



July 26, 2021

The Honorable Diana DeGette  
U.S. House of Representatives  
2111 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Fred Upton  
U.S. House of Representatives  
2183 Rayburn House Office Building  
Washington, D.C. 20515

Dear Representatives DeGette and Upton:

The National Organization for Rare Disorders (NORD) appreciates the opportunity to provide the following comments on the discussion draft of the 21<sup>st</sup> Century Cures 2.0 legislation (Cures 2.0). NORD is a unique federation of voluntary health organizations dedicated to helping the 25-30 million Americans living with a rare disease. We believe that all patients should have access to quality, accessible and affordable health coverage that is best suited to their medical needs.

### **Title I: Public Health**

#### **Sec. 103. Pandemic Preparedness Rare Disease Support Program:**

NORD firmly believes that the unique needs of rare disease patients must be accounted for in pandemic preparation. When the COVID-19 pandemic started to impact the United States, thousands of patients and over 150 patient organizations reached out to NORD for guidance on a variety of issues, including accessing necessary personal protective equipment for themselves and their caregivers, keeping critical clinical trials ongoing despite lockdowns, obtaining adequate supplies of critical medications, understanding new telehealth options, as well as preventing discrimination against patients with pre-existing conditions in health care settings with limited personnel or equipment. To help effectively support the rare disease community during the COVID-19 public health emergency, NORD engaged extensively with state and federal government officials on these and other pressing policy issues that were impacting rare disease patients.

Furthermore, NORD launched a website to assist our over 300 member organizations and all 25-30 million rare disease patients in navigating the challenges associated with the pandemic.<sup>1</sup> This website houses the variety of resources NORD developed to support the rare disease community, including webinars and videos from trusted government officials and health care providers, published reports that focus on the impact of COVID-19 on rare disease patients and clinical trials

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<sup>1</sup> NORD. COVID-19 Resource Center. Accessed 7/14/21. <https://rarediseases.org/covid-19/>

for rare disease treatments, and highlighted available financial relief programs, as well as other non-NORD resources for patients and caregivers.<sup>2</sup> While non-profit organizations like NORD are an important resource for patients, it is critical that the federal government include the needs of the rare disease patient population in its preparedness activities. NORD supports the goal of ensuring the government is in such a position and stands ready to assist in these efforts, but instead of tasking non-profits with developing these plans, NORD urges the Cures 2.0 legislation sponsors to explicitly include rare disease patients in the definition of “at-risk individuals” found in 42 USC § 300hh-1(b)(4)(B) so that this vulnerable patient population is better integrated into the federal government’s overall preparedness strategy and planning.

#### Sec. 104. Vaccine and Immunization Programs:

NORD supports increased funding to the CDC for vaccine and immunization awareness programs as outlined within this discussion draft. NORD urges the funding be allocated to raise awareness about COVID-19 specific vaccines and other vaccines that protect against other dangerous diseases.

Rare disease patients and their caregivers had unique questions and needed to understand how the COVID-19 vaccines could impact the symptoms and progression of their underlying conditions, what the effect of taking immunosuppressants or other medicines may have on the efficacy of the vaccine, or even if one vaccine is better than another for rare disease patients. As mentioned above, twice during the pandemic, NORD was able to gather Food and Drug Administration (FDA or Agency) and Centers for Disease Control and Prevention (CDC) leadership for webinars on COVID-19 and the vaccine for rare disease patients which were attended by thousands of patients and caregivers in the rare disease community. NORD found that holding these webinars was incredibly important to answer the unique questions from the rare disease community that required expertise from the CDC and FDA to answer effectively. Additional resources to ensure expert information is available and effectively communicated to a variety of audiences to help increase COVID-19 vaccination rates are vital to the rare disease community.

The role of herd immunity, both against COVID-19 and other communicable diseases, is especially important to the health of rare disease patients, some of whom may not be able to get certain vaccines. Therefore, additional resources are critical to ensuring all eligible patient populations have access to accurate vaccine information, including those with rare diseases.

## **Title II: Patients and Caregivers**

#### Sec. 201. Educational Programs and Training for Caregivers:

NORD has long supported education programs for caregivers. Caregivers are often overlooked, but play an outsized role in caring for a loved one with a rare disease. Learning how to effectively

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<sup>2</sup> Ibid.

care for a loved one with a rare disease could help achieve better health outcomes. Specific to the discussion draft, NORD suggests including the term “rare diseases” in the definition of the term caregiver on Page 49 subparagraph (c), as the current language of “aging, seriously ill, or disabled” may not fully encompass all rare disease patients.

#### Sec. 203. Increasing Diversity in Clinical Trials:

NORD supports this provision and the inclusion of trials for rare diseases in outreach and public awareness efforts. Ensuring that clinical trials are appropriately representative of the populations they seek to treat is a critically important issue that can be especially impactful with rare diseases as they usually have much smaller clinical trials because of the limited number of eligible patients.

#### Sec. 204. Patient Experience Data:

NORD supports efforts to enhance the use of patient experience data (PED) in drug development and review. FDA has been working with sponsors to leverage PED and develop frameworks for fit-for-purpose PED and incorporate it into regulatory decision making. FDA’s Patient-Focused Drug Development (PFDD) Guidance Series for Enhancing the Incorporation of the Patient’s Voice in Medical Product Development and Regulatory Decision Making, the stated purpose of which is “to address, in a stepwise manner, how stakeholders can collect and submit patient experience data and other relevant information from patients and caregivers for medical product development and regulatory decision making.”<sup>3</sup> The PFDD guidance series is an ongoing initiative at FDA consisting of four guidances to achieve the stated goal of incorporating PED in drug development and review.<sup>4</sup> Therefore, NORD recommends that the bill’s requirement for issuance of a final regulation in Sec. 204, currently at one year from the passage of the bill, be adjusted to ensure that the learnings from the ongoing PFDD activities are realized before these data are required in applications. This will ensure that sponsors are submitting quality, fit-for-purpose PED that FDA can utilize for regulatory decision making.

#### Sec. 205. Ensuring Coverage for Clinical Trials Under Existing Standard of Care:

NORD is supportive of this provision to ensure coverage of routine care costs for Medicare beneficiaries participating in Patient-Centered Outcomes Research Institute (PCORI)-funded clinical trials. The Medicare program already provides routine care coverage for beneficiaries participating in trials funded by other federal health agencies, such as the National Institute of

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<sup>3</sup> FDA. FDA Patient-Focused Drug Development Guidance Series for Enhancing the Incorporation of the Patient’s Voice in Medical Product Development and Regulatory Decision Making. Accessed 7/14/21.

<https://www.fda.gov/drugs/development-approval-process-drugs/fda-patient-focused-drug-development-guidance-series-enhancing-incorporation-patients-voice-medical>

<sup>4</sup> Ibid.

Health (NIH). However, the last update to the Medicare clinical trials policy occurred in 2007, well before the creation of the Institute. This commonsense provision will expand Medicare's policy to include PCORI-funded trials and grant beneficiaries access to these important trials.

### **Title III: Food and Drug Administration**

#### Sec. 301. Report on Collaboration and Alignment in Regulating Digital Health Technologies:

The increased acceptance of digital health technologies has the potential to transform how rare disease patients participate in clinical trials for the better. The use of digital tools to conduct a decentralized trial has the potential to boost the recruitment and retention in a clinical trial. NORD is supportive of efforts to establish digital endpoints, increase acceptance of decentralized clinical trials, and use of these tools in regulatory decision-making. To the extent that a report as described in Sec. 301 would foster a greater understanding of digital health technologies among members of Congress and other stakeholders, NORD supports this section. However, NORD suggests the completion of an assessment of whether a report, which is burdensome and resource-intensive for FDA to compile, is the best way to achieve such education or whether there are less burdensome means, i.e., a congressional briefing.

#### Sec. 302. Grants for Novel Trial Designs and Other Innovations in Drug Development:

NORD strongly supports the advancement of novel trial design and other innovations in drug development. Clinical trials for rare diseases are often quite challenging due to their small size and geographically disparate populations. Therefore, innovative tools and methods that enable robust clinical trials to be completed in small populations while reducing the burden on patients would have a tremendous impact on the rare disease community. To the extent a grant program like the one envisioned in Sec. 302 would foster this goal, NORD is supportive.

#### Sec. 303. FDA Cell and Gene Therapy:

Cell and gene therapies hold tremendous potential as treatments for genetic diseases, many of which are rare. This technology is at such an inflection point that requiring a 10-year outlook from FDA on the regulatory challenges may be burdensome for Agency staff to speculate on and those resources might be better applied elsewhere. Currently, there are over 1,100 INDs at the Center for Biologics Evaluation and Research (CBER), a majority of which are for rare diseases, and that number has been increasing exponentially in recent years. CBER's resource needs are serious; any additional resources provided by Congress should be allocated to the review and inspection of cell and gene therapies in order to get treatments to patients. Similar to our comments in Sec. 301, NORD believes there may be a way to receive this information from the FDA in a less onerous way than a new formal report. Periodic updates from FDA leadership or annual publication of the

information required in paragraph four of Sec. 303 may achieve a similar outcome while requiring fewer resources to complete.

#### Sec. 304. Increasing Use of Real-World Evidence:

In recent years, FDA has demonstrated its commitment to the use of Real-World Evidence (RWE) and Real-World Data (RWD); FDA has issued three guidances on RWE in the past four years,<sup>5</sup> as well as published a Framework for FDA’s Real-World Evidence Program.<sup>6</sup> NORD supports ensuring FDA has the discretion to rely upon real-world evidence when FDA believes such use is scientifically justified, including in the post-market setting for drugs approved via accelerated approval. NORD recently published a report on the Accelerated Approval Pathway, which sets forth several solutions to strengthen the pathway, including the formalization of utilization for RWE.<sup>7</sup> In the report, NORD asserts that “[i]f RWE is fit for purpose and otherwise meets regulatory criteria, FDA needs to have a functional mechanism for considering that evidence, along with any clinical data from the confirmatory study, to support conversion of accelerated approval to traditional approval and to discharge postmarketing requirements.”<sup>8</sup> Sec. 304 would help advance the use of RWE in these additional settings in a manner that comports with NORD’s suggestions in the above-referenced report.

#### Sec. 305. Improving FDA-CMS Communication Regarding Transformative New Therapies:

NORD is supportive of the goal of this provision to enhance communication between FDA and Centers for Medicare & Medicaid Services (CMS) regarding products that are granted expedited approval. NORD has seen that access problems for these products often come with payors failing to understand FDA approval processes and clinical trial data underlying approval. Therefore, NORD supports efforts to increase transparency and communication at the appropriate times to ensure access to the product does not have any unnecessary delays.

#### Sec. 306. Establishment of Additional Intercenter Institutes at the Food and Drug Administration:

NORD opposes the establishment of an intercenter institute for rare diseases as it would create a burdensome requirement for the establishment of an additional, unnecessary bureaucratic structure within FDA. Acting Commissioner Woodcock expressed similar concerns about this approach in

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<sup>5</sup> FDA. Real-World Evidence. Accessed 7/14/21. <https://www.fda.gov/science-research/science-and-research-special-topics/real-world-evidence>

<sup>6</sup> FDA. (2018). Framework for FDA’s Real World Evidence Program. Accessed 7/14/21. <https://www.fda.gov/media/120060/download>

<sup>7</sup> NORD. FDA’s Accelerated Approval Pathway: A Rare Disease Perspective (2021). Accessed 7/21/21.

[https://rarediseases.org/wp-content/uploads/2021/06/NRD-2182-Policy-Report\\_Accelerated-Approval\\_FNL.pdf](https://rarediseases.org/wp-content/uploads/2021/06/NRD-2182-Policy-Report_Accelerated-Approval_FNL.pdf)

<sup>8</sup> Ibid.

a recent meeting with the Alliance for a Strong FDA. She described the stress the Agency is under and stated, “[t]hese major or even minor structural reorganizations take a couple of years to get in place and then you have to socialize them and make sure everyone plays together well and learns to work within the new systems.”<sup>9</sup> She concluded by saying “the last thing I think we need to do right now – our people are tired and they . . . have a wall of work in front of us that has to be gotten through – is to do a lot of very disruptive things.”<sup>10</sup> Reorganizations are often resource intense, years-long efforts that require a substantial amount of logistical planning and preparation, which would only serve to disadvantage patients by diverting attention away from other rare disease activities.

Additionally, the Agency just completed a reorganization of the Office of New Drugs in the Center for Drug Evaluation and Research (CDER).<sup>11</sup> As part of the reorganization, there is more collaboration across the Agency to streamline review for rare disease products.

To the extent one of the goals of Sec. 306 is to enhance collaboration across the Agency, there are many efforts currently underway to address that. Examples of intercenter and interagency communication include:

- The Rare Disease Drug Development Council, a CDER led collaboration aimed at creating a forum for intercenter communication about rare disease drug development issues or learnings from difficult solutions that is joined by many across the Agency;
- The Rare Disease Council, an Office of Orphan Product Development (OOPD) led interagency council to discuss rare disease issues with different Centers and Offices at FDA;
- European Medicines Agency/Health Canada/FDA Rare Disease Cluster Call, an interregulator group from the US, European Union, and Canada, which discusses issues that lend themselves to international collaboration and harmonization;
- The Zegram, a CDER led internal newsletter that provides relevant information on topics like novel trial design, patient engagement strategies, recent approvals, and other information related to rare disease work to the Agency;
- The Rare Disease Consult Service, a CDER led FDA-wide internal consulting service that provides guidance to review divisions regarding drug development issues common to rare diseases, including endpoints and trial designs; and

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<sup>9</sup> Pink Sheet. (2021). Woodcock: COVID Is Not The Time For Structural Changes At US FDA. Accessed 7/14/21. <https://pink.pharmaintelligence.informa.com/PS144153/Woodcock-COVID-Is-Not-The-Time-For-Structural-Changes-At-US-FDA>

<sup>10</sup> Ibid.

<sup>11</sup> FDA. Reorganization of the Office of New Drugs with Corresponding Changes to the Office of Translational Sciences and the Office of Pharmaceutical Quality. Accessed 7/14/21. <https://www.fda.gov/drugs/regulatory-science-research-and-education/reorganization-office-new-drugs-corresponding-changes-office-translational-sciences-and-office>

- Disease area workgroups, which are Agency-wide small groups that meet on specific diseases area issues that arise during development or review, many of which often have rare disease considerations that contribute to the complexity of the issue.

Requiring a further restructuring of the Agency at this point would detract from this good work already being done at the FDA.

Finally, rare diseases are heterogeneous and affect every system of the body, which renders them not easily centralized into a center of excellence. Therefore, the priority should instead be to ensuring expert reviewers are embedded in all of the review divisions with rare disease responsibilities and that this work is appropriately resourced.

#### Sec. 307. IND Application Not Needed to Initiate Accelerated Approval:

NORD is concerned that Sec. 307, which would remove the requirement that sponsors must submit an Investigational New Drug (IND) application before requesting a Breakthrough Therapy or Regenerative Medicine Advanced Therapy (RMAT) Designation, has the potential to result in the unnecessary expenditure of staff resources at FDA. Specifically, if sponsors are able to request that FDA consider their product for these designations at any time, and an IND is not ultimately granted, FDA resources, that could be better expended elsewhere, would have been used unnecessarily.

Additionally, to avoid confusion with the specific accelerated approval pathway, the section's title should be adjusted to accurately describe the provision, which is not focused on accelerated approval, rather RMAT and Breakthrough.

#### Sec. 309. Post-Approval Study Requirements for Accelerated Approval:

As mentioned above, NORD fully supports the use of RWE to fulfill postmarketing requirements for accelerated approval. NORD appreciates this technical change to the Federal Food, Drug, and Cosmetic Act to allow for the submission of RWE, patient registries, and other data sources. If the bill sponsors are seeking further information on ideas to strengthen the accelerated approval pathway, the previously mentioned NORD report proposes additional solutions that may be of interest to the authors of this bill, including periodic progress reviews, improving product withdrawal, and specific labeling for accelerated approval products.<sup>12</sup>

### **TITLE IV: Centers for Medicare & Medicaid Services**

#### Sec. 401. GAO Study and Report:

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<sup>12</sup> NORD. FDA's Accelerated Approval Pathway: A Rare Disease Perspective (2021). Accessed 7/21/21. [https://rarediseases.org/wp-content/uploads/2021/06/NRD-2182-Policy-Report\\_Accelerated-Approval\\_FNL.pdf](https://rarediseases.org/wp-content/uploads/2021/06/NRD-2182-Policy-Report_Accelerated-Approval_FNL.pdf)

The rapid advancement of science means that many rare disease patients, who were once without any possibility of receiving targeted treatments for their condition, may soon have new therapeutic options. As representatives of the rare disease community, NORD is eager to ensure that groundbreaking treatments are broadly accessible to Medicare beneficiaries. Therefore, we are supportive of this provision to require the Government Accountability Office (GAO) to create recommendations to enhance coverage and reimbursement for innovative health technologies.

#### Sec. 402 and 403. Strategies to Increase Access to Telehealth Under Medicaid and Children's Health Insurance Program and Extending Medicare Telehealth Flexibilities:

NORD continues to be supportive of expanding access to telehealth during the COVID-19 pandemic and looks forward to finding ways to expand access post-pandemic permanently. In 2020, NORD commissioned a survey with over 800 rare disease patients and caregivers and found that 79% of respondents had experienced a canceled medical appointment because of COVID-19, but more than 83% had been offered a telehealth visit. NORD's survey found strong interest in telehealth, with 88% of survey respondents offered a telehealth appointment accepting it, and of those that accepted the appointment, 92% described it as a positive experience. Additionally, 70% indicated that they would like the option of telehealth for future medical appointments.<sup>13</sup>

As Congress and the Department of Health and Human Services considers to what extent to make permanent expanded telehealth access, NORD has developed [telehealth principles](#) that we believe can help ensure the patient needs are at the forefront of telehealth decisions:

- All patients should have equal and effective access to telehealth services.
- Patients and their providers should be able to make a choice on the location and type of care they receive that is based on what is in the best interests of the patient. Patient choice must be preserved; patients should not be pushed to or away from telehealth by their health plans or providers.
- Transparency around privacy protections and cost-sharing must be established and preserved.
- Data should drive decisions on telehealth.

In furtherance of these principles, NORD is supportive of Sec. 402 that would foster the development of strategies to expand access to telehealth for the Medicaid and CHIP populations. We applaud the efforts to share telehealth best practices with states and study the impact of telehealth on access, utilization, costs, and outcomes. Additionally, we are particularly grateful the MACPAC report would include an analysis on the utilization of and barriers to out-of-state care provided via telehealth. NORD's previously referenced telehealth survey reported 39% of patients

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<sup>13</sup> NORD. (2020). Ensuring Access To Telehealth For Rare Diseases. <https://rarediseases.org/wp-content/uploads/2020/10/NRD-2098-RareInsights-Telehealth-Report-1.pdf>

traveled at least 60 miles to received care, and that 17% have moved (or are considering relocation) to be closer to treatment to manage their rare diseases. This significant burden to care that was greatly reduced during the COVID-19 pandemic due to increased access to telehealth, some of which was able to be provided across state lines as a result of various emergency declarations tied to the COVID-19 pandemic. In addition, we are pleased to see in Sec. 403 the geographic requirements for Medicare removed and the expansion of health providers that can offer telehealth services.

#### Sec. 407 & 408. Expanding Access to Genetic Testing and Medicare Coverage for Precision Medicine Consultation:

NORD supports efforts to expand access to genetic testing, including next-generation sequencing (NGS) and genomic sequencing. Many patients with rare genetic disorders spend years on a “diagnostic odyssey” in which they visit multiple specialists and are often misdiagnosed at least once. Severe genetic disorders that are left untreated (or are inappropriately treated) can result in irreparable damage, including disability or even death. While we are pleased to see language within this discussion draft that would increase access to genetic diagnostics for pediatric Medicaid patients, we believe that more could be done to reduce barriers to genetic testing beyond just the Medicaid population. We encourage the sponsors to consider strategies to increase coverage and reduce utilization management for genetic tests for children and adult patients with rare genetic disorders, in all public health programs and private health insurance arrangements.

In addition, as the demand for genetic services grows, it will become increasingly important to strengthen the genetics workforce. For example, there is a significant national shortage of practicing clinical geneticists, and the traditional physician workforce receives limited genetics education. A robust and well-trained workforce is necessary to bring the full benefit of genetic and genomic testing to patients, particularly in rural and underserved communities where workforce shortages are most severe. NORD recommends Sec. 407 and Sec. 408 be expanded to holistically address these types of barriers to genetic testing.

#### **Title V: Research**

##### Sec. 501. Advanced Research Projects Agency for Health:

NORD is supportive of efforts to speed translational efforts to bring new therapies to patients and is a long-standing supporter of the National Center for Advancing Translational Science (NCATS). NORD believes that ARPA-H funding could have an impact on rare diseases if utilized to tackle some of the challenges the community faces. However, there are many unanswered questions about ARPA-H that need to be resolved. NORD encourages funding for robust translational research; however, many of the questions surrounding ARPA-H will require clarification before NORD is able to make an informed decision about the program.

Sec. 502. Research Investment to Spark the Economy:

NORD is a supporter of the RISE Act and ensuring that the research enterprise was not irreparably damaged during the pandemic. Providing those much-needed funds to researchers will ensure the long-term effect of COVID-19 on research is mitigated as much as possible.

**Conclusion**

NORD again thanks Representatives DeGette and Upton for the opportunity to provide comments on the Cures 2.0 discussion draft. We stand ready and willing to be a cooperative partner in this effort. Please do not hesitate to reach out to Richard White at [rwhite@rarediseases.org](mailto:rwhite@rarediseases.org) if you have any questions.

Sincerely,

*Richard White*

Richard White  
Policy Analyst

