

August 11, 2021

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

Dear Secretary Becerra,

The undersigned organizations represent health care providers, public health experts, and consumer and taxpayer advocates who work to advance public health and promote access to affordable medicines. We welcome President Biden's groundbreaking new effort to promote competition in the American economy. We ask that the plan you develop to combat high prescription drug prices mirrors this ambition. As an integral part of this effort, we urge you to outline how you will use your power, under existing law, to authorize generic competition when drug corporations abuse government-granted monopolies to set excessive prices that harm patients. **Any plan developed by the Department of Health and Human Services to combat excessive drug prices that does not call for the use of competitive licensing remedies would be incomplete.**

High drug prices are rooted in monopoly power. Patents and other government-granted exclusivities give corporations the power to set high prices. The federal government does not regulate or by and large even negotiate for the monopoly price. As a result, Americans pay more than two-and-a-half times as much for prescription drugs than people in other countries.¹ One-in-four Americans report they have been unable to afford their medicines.² Black and Brown communities disproportionately bear this suffering.³

Our letter today follows a January 12 letter sent by many of our organizations to then-President-elect Biden, which outlined several key actions to lower drug prices and make medicines affordable that could be taken immediately by the President upon taking office.⁴ Most important among the policy options for executive action our groups provided in the January letter are those that directly challenge the monopoly power drug corporations abuse to charge excessive prices: government patent use and Bayh-Dole rights to march-in or use patents royalty-free.

The federal government has the power under existing law to increase competition and lower drug prices. Under 28 U.S. Code §1498, the federal government can use patents to authorize generic competitors in exchange for reasonable compensation. The government used the law repeatedly in the 1960s to buy low-cost generic versions of patented drugs.⁵ The government still

¹ RAND, Prescription Drug Prices in the United States Are 2.56 Times Those in Other Countries, <https://www.rand.org/news/press/2021/01/28.html>

² Gallup, Medication Insecurity by Race and Political Identity, <https://news.gallup.com/poll/316052/large-racial-divide-covid-cost-concerns.aspx>

³ *Id.*

⁴ Letter to President-elect Biden Calling for Executive Action to Lower Drug Prices, <https://www.citizen.org/article/letter-to-president-elect-biden-calling-for-executive-action-to-lower-drug-prices-january-2021/>

⁵ Hannah Brennan et al., A Prescription for Excessive Drug Pricing, 18 Yale J. of Law & Tech 1 (2017).

routinely uses §1498 for other technologies, like passports and military equipment. In addition, the Bayh–Dole Act allows the federal government to “march-in” on drug patents developed with federal funding, or to use such patents royalty-free on behalf of the United States.⁶ These actions can help introduce additional producers. Generic competition, the Food and Drug Administration has found, can lead to price reductions of 95 percent.⁷

Americans support addressing patent monopoly abuse. Eight-in-ten voters favor breaking patent monopolies to reduce drug prices.⁸ Authorizing generic competition can rapidly lower prices for medicines used by many Americans, including medicines to prevent HIV (emtricitabine/tenofovir alafenamide), treat autoimmune disorders (adalimumab) and cure hepatitis C (ledipasvir/sofosbuvir). Your decisive action can help address the root cause of excessive medicine prices, and improve the lives of millions of Americans.

Sincerely,

Public Citizen
American Economic Liberties Project
Americans for Democratic Action, Southern California
Arkansas #insulin4all
Center for Popular Democracy Action
Citizen Action of Wisconsin
Connecticut #insulin4all
Consumer Action
Doctors for America
Down Home North Carolina
Florida #insulin4all
Global Health Justice Partnership at Yale
Health Care Voices
HealthGAP
Hometown Action
I-MAK
Indivisible
JustCare USA
Kentucky#insulin4all
Maine People's Alliance
Minnesota #insulin4all
NETWORK Lobby for Catholic Social Justice
North Carolina #insulin4all
Office of the Health Care Advocate, Vermont Legal Aid
ONE Northside
People's Action

⁶ KEI, KEI Briefing Note 2017:1. Bayh-Dole Act and difference between March-In Rights and the world wide royalty free rights in patents, <https://www.keionline.org/24132>

⁷ FDA, Generic Competition and Drug Prices: New Evidence Linking Greater Generic Competition and Lower Generic Drug Prices, <https://tinyurl.com/uxdc9>.

⁸ Executive Summary of Arnold Ventures March 2019 Drug Pricing Polling, <https://tinyurl.com/amhrukzf>

PrEP4All
Progressive Leadership Alliance of Nevada
Progressive Maryland
Right to Health Action
Rights & Democracy New Hampshire
Rights & Democracy Vermont
Social Security Works
T1 International
The Democracy Collaborative
Treatment Action Group
U.S. PIRG
United Vision for Idaho
Universal Health Care Foundation of Connecticut
Universities Allied for Essential Medicines
Utah #insulin4all
Wisconsin #insulin4all

cc: President Joe Biden
The Honorable Dr. Francis Collins, Director, National Institutes of Health
The Honorable Susan Rice, Director of the Domestic Policy Council
The Honorable Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services
The Honorable Tim Wu, Special Assistant to the President for Technology and Competition Policy