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WLF Calls on CDC to Remedy Failure to Follow Law

(In re: CDC Guideline for Prescribing Opioids for Chronic Pain)

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—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today called on the Centers for Disease Control and Prevention (CDC), in connection with its proposed *Guideline for Prescribing Opioids for Chronic Pain*, to take affirmative steps to eliminate the taint created by its previous violations of federal law governing procedures for adopting administrative rules. In formal comments, WLF praises CDC’s belated decision to open up the rulemaking process to public comment, but asserts that any guidance document ultimately issued by CDC may be subject to challenge unless CDC fully corrects its past mistakes.

The CDC Draft Guideline—which CDC prepared many months ago but did not publicly release until December—calls on doctors to cut back significantly on prescriptions of opioids to treat patients with chronic pain, as a means of reducing drug addiction and abuse. Many advocates for chronic pain sufferers have decried CDC’s proposal; they fear it would deprive patients of adequate treatment. CDC has been developing its opioid guidelines since 2014 but, until December, had been conducting its administrative process largely in secret. It established an advisory committee—consisting of medical professionals who deal with addiction issues—to assist in preparing the Guideline, but it refused to disclose any details of the committee’s work.

WLF wrote to CDC in November, charging that CDC was violating the Federal Advisory Committee Act (FACA) by failing to make public the work of its advisory committee, known as the Core Expert Group (CEG). Apparently in response to WLF’s charge, and similar concerns raised by leading Members of Congress, CDC in December released the Draft Guideline publicly, provided a 30-day public comment period, and directed a new advisory committee to review the document. In its comments filed today, WLF urges CDC to direct the new committee to take a fresh look at the issue and to come up with its own recommendations, rather than commenting on the existing Draft Guideline—a document prepared with considerable input from a secret advisory committee that did not comply with FACA.

Upon filing its comments, WLF issued the following statement by Chief Counsel Richard Samp: “CDC developed its Draft Guideline with considerable input from an improperly established federal advisory committee. Any new, properly constituted committee should be directed to take a fresh look, rather than simply being asked to judge the existing proposal. In the absence of such a fresh look, any final guidance document issued by CDC will be tainted inescapably by the major role played in its formation by an illegally constituted federal advisory committee.”

WLF is a public-interest law firm and policy center that regularly litigates to ensure that federal administrative agencies comply with statutes designed to ensure procedural fairness.