July 28, 2021

The Honorable Dick Durbin, Chairman
The Honorable Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

Consumer Reports writes in support of four bills the Committee is considering tomorrow:

- S. 1428, the "Preserve Access to Affordable Generics and Biosimilars Act"
- S. 1435, the "Affordable Prescriptions for Patients Act"
- S. 1425, the "Stop Significant and Time-wasting Abuse Limiting Legitimate Innovation of New Generics Act" or the "Stop STALLING Act"
- S. 1388, the "Prescription Pricing for People Act of 2021"

S. 1428 would prohibit, as an unfair method of competition, anti-competitive "pay for delay" schemes, in which brand-name prescription drug makers effectively pay off manufacturers of more affordable generic and biosimilar alternatives to stay out of the way, so the brand-name drug maker can prolong its monopoly profits – perversely gaming a system designed to *promote* expedited entry of generics and biosimilars. By blocking competition and consumer choice, these schemes cost consumers billions of dollars. After a sustained decade-long effort, the Federal Trade Commission obtained a Supreme Court ruling that pay-for-delay deals are subject to the antitrust laws and can be found unlawful.[1] But drug makers have continued to resist that ruling, and to look for ways to evade it.

S. 1435 would strengthen and clarify the authority of the Federal Trade Commission to stop the anticompetitive use of "product hopping." Product hopping is the practice of making a minor change in a drug in order to apply for a new patent and artificially prolong the brand-name drug maker's patent-protected monopoly profits, while at the same time discontinuing the similarly

[1] FTC v Actavis, Inc., 570 U.S. 136 (2013).

effective version that generics are on the verge of replicating to sell at a lower price. S. 1435 would prohibit product hopping as an unfair method of competition.

S. 1425 would prohibit the abusive use of so-called "citizen petitions" by brand-name drug makers to raise spurious concerns that stall progress on developing generic alternatives. This petition process was established to provide citizens to have an opportunity to bring concerns to the FDA's attention in a timely fashion. But the procedure has been commandeered by brand-name drug makers to raise dubious concerns, often numerous times, that require the FDA to suspend its approval process while it investigates and responds. One brand-name drug company reportedly filed 43 such petitions against a single generic application.[2] S. 1425 would prohibit, as an unfair method of competition, submitting a baseless citizen petition for the purpose of preventing or delaying the approval of a generic or biosimilar drug.

S. 1388 would direct the FTC to conduct a thorough study on the effects of the way pharmacy benefit managers operate. As originally conceived, PBMs can perform a valuable function as intermediaries between drug makers and health plans, helping negotiate lower wholesale prices. But their opaque operation makes it difficult to know whether they are acting in the interests of the health plans they ostensibly serve, or if they are operating in their own interests and taking kickbacks from drug makers in exchange for favoritism that keeps prices inflated and choices restricted. These concerns have grown more pronounced as the PBMs have become more consolidated, and have merged with other parts of the healthcare marketplace in ways that further increase the potential for conflicts of interest. A thorough study by the FTC will be very useful in helping determine what needs to be done to ensure competition and transparency.

We are very encouraged that all four of these bills are bipartisan.

Consumer Reports has long supported and informed consumers about constructive efforts to bring down the high prices consumers pay for prescription drugs – in our advocacy work, as well as in our journalism, for example in our July 2016 article, "Is There a Cure for High Drug Prices?",[3] and our April 2018 and November 2019 follow-ups, "How to Pay Less for Your Meds"[4] and "The Shocking Rise of Prescription Drug Prices."[5] All three articles reported on the results of nationally representative telephone surveys we conducted. The November 2019 article re-confirms our earlier findings that escalating prescription drug costs are forcing many consumers to choose between cutting back on needed medications or on other basic necessities.

These four bills will all significantly advance efforts to improve competition in the development and sale of medications, so that consumers who need them will be better able to afford

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[2] https://www.ftc.gov/news-events/press-releases/2017/02/ftc-charges-shire-viropharma-inc-abused-government-processes.

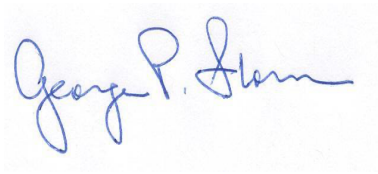
[3] https://www.consumerreports.org/drugs/cure-for-high-drug-prices.

[4] https://www.consumerreports.org/drug-prices/how-to-pay-less-for-your-meds.

[5] https://www.consumerreports.org/drug-prices/the-shocking-rise-of-prescription-drug-prices/.

them. We urge the Committee to approve these bills and send them promptly to the full House for consideration.

Sincerely,



George P. Slover
Senior Policy Counsel
Consumer Reports

cc: Members, Committee on the Judiciary