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## United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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July 18, 2024

### VIA ELECTRONIC TRANSMISSION

The Honorable Xavier Becerra  
Secretary  
Department of Health and Human Services  
200 Independence Ave., SW  
Washington, D.C., 20201

The Honorable Merrick Garland  
Attorney General  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C., 20530

Dear Secretary Becerra and Attorney General Garland:

I write very concerned about your agencies' refusal to brief the Health, Education, Labor, and Pensions (HELP) Committee regarding the Biden Administration's proposed rescheduling of marijuana under the Controlled Substances Act (CSA). The HELP Committee has broad jurisdiction over public health matters under the purview of the Department of Health and Human Services (HHS), including its rescheduling recommendation informing the Department of Justice's (DOJ) proposed rule to move marijuana from Schedule I to Schedule III. Your agencies' avoidance of the HELP Committee's attempt to carry out its oversight responsibilities over a matter of critical importance to public health and safety is troubling. Refusing to engage with Congress on the merits of this policy furthers the perception that this change is driven by election-year politics, rather than the scientific evidence.

Under the CSA, Congress established a consultative process between DOJ and HHS before DOJ can change the schedule of any substance. Under this process, the Attorney General must request HHS perform a scientific and medical evaluation of the drug or substance being considered prior to taking a scheduling action.<sup>1</sup> This evaluation must also include a formal scheduling recommendation.<sup>2</sup> As part of this evaluation, HHS is required to conduct an eight-factor analysis based upon which DOJ would make a determination as to the required controls of the drug or substance, including any accepted medical uses and its overall safety profile.<sup>3</sup>

Contrary to four previous analyses, DOJ (through the Drug Enforcement Administration (DEA)) has now proposed to move marijuana from Schedule I to Schedule III. In August 2023, HHS

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<sup>1</sup> See 21 U.S.C. § 811(b).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

recommended to DOJ that marijuana be rescheduled as a Schedule III substance.<sup>4</sup> On January 12, 2024, HHS' 252-page unredacted recommendation to DOJ became public.<sup>5</sup> In anticipation of formal rulemaking by DOJ on this matter, my office first requested a briefing from HHS on these proceedings on March 15, 2024. President Biden announced the rescheduling decision on May 16, and DOJ formally published the proposed rule on May 21.<sup>6</sup> In the months between the briefing request and publication of the proposed rule, neither HHS nor DOJ provided any substantive communications to the Committee. During this period, there were multiple leaks to the media and subsequent public releases indicating that HHS and DEA were planning to reschedule marijuana.<sup>7</sup>

HHS has outright refused to brief the Committee on this matter, including to address questions about HHS' publicly available scheduling recommendation, citing only an unspecified "internal policy" against briefing on a matter that is pending before DOJ as justification. HHS has been unable to provide written copies of the policy or any related citations. DOJ has been non-responsive to three requests for a briefing on this matter.

HHS may have legitimate sensitivities in cases involving open enforcement matters, but there is no valid reason why agencies cannot brief congressional staff about a publicly available proposed rule. Federal agencies regularly provide briefings to Congress about proposed rules to give substantive content to relevant committees. This failure to engage with Congress continues the administration's pattern of ignoring congressional oversight and sends a message that the administration is advancing policies merely for political gain in an election year.

The administration's lack of transparency into the interagency rescheduling decision is very concerning. Marijuana is the most commonly used federally illegal substance in the United States, with approximately one-third of Americans reporting daily use – the highest levels ever reported by the National Institutes of Health (NIH).<sup>8</sup> Recent scientific studies have indicated that

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<sup>4</sup> *Letter to the Honorable Anne Milgram*, Department of Health and Human Services (Aug. 29, 2023), <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyzwcwcvvt&e=1&dl=0>.

<sup>5</sup> Sam Reisman, *HHS Unveils Schedule III Recommendation For Marijuana*, Law360 (Jan. 12, 2024), <https://www.law360.com/cannabis/articles/1785771/hhs-unveils-schedule-iii-recommendation-for-marijuana>.

<sup>6</sup> *President Biden (@POTUS)*, X (May 16, 2024), [https://x.com/POTUS/status/1791152464617431389?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1791152464617431389%7Ctwgr%5E6abbe061f6d9a1e0722c2ac585063d2b244790ad%7Ctwcon%5Es1\\_&f\\_url=https%3A%2F%2Fiframe.nbcnews.com%2FglJ0wrH%3F\\_showcaption%3Dtrueapp%3D1](https://x.com/POTUS/status/1791152464617431389?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1791152464617431389%7Ctwgr%5E6abbe061f6d9a1e0722c2ac585063d2b244790ad%7Ctwcon%5Es1_&f_url=https%3A%2F%2Fiframe.nbcnews.com%2FglJ0wrH%3F_showcaption%3Dtrueapp%3D1); *Schedules of Controlled Substances: Rescheduling of Marijuana*, Drug Enforcement Administration (May 21, 2024), <https://www.federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana>.

<sup>7</sup> *See, e.g., Zeke Miller et al., US poised to ease restrictions on marijuana in historic shift, but it'll remain controlled substance*, Associated Press (Apr. 30, 2024), <https://apnews.com/article/marijuana-biden-dea-criminal-justice-pot-f833a8dae6ceb31a8658a5d65832a3b8>.

<sup>8</sup> *Marijuana and hallucinogen use, binge drinking reached historic highs among adults 35 to 50*, National Institutes of Health, National Institute on Drug Abuse (Aug. 17, 2023), [https://nida.nih.gov/news-events/news-releases/2023/08/marijuana-and-hallucinogen-use-binge-drinking-reached-historic-highs-among-adults-35-to-50#:~:text=Daily%20marijuana%20use%20also%20reached,\(6%25%20in%202012\);%20Marijuana,Substance%20Abuse%20and%20Mental%20Health%20Services%20Administration](https://nida.nih.gov/news-events/news-releases/2023/08/marijuana-and-hallucinogen-use-binge-drinking-reached-historic-highs-among-adults-35-to-50#:~:text=Daily%20marijuana%20use%20also%20reached,(6%25%20in%202012);%20Marijuana,Substance%20Abuse%20and%20Mental%20Health%20Services%20Administration), <https://www.samhsa.gov/data/taxonomy/term/435>.

greater marijuana use may lead to an increased risk of psychiatric disorders such as depression, bipolar disorder, and schizophrenia, especially among adolescents.<sup>9</sup> Congress took steps to lower barriers to cannabis research and directed HHS to research these important topics in the Medical Marijuana and Cannabidiol Research Expansion Act. This Act required HHS to issue a report to Congress on the health benefits and risks of marijuana, particularly for adolescent brain development.<sup>10</sup> HHS only shared this report on June 11, seven months after Congress directed HHS to issue this report and weeks after DOJ published its proposed rule. Rescheduling marijuana before this research was published raises further concerns about the integrity of this rulemaking process.

This lack of transparency has also extended to the publication of the proposed rule rescheduling marijuana. DEA is statutorily required to hold a public hearing as part of this process.<sup>11</sup> Despite numerous requests from stakeholders, including 19 state attorneys general and nine former DEA administrators, DEA has yet to commit to holding one.<sup>12</sup> This speaks to the continued disregard by the administration to provide clarity around this decision.

Moreover, this proposed rule runs contrary to multiple previous DOJ analyses that concluded that marijuana was appropriately placed in Schedule I. Moving marijuana from Schedule I to Schedule III would have significant implications for public health and safety. This change from longstanding DOJ policy, and the uncertainty around the long-term health risks associated with marijuana use, further reinforces the need for congressional oversight over this proposal.

I request that HHS and DOJ provide a briefing or briefings on in the proposed marijuana rescheduling rule no later than August 1. If you refuse, I ask that you provide written justification, with relevant citations to the legal requirements that purportedly prevent you from briefing Congress on this proposed rule.

Thank you for your attention to this matter.

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<sup>9</sup> Andre McDonald et al., *Age-dependent association of cannabis use with risk of psychotic disorder*, *Psychological Medicine* (May 22, 2024), <https://www.cambridge.org/core/journals/psychological-medicine/article/agedependent-association-of-cannabis-use-with-risk-of-psychotic-disorder/BDCA0F73CDD7AF150D6FDCF89D29DC7F>; Ryan Sultan et al., *Nondisordered Cannabis Use Among Adolescents*, *JAMA Network Open* (May 3, 2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2804450>.

<sup>10</sup> *Medical Marijuana and Cannabidiol Research Expansion Act*, H.R.8454, 117<sup>th</sup> Cong., (P.L.117-215).

<sup>11</sup> See 21 U.S.C. § 811.

<sup>12</sup> See *Attorneys General of South Carolina et al.*, *Schedules of Controlled Substances et al.*, Drug Enforcement Administration (Jun. 20, 2024), <https://www.regulations.gov/comment/DEA-2024-0059-23343>; Peter Bensinger et al., *Schedules of Controlled Substances*, Drug Enforcement Administration (Jun. 20, 2024), <https://www.regulations.gov/comment/DEA-2024-0059-23173>.

Sincerely,

*Bill Cassidy, M.D.*

Bill Cassidy, M.D.

Ranking Member

U.S. Senate Committee on Health,  
Education, Labor, and Pensions