Office of Inspector General's (DOJ IG) recent review of the Federal Bureau of Prison's (BOP) drug procurement process and its efforts to control drug costs.¹ In its report, DOJ IG identified several problems which risk BOP spending millions more for prescription drugs than other Federal agencies.

According to DOJ IG, BOP's drug purchases increased from \$74 million to approximately \$127 million, or 71 percent, between FY 2012 and FY 2018.² DOJ IG attributed this to a number of factors, including rising drug costs and an aging inmate population.³ For example, BOP's spending on Hepatitis C drugs alone represented a 20 percent increase in BOP's annual drug spending in 2018.⁴ DOJ IG also identified a number of issues relating to BOP's drug procurement process and its ability to control drug costs, including its lack of access to the

¹ U.S. DEP'T. OF JUST., OFF. OF INSPECTOR GEN., EVALUATION AND INSPECTIONS DIVISION NO. 20-027, REVIEW OF THE FEDERAL BUREAU OF PRISONS' PHARMACEUTICAL DRUG COSTS AND PROCUREMENT (2020).

² *Id.* at 1.

³ *Id.* at 2, fn 4.

⁴ *Id.*

lowest government price, lack of oversight, and its inability to collect and analyze accurate drug purchasing data.

First, BOP purchases a majority of its drugs at the Federal Supply Schedule (FSS) price.⁵ However, it does not have access to the lowest government price known as the “Big 4” price.⁶ The Big 4 price is a type of FSS price that is only available by statute to four Federal agencies: (1) the U.S. Department of Defense, (2) the U.S. Public Health Service, (3) the U.S. Department of Veterans Affairs (VA), and (4) the U.S. Coast Guard.⁷ These Federal agencies often get discounts on brand-name drugs because these drugs are subject to a maximum ceiling price.⁸ This gives these agencies the ability to control drug costs and procure brand-name drugs at a significant discount.

According to DOJ IG, BOP could save tens of millions of taxpayer dollars on drug purchases, especially on certain high cost specialty drugs, if it had access to Big 4 prices.⁹ DOJ IG also found that, while BOP previously tried to obtain Big 4 pricing, DOJ and BOP have not prioritized this initiative.¹⁰ DOJ IG recommended that the Office of the Deputy Attorney General (ODAG), in consultation with other DOJ components and federal stakeholders, seek to obtain Big 4 pricing for BOP.¹¹ BOP and ODAG concurred with DOJ IG’s recommendation and explained that it will “assess the risks and the benefits” of this proposal.¹²

Second, DOJ IG found that BOP does not ensure that its institutions purchase drugs in the most cost efficient way. According to DOJ IG, BOP institutions have different sources by which they can procure drugs,¹³ but a majority make their purchases through the VA’s Prime Vendor Program (PVP).¹⁴ To help its institutions identify the least expensive drug, BOP recommends a drug ordering hierarchy.¹⁵ For example, BOP recommends that its institutions first seek to purchase generic drugs through the VA’s PVP before purchasing brand-name drugs and that purchases from secondary wholesalers “should only be considered as a last resort.”¹⁶ However, BOP does not require its institutions to follow this hierarchy, nor does it ensure that its

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.* In addition, other DOJ components do not have access to Big 4 prices, notably the U.S. Marshals Service. *Id.* at 9.

⁸ In 1992, Congress passed the Veteran’s Health Care Act of 1992 which requires pharmaceutical manufacturers to list covered drugs on the FSS in order to participate in Medicaid. It also created a statutorily mandated ceiling price for sales to the Big 4 purchasers. 38 U.S.C. § 8126(a).

⁹ *Supra* note 1, at 8.

¹⁰ *Id.* at 8-11.

¹¹ *Id.* at 38. In 2016, DOJ IG also identified a similar instance in which BOP was paying more for certain medical services because it did not have authority to cap its Medicare reimbursement rate. DOJ IG suggested that BOP explore legislative options to address this issue. *Id.* at 10.

¹² *Id.* at 45.

¹³ *Id.* at 1.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 11-13.

¹⁶ *Id.* at 12.

institutions are even aware of this guidance.¹⁷ Therefore, BOP and its institutions may be paying more than necessary for drugs.

BOP also does not have accurate or complete data on its institution's drug purchases.¹⁸ According to DOJ IG, not all institutions report their non-PVP purchases to BOP¹⁹ and, even when the institutions report non-PVP purchases, the reporting does not capture key details such as source of the purchase (e.g., if the drug was purchased from a grey market source).²⁰ Without accurate or complete data, BOP cannot implement measures to control drug costs. For example, DOJ IG highlighted that when drugs are out-of-stock, institutions may resort to purchasing more expensive brand-name drugs.²¹ However, if BOP had access to better drug purchasing data, it could inform the prime vendor and thereby trigger the vendor to increase inventory at its distribution centers.²² DOJ IG recommended that BOP's institutions track and report to BOP all their drug purchases and capture details such as source, purchase data, quantity, and price.²³

In order to better understand how DOJ and BOP will address the inspector general's recommendations to enhance BOP's drug procurement process and control costs, I ask that you answer the following questions no later than March 30, 2020.

1. How will DOJ and BOP assess the risks and benefits of obtaining Big 4 pricing? What is the timeframe for completing this assessment? Please provide a copy of this assessment when it is complete.
2. Aside from obtaining such pricing and authority, what other ways can the Department help BOP improve its procurement process to reduce drug costs?
3. In addition to its drug purchasing hierarchy, what recommendations, guidance, or guidelines does BOP provide its institutions to help them identify the lowest-priced drugs? Are these recommendations, guidance, and guidelines standardized across institutions, and if not, how do they differ? Please provide examples of these recommendations, guidance, and guidelines.
4. What does BOP's drug procurement training involve? Who is required to participate in these trainings?
5. When will BOP issue purchasing guidelines to its institutions to help identify the lowest-priced drugs? How will BOP monitor their institutions to ensure that its drug purchasing guidelines are followed?

¹⁷ *Id.* at 11-13.

¹⁸ *Id.* at 17.

¹⁹ *Id.*

²⁰ *Id.* at 18.

²¹ *Id.* at 19.

²² *Id.* at 19-20.

²³ *Id.* at 38.

6. Has BOP considered establishing an ombudsman within the component to monitor and/or assess how its institutions are following its drug purchasing guidelines? If not, why not?
7. How does BOP intended to ensure that its institutions track and report all of their drug purchases to BOP, including those from non-PVP sources?
8. Based on DOJ IG's report, the BOP lacks sufficient oversight to ensure that its facilities, staff, and inmates follow guidance and recommendations from BOP's Central Office. How will BOP ensure that its facilities are prepared to handle any potential outbreak, quarantines, and/or resulting inmate disruptions in the event of a COVID-19 outbreak? What recommendations, guidance, and guidelines is the BOP giving its facilities?

In addition to answering these questions, I ask that you keep me informed of BOP's implementation of DOJ IG's recommendations. If you have any questions, please contact Caitlin Soto of my Committee staff at (202) 224-4515.



Chuck Grassley
Chairman