

The Honorable Jason Chaffetz
Chairman, House Committee on
Oversight & Government Reform

The Honorable Elijah Cummings
Ranking Member, House Committee on
Oversight & Government Reform

February 4, 2016

Dear Chairman Chaffetz and Ranking Member Cummings:

Consumers Union, the policy and advocacy arm of Consumer Reports¹, appreciates this opportunity to provide our views on rising drug prices, the impact of high drug costs on consumers, and policy ideas to address the burden of drug costs on consumers. We applaud the Committee for addressing this important issue that affects the health and financial security of millions of Americans.

Consumer Reports is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers. We have a particular focus on the drug marketplace. In 2004, we launched *Consumer Reports Best Buy Drugs* to help consumers find the best value when purchasing prescription drugs. This program uses evidence-based systematic reviews of prescription drugs to clearly demonstrate the efficacy and safety of commonly used medicines in over 30 categories.² We combine this information with reliable cost information, enabling consumers to truly identify the “best buy” for many drugs.

Spikes in drug prices, as well as prices that are simply too high, have been widely reported in the news and confirmed by Consumer Reports’ own, nationally representative survey. Our recent poll found that thirty percent of people who regularly take at least one prescription drug

¹ Founded in 1936, *Consumer Reports* is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers, and to empower consumers to protect themselves. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Consumer Reports has over 8 million subscribers to its magazine, website, and other publications. Its policy and advocacy division, Consumers Union, works for health reform, food and product safety, financial reform, and other consumer issues in Washington, D.C., the states, and the marketplace. This division employs a dedicated staff of policy analysts, lobbyists, grassroots organizers, and outreach specialists who work with the organization’s more than 1 million online activists to change legislation and the marketplace in favor of the consumer interest.

² <http://www.consumerreports.org/health/best-buy-drugs/index.htm>. Note: We do not do cost-effectiveness analysis. Instead, we present price data alongside the effectiveness, safety, and side-effect data. And then we let consumers—in consultation with their doctors—interpret and adapt these data according to individual preferences, clinical circumstances, and priorities (including budgetary).

experienced unexpected spikes in their out-of-pocket drug costs in the past 12 months—anywhere from just a few dollars to more than \$100 per prescription.³ High and rising drug prices are rightfully a major concern for the nearly 60% of adults who regularly take a prescription drug.⁴

A common reason for high out-of-pocket costs is that some drugs consumers take regularly have been placed in a higher cost-sharing tier by their insurance plan—thus they are personally paying a greater share of the cost.⁵ But the underlying price of many drugs paid by health plans, state Medicaid programs, and other payers is also spiking. Researchers suggest factors such as long periods of market “exclusivity,” insufficient competition, and materials shortages are contributing to higher prices.

In the short term, immediate relief to consumers can and should be provided by limiting monthly out-of-pocket costs and addressing concerns about discriminatory formulary designs.⁶ Another key step is to increase transparency. Pharmacy Benefit Managers (PBMs) should be required to reveal the negotiated cost of medications to employers and Medicare Part D plans should be prohibited from using gag clauses that prevent pharmacists from offering drugs at a lower price, if one exists. Consumers and employers would benefit from published benchmark prices that signal a fair or reasonable price for the drug. To that end, the prices the Veterans Administration and other countries pay for drugs should be published.

These, however, are short-term solutions that do not get at the underlying cost drivers. To truly help consumers, we must address the root cause of high drug prices and take more aggressive steps to combat excess price gouging.

Measures that more directly address the underlying causes of high prices worthy of consideration include:

- Patent Reform -- Patent terms must be reasonable and granted only for real advances to, rather than minor tweaks or reformulations of, existing drugs. Limiting the monopoly period would speed up the entrance of competition that could drive prices down.

³ Consumer Reports National Research Center poll of 1,037 adults. *Are you paying more for your Rx meds? A Consumer Reports' poll shows one-third of Americans hit by high drug prices:* August 13, 2015.

⁴ As of 2011-12, nearly 3 in 5 Americans over age 20 take at least one prescription drug. As of 2012, those taking five or more drugs has doubled since 1999-2000 to 15% of all Americans. Elizabeth D. Kantor et al. *Trends in Prescription Drug Use Among Adults in the United States From 1999-2012*. *JAMA*. 2015;314(17):1818-1830

⁵ In some instances, this activity is being investigated to see if these changes are in violation of the anti-discriminatory benefit design protections in the Affordable Care Act.

⁶ For example, Consumers Union recently helped pass [legislation enacted in California](#) which caps a consumer's share of payment at no more than \$250 for a 30-day prescription on all metals tiers except bronze, on which it is capped at \$500.

- Strengthen FDA approval standards -- go beyond merely ensuring that the new drug is better than a placebo, by requiring it to be safer and/or more effective than existing drugs.
- Exclusivity Reform --The FDA should reexamine the criteria for granting periods of exclusivity that allow manufacturers to price drugs according to "what the market will bear".⁷ Shortening these exclusivity periods may also lead to more competition which may lower prices.
- Increased Comparative Effectiveness Research -- New, expensive drugs may provide significant consumer benefits, but it is often difficult for payers to know if the benefits outweigh the costs when a cheaper, slightly different alternative is available. Increase funding for comparative effectiveness research, especially targeting expensive new drugs and drugs targeting a large patient population.
- Medicare Negotiation -- Allow Medicare to negotiate prices directly if the prices paid by Part D beneficiaries exceed the weighted average of what other developed countries pay.
- Drug Re-importation -- Study solutions that would legalize re-importation from Canada in a way that is overseen by FDA and ensures consumer safety.

Our own survey, as well as the research of others, shows that when people are unable to afford their medications, they frequently cut corners in ways that could be harmful to their health.⁸ They might skip filling a prescription or they might take less of a medication than prescribed, which can lead to poor health outcomes and higher healthcare costs in the long run. The consequences of high drug prices are painful and real, both financially and in terms of the health of Americans, and must be addressed by Congress.

Ensuring that consumers can afford the drugs they need and that they have access to reliable information on the comparative effectiveness of treatments will provide to a better consumer experience, better treatment compliance, and better health outcomes. We appreciate the Oversight and Government Reform Committee's attention to this issue of profound importance to our health care system and to consumers.

Respectfully submitted,

Victoria L. Burack

Cc: House Oversight and Government Reform Committee

⁷ "How Pfizer Set the Cost of Its New Drug at \$9,850 a Month" By Jonathan D. Rockoff | *The Wall Street Journal* | Dec. 9, 2015

⁸ For example, sixteen percent of diabetes patients in Medicare fail to fill at least one prescription a year because of the cost, according to Williams J, Steers WN, Ettner SL, Mangione CM, Duru OK. 2013. "Cost-related Nonadherence by Medication Type among Medicare Part D Beneficiaries with Diabetes". *Medical Care*. 2013; 51(2):193-198