

## Support for including a ban on 'pay-for-delay' settlements in the Senate health care reform proposal

December 8, 2009

Dear Majority Leader Reid, Chairman Baucus, Senator Dodd, Chairman Harkin:

The undersigned organizations urge that the current provisions of the Preserving Consumer Access to Generic Drugs Act (S. 369) as introduced by Sen. Kohl be included as an amendment to the Senate's national health care reform bill (S.A 2862).

We support either an outright ban on these "pay-for-delay" settlements, or a strong legal presumption that they are anti-competitive. This will help provide patients with **affordable access to needed medicines** through market competition, and help **save an estimated \$35 billion over ten years**. As the ongoing health reform debate clearly shows, maximizing every possible opportunity for savings is essential to the overall goal of extending quality affordable health care for all.

Generic drugs are essential to reducing costs and increasing access to needed medicines because they cost between 60% and 90% less than their brand-name equivalents. Generic drugs fill over two-thirds of all U.S. prescriptions, but account for less than one sixth of our national prescription drug costs.

A generic drug can be brought to market early if it does not infringe the patent of a brand name drug. Yet for the past several years, **brand-name drug manufacturers have been paying their generic competitors multi-million dollar "pay-for-delay" settlements to keep generics off the market**. These sweetheart "pay-for-delay" deals, which are not disclosed to the public, deprive many vulnerable patients of access to needed medicines. They also stifle competition, and are costing our health system billions each year.

S. 369 is necessary because the federal courts have been divided on the legality of "pay-for-delay" settlements since 2005, and the Supreme Court has twice refused to resolve the issue. Drug companies have successfully maneuvered challenges into more permissive Courts likely to allow these sweetheart deals. As a result, healthy market competition and needed savings will not be restored without Congressional action.

The FTC opposes these settlements, and the Department of Justice recently announced that these "agreements should be treated as presumptively unlawful." President Obama's February 2009 budget message asserted that money saved by "prohibiting anticompetitive agreements and collusion between brand-name and generic drug manufacturers intended to keep generic drugs off the market" can help pay for national health care reform.

We urge you to help lower the costs of national health care reform and to preserve consumer access to affordable prescription drugs by including S. 369's

provisions in the Senate's final proposal for national health care reform.

Sincerely,

AFSCME - District Council 37 (NY)  
Alliance for Retired Americans  
The Annie Appleseed Project (FL)  
California Alliance for Retired Americans (CA)  
CALPIRG (CA)  
Center for Medical Consumers (NY)  
Central New York Citizens in Action, Inc. (NY)  
Coalition of Wisconsin Aging Groups (WI)  
Community Catalyst  
Consumers for Affordable Health Care (ME)  
Consumers Union  
Connecticut Citizen Action Group (CT)  
The Gilead Outreach and Referral Center (IL)  
Health Care For All (MA)  
Illinois PIRG (IL)  
Long Island Health Access Monitoring Project (NY)  
Maine Council of Senior Citizens - Alliance for Retired Americans (ME)  
Maryland Citizens' Health Initiative (MD)  
Medicare Rights Center  
Metro New York Health Care for All Campaign (NY)  
National Health Law Program  
National Legislative Association on Prescription Drug Prices  
New York State Alliance For Retired Americans (NY)  
NJ PIRG (NJ)  
Oregon State Public Interest Research Group (OR)  
Patients not Patents  
PIRGIM (MI)  
Progressive Research and Action Center, Inc. (NY)  
Public Citizen  
Teamsters Union 25 Health Services & Insurance Plan (MA)  
Tennessee Health Care Campaign (TN)  
US PIRG  
West Virginia Citizen Action Group (WV)