June 23, 2022

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independent Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra:

We write to you today to urge you to utilize administrative authorities, including government patent use compulsory licensing under 28 U.S.C. 1498 and march-in and royalty-free rights under the Bayh-Dole Act, to lower prescription drug prices.

Americans pay more than two-and-a-half times as much for prescription drugs as people in other countries.¹ This is especially perverse and upsetting, given that U.S. taxpayers drive biomedical research through more than $40 billion in annual investments through the National Institutes of Health.² High U.S. medicine prices are the result of prescription drug corporations using their monopoly power to hike prices and pad their bottom lines. Meanwhile, U.S. law forbids direct government negotiations and other restrictions on pharmaceutical pricing.³ This uniquely American combination of rules has led to pharmaceutical companies making more money in the U.S. than the rest of the world combined for the 20 top-selling drugs.⁴

Sky-high prices for medicines can be devastating for Americans’ finances and health, leading to hardships and personal tragedies for families across the nation.

One in four Americans report they have been unable to afford their medicines, with Black and brown communities disproportionately bearing this suffering.⁵ Patients confronted with exorbitant prices are forced to make difficult decisions between filling prescriptions and putting food on the table or paying rent. And people with chronic illnesses who are forced to skip or

delay medication due to cost are more likely to experience adverse health events, including death.⁶

We thank you and President Biden for your leadership in seeking relief for many of these patients by calling for Congress to finally allow Medicare to negotiate drug prices for a selection of high-priced, brand-name drugs and to prevent prices for all drugs from rising faster than the rate of inflation.⁷ We stand committed to delivering on these vital legislative priorities. But to provide the urgent relief that Americans demand, including patients who would not initially benefit from Medicare drug price negotiations, you must simultaneously use the executive tools readily at your disposal.

Exercising these authorities would be extraordinarily popular – about 80 percent of voters favor breaking patent monopolies to reduce drug prices.⁸ Moreover, using executive tools to lower drug prices while also supporting robust drug pricing legislation is the policy of the administration as expressed by President Biden in the executive order he signed last summer, Promoting Competition in the American Economy.⁹ The order directs the Department of Health and Human Services to ensure that the patent system does not “unjustifiably delay generic drug and biosimilar competition,” while also expressing support for “aggressive” legislative reforms.¹⁰ It also directs the National Institute of Standards and Technology to consider not finalizing a Trump-era regulation that would prevent the government from exercising certain rights under the Bayh-Dole Act to lower drug prices on medicines invented with taxpayer funds.¹¹

Utilizing patent licensing authorities under these statutes could introduce generic or biosimilar competition and dramatic price relief in a matter of months. In your report released in September 2021, you recognized that the federal government holds government use patent licensing rights under 28 U.S.C. 1498 and march-in rights under the Bayh-Dole Act.¹² The report concludes that legislative and administrative actions presented in its pages “…will protect American patients and improve their access and adherence to medications by lowering drug prices through increased competition throughout the health care system.”¹³

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¹⁰ Id.
¹¹ Id.
¹³ Id.
You personally understand the value that these authorities can provide to American patients. We appreciate that as California’s attorney general, you led a bipartisan initiative of state attorneys general in urging the prior administration to use its licensing authorities to ensure access to and secure a fair price for the drug remdesivir. As a member of Congress, you also called on the Obama administration to use competitive licensing to lower drug prices.

Now, you have the power to take on the monopoly abuses of the pharmaceutical industry and the responsibility to ensure Americans have affordable access to the medicines they need. We respectfully request a meeting with you by July 15, 2022 to discuss the Department’s efforts to urgently lower drug prices for Americans using these authorities. You can provide immediate relief for millions of patients from Big Pharma’s price gouging and show millions more Americans that you, President Biden, and his administration are on their side. Please do so without delay.

Sincerely,

Elizabeth Warren
United States Senator

Lloyd Doggett
Member of Congress

Angus S. King, Jr.
United States Senator

Joaquin Castro
Member of Congress

Sara Jacobs
Member of Congress

Katie Porter
Member of Congress

Tammy Baldwin
United States Senator

Sherrod Brown
United States Senator

Cory A. Booker
United States Senator

Edward J. Markey
United States Senator

Jeffrey A. Merkley
United States Senator

Bernard Sanders
United States Senator

Jan Schakowsky
Member of Congress

James P. McGovern
Member of Congress
Rosa L. DeLauro
Member of Congress

Jesús G. "Chuy" García
Member of Congress

Eleanor Holmes Norton
Member of Congress

Sheila Jackson Lee
Member of Congress

Ilhan Omar
Member of Congress

Maxine Waters
Member of Congress

Ritchie Torres
Member of Congress

Andy Levin
Member of Congress

Brenda L. Lawrence
Member of Congress

Adriano Espaillat
Member of Congress
Peter A. DeFazio  
Member of Congress

Mark DeSaulnier  
Member of Congress

John Yarmuth  
Member of Congress

Adam Smith  
Member of Congress

Sylvia R. Garcia  
Member of Congress

Debbie Dingell  
Member of Congress

Ayanna Pressley  
Member of Congress

Mark Takano  
Member of Congress

Barbara Lee  
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Chellie Pingree  
Member of Congress
Matt Cartwright
Member of Congress

Sanford D. Bishop, Jr.
Member of Congress

Jamaal Bowman, Ed.D.
Member of Congress

Jamie Raskin
Member of Congress

Veronica Escobar
Member of Congress

Cori Bush
Member of Congress

Jerrold Nadler
Member of Congress

Jahana Hayes
Member of Congress

Marie Newman
Member of Congress

Karen Bass
Member of Congress
Al Lawson  
Member of Congress  

Salud Carbajal  
Member of Congress  

Betty McCollum  
Member of Congress  

Melanie Stansbury  
Member of Congress  

Alan Lowenthal  
Member of Congress  

Lois Frankel  
Member of Congress  

Steve Cohen  
Member of Congress  

Terri A. Sewell  
Member of Congress  

Troy Carter  
Member of Congress  

Dean Phillips  
Member of Congress