



Statement for the Record

Senate Health, Education, Labor, and Pensions Committee

Hearing entitled *“Why Does the United States Pay, by Far, the Highest Prices in the World for Prescription Drugs?”*

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Chairman Sanders and Ranking Member Cassidy, on behalf of Families USA, we want to thank you for holding this important and timely hearing and offer our appreciation for lifting up the reality of high drug costs in the United States. It is well documented that the United States is paying significantly higher prices for prescription drugs compared to peer countries. A recent report from the Assistant Secretary for Planning and Evaluation (ASPE) at the Department of Health and Human Services (HHS) found that in 2022, across all brand name and generic drugs, families in America pay nearly three times as much as 33 Organization for Economic Co-operation and Development (OECD) countries.¹ And this gap is continuing to widen as drug prices in the U.S. continue to skyrocket. This problem can easily be traced directly back to failures in U.S. patent policy that incentivize big drug corporations to keep old drugs on the market and push out healthy competition, as well as these corporations' ability to price gouge year over year with no repercussions.

Congress and the Biden administration have taken meaningful steps to address high drug costs for Americans, importantly through enactment and implementation of the Medicare price negotiation program and inflationary rebates. It is essential that Congress build off this critical progress by taking additional steps to further address this uniquely American failure.

The Impact of High Drug Prices on Families

While high drug prices are a source of seemingly constant policy debate in Washington, D.C., for millions of America's families, they are a painful and burdensome reality that often impacts their ability to meet basic necessities of life. For example, consumers facing increased drug costs report cutting back on key areas of their budget, such as buying food.² For some the choice is even more dire, with research showing that nearly three in ten adults – approximately 80 million people – in our country have not taken required medicine as prescribed due to its costs.³ Approximately one in five adults forgo essential medications altogether because they can't afford to fill their prescription in the first place.⁴ The impact of being forced to make these decisions has on *health* is clear: medication nonadherence, such as rationing or skipping needed medication, causes an estimated 125,000 deaths a year.⁵

While people who need high-priced drugs often face the most significant financial pain from high and rising prices, the impact of the skyrocketing cost of drugs is widely felt beyond the pharmacy counter. Approximately 20% of health insurance premiums are driven by the rising cost of prescription drugs, which means as drug prices continue to rise so do premiums, deductibles, and other health care costs for all families – even those who are not taking prescription medications.⁶

Big Drug Corporations Abuse U.S. Patent System to Protect Profit and Limit Competition

The business model of big drug companies is rooted in exploitation. They take extreme steps to create a monopoly drug market and then abuse it for profit, including price gouging, protecting drug exclusivity through anticompetitive behavior, and increasing profits on old drugs rather than investing in new and innovative treatments to help our nation's families.⁷ Drug companies regularly deploy a barrage of tactics to extend their exclusivity periods, keep generics off the market, and maintain their market dominance.⁸ Common examples include blanketing one drug with multiple and overlapping patents to create a "patent thicket" and "product hopping" a patent by making minor tweaks to existing drugs that typically confer no additional clinical benefit but allow for extended patent protections. In fact, the 10

top-selling drugs on the market today have been granted an average of 74 patents per drug, with an average of 140 patents filed for each of them.⁹

Once these big drug corporations have blocked other competitors, they are free to raise their drug's price year after year at shocking rates, even long after the drug's release. We see this problem across the drug market: Between July 2021 and July 2022, 1,216 drug products had price increases that were higher than the inflation rate (8.5%). Some drug prices increased by more than 500%.¹⁰ These prices are not being justified by any additional benefits or effectiveness of that drug. In fact, one study of high-spend drugs showed that seven of the 10 drugs reviewed provided no additional clinical benefit relative to other available drugs.¹¹

These abuses only occur because of the loopholes littered throughout the U.S. patent system and are major contributors to the uniquely high drug prices that American families face.

Proposed Legislation Could Address Corporate Pricing Abuses

Recently, Congress took important steps to systemically bring down drug prices and rein in the rate of skyrocketing price increases. The Inflation Reduction Act (IRA) of 2022 is landmark legislation that includes several key provisions to address the high prices that are a hallmark of the American experience with prescription medication. The recently passed reforms include giving Medicare the authority to negotiate the price of drugs, as well as penalties (through rebates) for big drug companies that raise the price of their drug higher than the rate of inflation. These are both foundational steps that change the incentives specific to the U.S. market that have led to these high drug costs.

Congress can build on this foundation to further rein in prescription drug costs and make health care more affordable for everyone in two key ways:

1. Extending the reforms in the IRA to apply to the commercial market to better protect all consumers from high and irrational drug costs. This includes allowing the commercial market to adopt Medicare's negotiated rates and extend the inflationary rebate to fight price gouging year over year in the commercial market.
2. Close loopholes that allow companies to create monopoly drug markets and prevent generics from coming to the market in a timely fashion. This includes ending patent abuses like patent thickets and product hopping, simplifying the generic approval process and ending pay for delay policies.

Conclusion

High and rising drug costs are a uniquely American problem and a major factor as to why health care affordability is an American crisis. Drug prices threaten the health and financial security of families and individuals in every state and community. Big drug companies abuse the patent system, delay the entry of generic drugs, and price gouge to support their greed while families and individuals go into medical debt, ration or skip medications, and have to choose between filling their prescription or filling their fridge. Even those not taking prescription drugs are left with difficult financial decisions due to rising insurance premiums, higher deductibles, and stagnant wages — all of which can be tied back to rising drug costs. This cannot be allowed to continue. We appreciate the important work of this committee to

address these concerns and look forward to continuing to work with you to ensure all families can achieve affordable health and health care.

¹ “Comparing Prescription Drugs in the U.S. and Other Countries: Prices and Availability “
<https://aspe.hhs.gov/reports/comparing-prescription-drugs>

² Gill, Lisa L. “How to Pay Less for Your Meds.” Consumer Reports. April 5, 2018,
<https://www.consumerreports.org/drug-prices/how-to-pay-less-for-your-meds/>

³ Kirzinger, Ashley, Lunna Lopes, Bryan Wu, and Mollyann Brodie. “KFF Health Tracking Poll—February 2019: Prescription Drugs.” The Henry J. Kaiser Family Foundation. March 01, 2019. <https://www.kff.org/health-costs/poll-finding/kff-health-tracking-poll-february-2019-prescription-drugs/>.

⁴ “Americans’ Challenges with Health Care Costs” The Henry J. Kaiser Family Foundation, December 14 2021, <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>

⁵ Fred Kleinsinger. “The Unmet Challenge of Medication Nonadherence” National Library of Medicine. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6045499/>

⁶ Kim Keck, “Six Ways We’re Lowering Drug Prices,” Blue Cross Blue Shield of America, March 3, 2022, <https://www.bcbs.com/the-health-of-america/articles/six-ways-were-lowering-drug-prices#:~:text=In%20the%20United%20States%20today,cost%20can%20be%20much%20higher.>

⁷ Bailey Reavis and Hazel Law, The Reality of Prescription Drug Innovation: Drug Manufacturers Limit Innovation to Protect Patents and Profits (Washington, DC: Families USA, August 2023), <https://familiesusa.org/wp-content/uploads/2023/08/Drug-Companies-Limit-Innovation-for-Profit-2.pdf>.

⁸ Patricia Kelmar and Abe Scarr, The Cost of Prescription Drug Patent Abuse: How Drug Companies Abuse the Patent System and Demand Inflated Monopoly Prices in America (U.S. PIRG Education Fund, April 2023), <https://pirg.org/edfund/resources/the-cost-of-prescription-drug-patent-abuse/>.

⁹ Tahir Amin and David Mitchell, “Big Pharma’s Patent Abuses Are Fueling the Drug Pricing Crisis,” Time, February 24, 2023, <https://time.com/6257866/big-pharma-patent-abuse-drug-pricing-crisis/#:~:text=A%20recent%20national%20report%20reveals,for%20very%20minor%20product%20modifications.>

¹⁰ Bailey Reavis and Hazel Law, The Reality of Prescription Drug Innovation: Drug Manufacturers Limit Innovation to Protect Patents and Profits (Washington, DC: Families USA, August 2023), <https://familiesusa.org/wp-content/uploads/2023/08/Drug-Companies-Limit-Innovation-for-Profit-2.pdf>.

¹¹ Eliot Fishman, Our Broken Drug Pricing and Patent System Diverts Resources Away From Innovation and Into Mergers, Patent Gaming and Price Gouging (Washington, DC: Families USA, August 2021), https://familiesusa.org/wp-content/uploads/2021/08/RX-2021-209_Innovation-Drug-Pricing-Issue-Brief.pdf.