



April 13, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave, SW  
Washington, DC 20201

**Re: Oregon Health Plan 1115 Demonstration Waiver Application for Renewal**

Dear Secretary Becerra:

The National Organization for Rare Disorders (NORD) appreciates the opportunity to submit comments on the pending Oregon 1115 Demonstration Waiver for the Oregon Health Plan. 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.

The Medicaid program serves as lifeline for many people living with a rare disease. Patients with rare disorders often find their financial lives upended by the debilitating nature of their diseases, and on their behalf, NORD is committed to ensuring that the Oregon Health Plan provides quality, comprehensive health care coverage to all low-income individuals and families. We applaud Oregon's focus on health equity in this waiver application and are supportive of the state's request to provide multi-year continuous enrollment for many beneficiaries. Our comments regarding these provisions are discussed more fully in a separate letter to which NORD is a signatory that has been provided to the Department of Health and Human Services (HHS).

However, NORD is opposed to Oregon's request for the authority to limit access to drugs approved through the Food and Drug Administration's (FDA) accelerated approval pathway and believe granting the state of Oregon this authority would have a significant and negative impact on patients with rare diseases. Of the 7,000 rare diseases that have been identified, more than 90% have no FDA-approved treatment.<sup>1</sup> Unfortunately, many facets of rare diseases make them particularly difficult to study in clinical trials targeting direct clinical benefit. For example, the number of patients with any one condition can be small and heterogeneous, with highly diverse clinical manifestations and a long timeframe for disease progression. Furthermore, there is often a lack of prior clinical studies and a limited number of clinical investigators and treatment centers knowledgeable about a given rare disorder.<sup>2</sup> This makes accelerated approval, and the use of surrogate endpoints, especially important for the development of treatments for rare

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<sup>1</sup> Jennifer Huron, *New Study Investigates the Number of Available Orphan Products, Generics and Biosimilars*, Nat'l Org. for Rare Disorders (Mar. 25, 2021), <https://rarediseases.org/new-study-investigates-the-number-of-available-orphan-products-generics-and-biosimilars/>.

<sup>2</sup> Food and Drug Administration. Report: Complex Issues in Developing Drugs and Biological Products for Rare Diseases and Accelerating the Development of Therapies for Pediatric Rare Diseases Including Strategic Plan: Accelerating the Development of Therapies for Pediatric Rare Diseases. July 2014. <https://www.fda.gov/media/89051/download>

diseases.<sup>3</sup> Arbitrarily limiting coverage of drugs that come onto market through this pathway will mean that the few patients with a rare disease who *do* have an FDA-approved therapy will be unable to access vital and often lifesaving treatment.

The state claims in its waiver renewal application that drugs which come onto market through the accelerated approval pathway “have not yet demonstrated clinical benefit” as they have been studied in clinical trials using surrogate endpoints.<sup>4</sup> This proposal is premised on an inaccurate understanding of the FDA’s approval process for therapies on the market via the accelerated approval pathway. To the contrary, accelerated approval is granted based on FDA’s finding that a drug is safe and effective for its intended use—the same approval standard used for traditional approval. Furthermore, Congress and the FDA have considered – and rejected – the notion that accelerated approval is a different or lesser standard than traditional approval.<sup>5</sup> The accelerated approval pathway is a proven, vital tool that helps to bring safe and effective treatments to many patients, including those with rare diseases.

Overall, the vague language that is included within this proposal makes it very difficult to provide technical feedback to the state regarding the potential impact of this waiver on patients. Oregon requests in its waiver application the “ability to use its own rigorous review process to determine coverage of drugs previously granted accelerated approval that have not had benefit confirmed with conversion to full FDA approval in the expected time interval” but it is not clear how the state would implement this section and assure continued patient access. For example, the state does not provide details regarding their process for selecting which accelerated approval products would be subject to review, nor do they explain how the state will assess “clinical efficacy” above and beyond what has been determined by the FDA. It also does not provide any details about how patients who are currently utilizing a treatment approved using accelerated approval could continue to access the therapy if the state decides to decline coverage. Often, a therapy approved via the accelerated approval pathway is the only FDA approved product to treat a specific rare disease, and there are no other alternative options for patients or providers to consider, which is why the lack of clarity around how Oregon would implement these provisions is deeply concerning to the rare disease community.

NORD believes drug sponsors whose products are granted accelerated approval must work with due diligence to complete their required post-market confirmatory trials. However, enforcement of the requirements agreed upon as part of an accelerated approval is the duty of the FDA, not the state of Oregon. In fact, NORD is currently advocating for FDA to be granted additional authority and resources in order to bolster payer confidence in the pathway as part of the reauthorization of the Prescription Drug User Fee Act (PDUFA). On April 4, NORD and 90 additional organizations representing patients with rare diseases and other acute or chronic health conditions sent you a letter urging that you to use your authority to preserve patient access to the critical, often life-saving therapies that come to market through the accelerated approval pathway and support efforts under consideration now at the FDA and in Congress to strengthen the pathway. These 91 organizations also sent a letter to leaders of the House Committee on Energy and Commerce and the Senate Committee on Health, Education, Labor and Pensions, asking that they incorporate several key recommendations regarding accelerated approval into the upcoming PDUFA reauthorization legislation, including increasing transparency around post-market confirmatory trials. We

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<sup>3</sup> U.S. Food & Drug Admin., CDER Drug and Biologic Accelerated Approvals Based on a Surrogate Endpoint (Jan. 14, 2021), <https://www.fda.gov/media/88907/download>

<sup>4</sup> Oregon Health Plan. Application for Renewal and Amendment. Accessed April 9, 2022.

<https://www.oregon.gov/oha/HSD/Medicaid-Policy/Documents/2022-2027-Waiver-Application-Final.pdf>

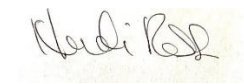
<sup>5</sup> See 158 Cong. Rec. H3825-01, H3848 (2012).

believe that, if implemented, these recommendations would address the concerns of payers without jeopardizing patient access to medically necessary treatments. Those letters, which have already been provided to your office, are attached to these comments for reference.

NORD does not want to see challenges with accelerated approval being used as a proxy for the broader health system's challenges with increasing prescription drug costs. Therapies that utilize the accelerated approval pathway do often have high list prices, but high list prices are also a concern for many therapies approved through the traditional pathway. While Oregon's waiver application states, "New drugs approved under the FDA's accelerated approval pathway tend to be specialty medications that represent a significant portion of pharmacy expenditures," between 2015 – 2020 only 4% of Medicaid's net spending on prescription drugs was on therapies with accelerated approval status.<sup>6</sup> Indeed, the Medicaid Drug Rebate Program (MDRP) has proven itself to be tremendously successful at making prescription drugs more affordable for states. In 2016, for example, rebates lowered Medicaid drug costs "by more than 51.3 percent, compared to rebate savings of only 19.9 percent in Medicare Part D."<sup>7</sup> The MDRP assures that states receive the "best price" for prescription drugs, in exchange for maintaining an open formulary, providing coverage of all FDA approved medications. CMS, state Medicaid programs and other payers are right to be looking for creative solutions in order to maximize limited resources - but reducing patient access to therapies that utilized a specific FDA pathway and eroding the Medicaid prescription drug benefit or the MDRP is not the appropriate way to address high prescription drug costs. We urge HHS to reject Oregon's proposal, and work with the state to advance alternative policies that will improve, not hinder, patient access to vital medicines.

Thank you for the opportunity to provide comments. For questions about NORD or our comments please contact Corinne Alberts at [calberts@rarediseases.org](mailto:calberts@rarediseases.org).

Sincerely,



Heidi Ross  
Acting Vice President of Policy  
National Organization for Rare Disorders

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<sup>6</sup> Rome, B. N., Kesselheim, A.S., (2021) [Raising Medicaid Rebates For Drugs With Accelerated Approval](#), *Health Affairs*, 40:12, 1935-1942

<sup>7</sup> Park, E. (2019) How to Strengthen the Medicaid Drug Rebate Program to Address Rising Medicaid Prescription Drug Costs. *Georgetown University Health Policy Institute, Center for Children and Families*.  
<https://ccf.georgetown.edu/wp-content/uploads/2019/01/Medicaid-Rx-Policy-Options-v4.pdf>



April 4, 2022

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

Dear Secretary Becerra,

The 91 undersigned organizations, representing patients with rare diseases and other acute or chronic health conditions, urge you to use your authority to preserve and strengthen patient access to critical, often life-saving therapies that come to market through the Food and Drug Administration's (FDA)



accelerated approval (AA) pathway. The AA pathway has proven itself to be a vital tool in bringing safe and effective treatments to many patients, including those with rare diseases. However, the pathway faces mounting criticism from a variety of stakeholders.<sup>1</sup> Some of these concerns have led to several proposals now before the Department of Health and Human Services (HHS) for consideration, that if approved and implemented, would undermine the authority of the FDA and delay or potentially bar patients from accessing crucial therapies where no other options exist.<sup>2 3</sup> While there are legitimate criticisms of the AA pathway, too often it appears that issues with accelerated approval are being used as a proxy for the broader health system's challenges with high prescription drug costs. Reducing patient access to therapies that utilize a specific FDA pathway will not solve problems with accelerated approval or prescription drug costs. We urge you to support efforts underway within Congress and the FDA to reform and strengthen the AA pathway and ask you to reject policies that could limit access to rare disease therapies that utilize accelerated approval.

### **The History and Importance of Accelerated Approval to the Rare Disease Community**

The AA pathway was first enshrined in regulation in 1992, after the HIV/AIDS epidemic had drastically altered the landscape for drug development.<sup>4</sup> In response to the epidemic, scientists sought ways to streamline and expedite clinical trials for HIV/AIDS drugs to focus on the utility of surrogate endpoints which were known to demonstrably correlate with improved outcomes.<sup>5</sup> As consensus grew about the utility of surrogate endpoints in clinical trial design, FDA embraced drug approval reform and promulgated regulations formalizing the AA pathway.<sup>6</sup> Under accelerated approval, the time required to receive FDA approval was considerably shortened, allowing for earlier patient access to drugs that were intended to treat serious and life-threatening diseases and conditions for which there were unmet medical needs, including many rare diseases.

It is estimated that 25-30 million Americans (or 1 in 10 individuals) suffer from rare diseases, which are typically serious and life-threatening conditions with unmet medical needs.<sup>7</sup> Of the 7,000 rare diseases that have been identified, more than 90% have no FDA-approved treatment.<sup>8</sup> Many facets of rare diseases make them particularly difficult to study in clinical trials targeting direct clinical benefit. For example, the

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<sup>1</sup> Medicaid and CHIP Payment and Access Commission (MACPAC), *Report to Congress on Medicaid and CHIP*, June 2021, <https://www.macpac.gov/wp-content/uploads/2021/06/June-2021-Report-to-Congress-on-Medicaid-and-CHIP.pdf>

<sup>2</sup> Oregon Health Authority, *2022-2027 Medicaid 1115 Demonstration Application*, (February 18, 2022), <https://www.oregon.gov/oha/HSD/Medicaid-Policy/Documents/2022-2027-Waiver-Application-Final.pdf>

<sup>3</sup> Centers for Medicare & Medicaid Services, *Monoclonal Antibodies Directed Against Amyloid for the Treatment of Alzheimer's Disease (CAG-00460N)*, (January 11, 2022), <https://www.cms.gov/medicare-coverage-database/view/ncacal-decision-memo.aspx?proposed=Y&NCAId=305>

<sup>4</sup> The Centers for Disease Control and Prevention ("CDC") published its first report on HIV/AIDS in 1981. See James W. Curran & Harold W. Jaffe, AIDS: The Early Years and CDC's Response, 60 *Morbidity & Mortality Weekly Rep.* 64 (Oct. 7, 2011), available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/su6004a11.htm>.

<sup>5</sup> See U.S. Food & Drug Admin., Guidance for Industry: Human Immunodeficiency Virus-1 Infection: Developing Antiretroviral Drugs for Treatment 3 (Nov. 2015), [www.fda.gov/files/drugs/published/Human-Immunodeficiency-Virus-1-Infection--Developing-Antiretroviral-Drugs-for-Treatment.pdf](https://www.fda.gov/files/drugs/published/Human-Immunodeficiency-Virus-1-Infection--Developing-Antiretroviral-Drugs-for-Treatment.pdf)

<sup>6</sup> FDA also created the fast track, breakthrough therapy, and priority review designations to advance the development and review of new drugs and address unmet needs in the treatment of a serious medical condition. See U.S. Food & Drug Admin., Guidance for Industry: Expedited Programs for Serious Conditions – Drugs and Biologics 1 (May 2014) ("Expedited Programs Guidance"), <https://www.fda.gov/media/86377/download>

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<sup>8</sup> *Id.*

number of patients with any one condition can be small and heterogeneous, with highly diverse clinical manifestations and a long timeframe for disease progression. Furthermore, there is often a lack of prior clinical studies and a limited number of clinical investigators and treatment centers knowledgeable about a given rare disorder.<sup>9</sup> This makes accelerated approval, and the ability to use surrogate endpoints in the approval process, a particularly important tool for the development of treatments for rare diseases.<sup>10</sup>

### **Threats to the Accelerated Approval Pathway**

Increasingly, the AA pathway, and products that utilize the pathway, are being targeted for differential treatment by various payers in the health care system.<sup>11</sup>

- Institute for Clinical and Economic Review (ICER) and the Medicaid and CHIP Payment and Access Commission (MACPAC) have both advocated for an increase in mandatory federal rebates for accelerated approval drugs until their confirmatory studies are complete and are granted traditional approval.<sup>12 13</sup>
- Centers for Medicare and Medicaid Services (CMS) has proposed to cover an entire drug class, monoclonal antibodies directed against amyloid for the treatment of Alzheimer’s disease, under Coverage with Evidence Development (CED).<sup>14</sup>
- Oregon, as part of their Medicaid 1115 waiver proposal, has requested permission from CMS to exclude Medicaid “coverage of accelerated approval drugs with limited or inadequate evidence of clinical efficacy”.<sup>15</sup>

Many critics of the AA pathway claim that these treatments have yet to demonstrate clinical benefit and should therefore be treated differently because they have been studied using surrogate endpoints and are not yet “clinically proven.”<sup>16</sup> Furthermore, critics have characterized accelerated approval drugs as “experimental.” These criticisms of the AA pathway misunderstand the law and regulations that govern it. Surrogate endpoints are chosen because FDA, in its scientific discretion, has determined they are reasonably likely to predict clinical benefit. Accelerated approval—both as it is set forth in law and in regulations—does not alter FDA’s gold standard of substantial evidence of safety and effectiveness.<sup>17</sup> To the contrary, accelerated approval is granted based on FDA’s finding that a drug is safe and effective for its intended use—the same approval standard used for traditional approval. Furthermore, Congress and the FDA have considered – and rejected – the notion that accelerated approval is a different or lesser standard than traditional approval.<sup>18</sup>

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<sup>9</sup> Food and Drug Administration. Report: Complex Issues in Developing Drugs and Biological Products for Rare Diseases and Accelerating the Development of Therapies for Pediatric Rare Diseases Including Strategic Plan: Accelerating the Development of Therapies for Pediatric Rare Diseases. July 2014. <https://www.fda.gov/media/89051/download>

<sup>10</sup> U.S. Food & Drug Admin., CDER Drug and Biologic Accelerated Approvals Based on a Surrogate Endpoint (Jan. 14, 2021), <https://www.fda.gov/media/88907/download>

<sup>11</sup> The undersigned organizations may or may not have taken positions on the individual proposals listed below and include them only as context for ongoing discussions on AA.

<sup>12</sup> Institute for Clinical and Economic Review (ICER), *Strengthening the Accelerated Approval Pathway: An Analysis of Potential Policy Reforms and their Impact on Uncertainty, Access, Innovation, and Costs*, (April 26, 2021) <https://icer.org/wp-content/uploads/2021/04/Strengthening-the-Accelerated-Approval-Pathway--ICER-White-Paper--April-2021.pdf>

<sup>13</sup> MACPAC, *supra* note 1

<sup>14</sup> Centers for Medicare & Medicaid Services, *supra* note 3

<sup>15</sup> Oregon Health Authority, *supra* note 2

<sup>16</sup> *Id.*

<sup>17</sup> 57 Fed. Reg. at 58944

<sup>18</sup> See 158 Cong. Rec. H3825-01, H3848 (2012).

## **Recommendations to Strengthen the Accelerated Approval Pathway**

FDA approval is only the first step to a patient obtaining access to a treatment. True access is only achieved when patients receive treatments prescribed and affordably covered by their health program or insurer. Too often this is a serious challenge for rare disease patients. Treating products that utilize accelerated approval differently will not solve these patient access challenges. Therefore, we urge you to focus on ways to strengthen the pathway and believe the following proposals would do just that while simultaneously alleviating payer concerns and supporting robust patient access.

### *Post-market Confirmatory Study Transparency*

Post-market confirmatory studies are already a condition of accelerated approval but requiring more robust, frequent, and transparent reports on the design of confirmatory studies and a manufacturer's progress on their confirmatory studies would give all stakeholders more confidence that studies are being completed with due diligence. Reports should compare realized progress on the milestones that the manufacturer agreed to at the time of accelerated approval and explain where progress is falling short of the agreement. The FDA should also be required to make this information easily accessible to the public by publishing it on the FDA's website in a timely manner.

### *Use of Real-World Evidence for Conversion to Traditional Approval*

The FDA already utilizes real world evidence (RWE) in the post-market to evaluate safety, and our organizations believe that the FDA should consider, when appropriate, RWE in the post-market in evaluations intended to confirm efficacy in products approved through accelerated approval. Consideration of RWE as part of the evaluation of whether the drug has an effect on the intended clinical benefit would permit FDA to convert accelerated approval drugs to traditional approval, when scientifically appropriate, at an earlier point in time.

### *Expedited Withdrawal of an Accelerated Approval Product*

It can be difficult to design, enroll, and complete post-marketing confirmatory studies for rare disease drugs, and there are frequently legitimate reasons for delays in converting a product from accelerated approval to traditional approval. However, delayed confirmatory studies extend prescriber and patient uncertainty and also give fodder to critics of accelerated approval who point to them as evidence that FDA doesn't have the ability to properly address or enforce action against accelerated approval products that have not proven clinical benefit. Establishing clear circumstances under which the expedited withdrawal of an accelerated approval product would be appropriate is important for holding drugmakers accountable for timely completion of confirmatory studies and building confidence in the pathway.

### *Increased Funding and Resources for FDA*

Many of the ideas proposed herein would require additional, targeted resources at FDA. An increase in federal funding and resources through budgeting and appropriations could provide FDA with the resources necessary to implement some of the reforms contemplated and to exercise its existing and ideally expanded authorities when appropriate.

## **Conclusion**

Accelerated approval is critical to the innovation and development of new drugs to treat rare diseases. Our organizations believe these reforms will result in an efficient and transparent use of the AA pathway so that all stakeholders have confidence in products that come onto the market through accelerated approval.

We urge you and your Department to take the steps necessary to reject efforts to curtail or deny patient access to FDA approved treatments, enable timely patient access to treatments that have been FDA approved and clearly support the FDA's authority and crucial role in making sure safe and effective drugs are available to improve the health of all people, including those with rare diseases, in the United States. For more information, please contact Heidi Ross, Acting Vice-President of Policy and Regulatory Affairs at the National Organization for Rare Disorders at [HRoss@rarediseases.org](mailto:HRoss@rarediseases.org).

Thank you for your consideration,

National Organization for Rare Disorders  
Alport Syndrome Foundation  
ALS Association  
American Kidney Fund  
Angelman Syndrome Foundation  
Angioma Alliance  
Arthritis Foundation  
Asbestos Disease Awareness Organization  
Association for Creatine Deficiencies  
Avery's Hope  
CACNA1A Foundation  
CDG CARE  
Child Neurology Foundation  
Choroideremia Research Foundation  
Conquering Gyrate Atrophy  
CSNK2A1 Foundation  
Cure CMD  
Cure HHT  
CureCMT4J  
CURED Nfp  
Cystic Fibrosis Research Institute (CFRI)  
DCM Foundation  
Dreamsickle Kids Foundation, Inc  
Dup15q Alliance  
Epilepsy Foundation  
Fabry Support & Information Group  
FACES; The National Craniofacial Association  
FOD Family Support Group  
Foundation for Sarcoidosis Research  
Free ME from Lung Cancer

Galactosemia Foundation  
Gaucher Community Alliance  
Global Healthy Living Foundation  
Gorlin Syndrome Alliance  
Greater Boston Sickle Cell Disease Association  
GRIN2B Foundation  
HCU Network America  
Hemophilia Federation of America  
Hepatitis B Foundation  
Hereditary Neuropathy Foundation  
Hermansky-Pudlak Syndrome Network  
Huntington's Disease Society of America  
Huntington's Disease Youth Organization  
Hydrocephalus Association  
IGA Nephropathy Foundation  
Immune Deficiency Foundation  
International Foundation for Autoimmune & Autoinflammatory Arthritis (AiArthritis)  
International Foundation for CDKL5 Research  
International Pemphigus Pemphigoid Foundation  
International Waldenstrom's  
Macroglobulinemia Foundation  
JDRF  
Lupus Foundation of America  
Malan Syndrome Foundation  
M-CM Network  
MdDS Balance Disorder Foundation



MPN Advocacy & Education International  
Muscular Dystrophy Association  
National Median Arcuate Ligament Syndrome  
Foundation Inc  
National Multiple Sclerosis Society  
National Patient Advocate Foundation  
National PKU Alliance  
National PKU News  
NBIA Disorders Association  
NephCure Kidney International  
No Stomach For Cancer  
NTM Info & Research  
Phelan-McDermid Syndrome Foundation  
Pulmonary Fibrosis Foundation  
Recurrent Respiratory Papillomatosis  
Foundation  
Remember The Girls  
RETpositive Inc.  
Ring14 USA  
SATB2 Gene Foundation

SCID Angels for Life  
Sickle Cell Reproductive Health Education  
Directive  
SLC6A1 Connect  
STXBP1 Foundation  
SYNGAP1 Foundation  
The Akari Foundation  
The AKU Society of North America  
The Association for Frontotemporal  
Degeneration  
The Leukemia & Lymphoma Society  
The Life Raft Group  
The Patient Story  
The RYR-1 Foundation  
United Leukodystrophy Foundation  
Upstage Lung Cancer  
Vasculitis Foundation  
VHL Alliance  
Williams Syndrome Association  
Xia-Gibbs Society, Inc



April 4, 2022

The Honorable Patty Murray  
Chairwoman  
Committee on Health, Education, Labor & Pensions  
United States Senate  
Washington, D.C. 20510

The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education, Labor & Pensions  
United States Senate  
Washington, D.C. 20510

The Honorable Frank Pallone  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairwoman Murray, Ranking Member Burr, Chairman Pallone, and Ranking Member McMorris Rodgers,

The 91 undersigned organizations, representing patients with rare diseases and other acute or chronic health conditions, urge you to include as part of this year's Prescription Drug User Fee Act (PDUFA) reauthorization provisions to strengthen the Food and Drug Administration's (FDA) accelerated approval (AA) pathway and enable patient access to these critical, often life-saving therapies. The AA pathway has proven itself to be a vital tool in bringing safe and effective treatments to many patients, including those with rare diseases. However, the pathway faces mounting criticism from a variety of stakeholders.<sup>1</sup> Some of these concerns have led to several proposals now before the Department of Health and Human Services (HHS) for consideration, that if approved and implemented, would undermine the authority of the FDA and delay or potentially bar patients from accessing crucial therapies where no other options exist.<sup>2 3</sup> While there are legitimate criticisms of the AA pathway, too often it appears that issues with accelerated approval are being used as a proxy for the broader health system's challenges with high prescription drug costs. Reducing patient access to therapies that utilize a specific FDA pathway will not solve problems with accelerated approval or prescription drug costs. Therefore, we urge Congress to incorporate into PDUFA reauthorization several recommendations outlined with this letter to strengthen the AA pathway and facilitate patient access to rare disease therapies that utilize accelerated approval.

### **The History and Importance of Accelerated Approval to the Rare Disease Community**

The AA pathway was first enshrined in regulation in 1992, after the HIV/AIDS epidemic had drastically altered the landscape for drug development.<sup>4</sup> In response to the epidemic, scientists sought ways to streamline and expedite clinical trials for HIV/AIDS drugs to focus on the utility of surrogate endpoints which were known to demonstrably correlate with improved outcomes.<sup>5</sup> As consensus grew about the utility of surrogate endpoints in clinical trial design, FDA embraced drug approval reform and promulgated regulations formalizing the AA pathway.<sup>6</sup> Under accelerated approval, the time required to receive FDA approval was considerably shortened allowing for earlier patient access to drugs that were intended to treat serious and life-threatening diseases and conditions for which there were unmet medical needs, including many rare diseases.

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### **Threats to the Accelerated Approval Pathway**

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<sup>10</sup> U.S. Food & Drug Admin., CDER Drug and Biologic Accelerated Approvals Based on a Surrogate Endpoint (Jan. 14, 2021), <https://www.fda.gov/media/88907/download>

<sup>11</sup> The undersigned organizations may or may not have taken positions on the individual proposals listed below and include them only as context for ongoing discussions on AA.

<sup>12</sup> Institute for Clinical and Economic Review (ICER), *Strengthening the Accelerated Approval Pathway: An Analysis of Potential Policy Reforms and their Impact on Uncertainty, Access, Innovation, and Costs*, (April 26, 2021) <https://icer.org/wp-content/uploads/2021/04/Strengthening-the-Accelerated-Approval-Pathway--ICER-White-Paper--April-2021.pdf>

<sup>13</sup> MACPAC, *supra* note 1

<sup>14</sup> Centers for Medicare & Medicaid Services, *supra* note 3

<sup>15</sup> Oregon Health Authority, *supra* note 2

<sup>16</sup> *Id.*

standard of substantial evidence of safety and effectiveness.<sup>17</sup> To the contrary, accelerated approval is granted based on FDA's finding that a drug is safe and effective for its intended use—the same approval standard used for traditional approval. Furthermore, Congress and the FDA have considered – and rejected – the notion that accelerated approval is a different or lesser standard than traditional approval.<sup>18</sup>

### **Recommendations to Strengthen the Accelerated Approval Pathway**

FDA approval is only the first step to a patient obtaining access to a treatment. True access is only achieved when patients receive treatments prescribed and affordably covered by their health program or insurer. Too often this is a serious challenge for rare disease patients. Treating products that utilize accelerated approval differently will not solve these patient access challenges. Therefore, we urge you to focus on advancing legislation to strengthen the pathway and believe the following proposals would do just that while simultaneously alleviating payer concerns and without compromising robust patient access.

#### *Post-market Confirmatory Study Transparency*

Post-market confirmatory studies are already a condition of accelerated approval but requiring more robust, frequent, and transparent reports on the design of confirmatory studies and a manufacturers progress on their confirmatory studies would give all stakeholders more confidence that studies are being completed with due diligence. Reports should compare realized progress on the milestones that the manufacturer agreed to at the time of accelerated approval and explain where progress is falling short of the agreement. The FDA should also be required to make this information easily accessible to the public by publishing it on the FDA's website in a timely manner.

#### *Use of Real-World Evidence for Conversion to Traditional Approval*

The FDA already utilizes real world evidence (RWE) in the post-market to evaluate safety, and our organizations believe that the FDA should consider, when appropriate, RWE in the post-market in evaluations intended to confirm efficacy in products approved through accelerated approval. Consideration of RWE as part of the evaluation of whether the drug has an effect on the intended clinical benefit would permit FDA to convert accelerated approval drugs to traditional approval, when scientifically appropriate, at an earlier point in time.

#### *Expedited Withdrawal of an Accelerated Approval Product*

It can be difficult to design, enroll, and complete post-marketing confirmatory studies for rare disease drugs and there are frequently legitimate reasons for delays in converting a product from accelerated approval to traditional approval. However, delayed confirmatory studies extend prescriber and patient uncertainty and also give fodder to critics of accelerated approval who point to them as evidence that FDA doesn't have the ability to properly address or enforce action against accelerated approval products that have not proven clinical benefit. Establishing clear circumstances under which the expedited withdrawal of an accelerated approval product would be appropriate is important for holding drugmakers accountable for timely completion of confirmatory studies and building confidence in the pathway.

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<sup>17</sup> 57 Fed. Reg. at 58944

<sup>18</sup> See 158 Cong. Rec. H3825-01, H3848 (2012).



### *Increased Funding and Resources for FDA*

Many of the ideas proposed herein would require additional, targeted resources at FDA. An increase in federal funding and resources through budgeting and appropriations could provide FDA with the resources necessary to implement some of the reforms contemplated and to exercise its existing and ideally expanded authorities when appropriate.

### **Conclusion**

Accelerated approval is critical to the innovation and development of new drugs to treat rare diseases. Our organizations believe these reforms will result in an efficient and transparent use of the AA pathway so that all stakeholders have confidence in products that come onto the market through accelerated approval.

We urge Congress to advance legislation that supports timely patient access to treatments that have been FDA approved through the accelerated approval pathway and strengthens FDA's authority and crucial role in making sure safe and effective drugs are available to improve the health of all people, including those with rare diseases, in the United States. For more information, please contact Heidi Ross, Acting Vice-President of Policy and Regulatory Affairs at the National Organization for Rare Disorders, at [HRoss@rarediseases.org](mailto:HRoss@rarediseases.org).

Thank you for your consideration,

National Organization for Rare Disorders  
Alport Syndrome Foundation  
ALS Association  
American Kidney Fund  
Angelman Syndrome Foundation  
Angioma Alliance  
Arthritis Foundation  
Asbestos Disease Awareness Organization  
Association for Creatine Deficiencies  
Avery's Hope  
CACNA1A Foundation  
CDG CARE  
Child Neurology Foundation  
Choroideremia Research Foundation  
Conquering Gyrate Atrophy  
CSNK2A1 Foundation  
Cure CMD  
Cure HHT  
CureCMT4J  
CURED Nfp  
Cystic Fibrosis Research Institute (CFRI)  
DCM Foundation  
Dreamsickle Kids Foundation, Inc  
Dup15q Alliance  
Epilepsy Foundation

Fabry Support & Information Group  
FACES; The National Craniofacial Association  
FOD Family Support Group  
Foundation for Sarcoidosis Research  
Free ME from Lung Cancer  
Galactosemia Foundation  
Gaucher Community Alliance  
Global Healthy Living Foundation  
Gorlin Syndrome Alliance  
Greater Boston Sickle Cell Disease Association  
GRIN2B Foundation  
HCU Network America  
Hemophilia Federation of America  
Hepatitis B Foundation  
Hereditary Neuropathy Foundation  
Hermansky-Pudlak Syndrome Network  
Huntington's Disease Society of America  
Huntington's Disease Youth Organization  
Hydrocephalus Association  
IGA Nephropathy Foundation  
Immune Deficiency Foundation  
International Foundation for Autoimmune &  
Autoinflammatory Arthritis (AiArthritis)  
International Foundation for CDKL5 Research  
International Pemphigus Pemphigoid Foundation

International Waldenstrom's Macroglobulinemia  
Foundation  
JDRF  
Lupus Foundation of America  
Malan Syndrome Foundation  
M-CM Network  
MdDS Balance Disorder Foundation  
MPN Advocacy & Education International  
Muscular Dystrophy Association  
National Median Arcuate Ligament Syndrome  
Foundation Inc  
National Multiple Sclerosis Society  
National Patient Advocate Foundation  
National PKU Alliance  
National PKU News  
NBIA Disorders Association  
NephCure Kidney International  
No Stomach For Cancer  
NTM Info & Research  
Phelan-McDermid Syndrome Foundation  
Pulmonary Fibrosis Foundation  
Recurrent Respiratory Papillomatosis Foundation

Remember The Girls  
RETpositive Inc.  
Ring14 USA  
SATB2 Gene Foundation  
SCID Angels for Life  
Sickle Cell Reproductive Health Education Directive  
SLC6A1 Connect  
STXBP1 Foundation  
SYNGAP1 Foundation  
The Akari Foundation  
The AKU Society of North America  
The Association for Frontotemporal Degeneration  
The Leukemia & Lymphoma Society  
The Life Raft Group  
The Patient Story  
The RYR-1 Foundation  
United Leukodystrophy Foundation  
Upstage Lung Cancer  
Vasculitis Foundation  
VHL Alliance  
Williams Syndrome Association  
Xia-Gibbs Society, Inc.

CC:

The Honorable Tammy Baldwin, Chair Agriculture Appropriations Subcommittee, U.S. Senate  
The Honorable John Hoeven, Ranking Member Agriculture Appropriations Subcommittee, U.S. Senate  
The Honorable Sanford Bishop, Chair Agriculture Appropriations Subcommittee, U.S. House of Representatives  
The Honorable Andy Harris, Acting Ranking Member Agriculture Appropriations Subcommittee, U.S. House of Representatives