May 1, 2023

The Honorable Bernie Sanders
Chairman
Committee on Health, Education, Labor & Pensions
United States Senate
Washington, D.C. 20510

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

Dear Chairman Sanders and Ranking Member Cassidy,

The 78 undersigned organizations representing patients with rare disorders thank you for including S. 1214, the Retaining Access and Restoring Exclusivity (RARE) Act, as introduced by Senator Tammy Baldwin, in the upcoming markup for HELP Committee consideration. The RARE Act would clarify the original intent of the Orphan Drug Act (ODA) and codify the Food and Drug Administration's (FDA) long-standing interpretation of that landmark law. Our organizations are deeply concerned that a decision from a recent court case, if not corrected by the enactment of the RARE Act, could hinder continued progress in rare disease drug development. The implications of this case could leave some rare disease patients, including children or those with less common variations of a rare disease, without access to an FDA approved treatment that has been proven to be safe and effective for their specific circumstances and/or condition. In addition, broadening the scope of exclusivity to apply to an entire disease, rather than specific use, could also delay generic competition.

The ODA provides a set of incentives to support research and development into drugs for rare diseases. One of the key incentives is a seven-year term of "exclusivity" for the orphan drug once approved and marketed. The ODA established a two-part process for obtaining orphan drug exclusivity. First, at an early stage in development, a company can request that FDA "designate" the drug as an orphan drug to prevent, diagnose or treat a rare disease or condition. Once a company receives this designation from the FDA, the company can access other ODA incentives, including tax credits for research and clinical testing of the drug. Second, after completing the necessary clinical studies and obtaining FDA approval, the drug is then awarded exclusivity that protects from competition the specific use of the drug that is approved.

In most cases, the orphan designation is intentionally broader than the use ultimately approved. For instance, a drug might be designated for the treatment of Fabry's disease, a rare lysosomal storage disorder. After conducting studies in the disease, the sponsor may have only obtained data sufficient to support approval for a narrower population than the entire patient population with Fabry's disease, such as only adults with the disease. Similarly, many orphan drugs being developed for cystic fibrosis (CF) receive orphan designation for the disease broadly, but, after years of continued drug development, may ultimately be approved for use in specific subpopulations of CF patients, such as those with specific mutations.

However, the recent 11th Circuit decision in the case of Catalyst Pharms., Inc. v. Becerra, if left unaddressed by Congress, could threaten FDA's decades-long interpretation of the ODA that the exclusivity protects the "use or indication" ultimately approved. The Court instead held that the rare disease designated at the outset of the drug development process dictates the scope of the orphan drug exclusivity. This decision threatens to undermine 40 years of practice and would incentivize sponsors to seek broader designations for an entire rare disease at the outset, leaving little incentive to continue to study the safety and efficacy of that drug in special populations, like children. More than half of people with rare diseases are children, so the implications of this Court ruling have the potential to be significant. Broadening the scope of exclusivity to apply to an entire disease, rather than specific use, could also delay generic competition.

The RARE Act would maintain the original intent of the ODA, making clear that orphan drug exclusivity is tied to the approved indication, while ensuring proper incentives remain in place to foster robust rare disease drug development. Clarifying the scope of orphan drug exclusivity is critical since rare diseases remain an area with significant unmet needs. Over 90% of the estimated 7,000 known rare diseases still

do not have an FDA-approved treatment indicated for the specific rare disease. If the RARE Act is not enacted, there is likely to be fewer orphan drugs approved for special patient populations, an outcome that runs counter to the goal of the ODA and is not in the best interest of the rare disease community.

We urge members of the HELP Committee to support the RARE Act and vote to advance this legislation out of Committee to preserve the intent of this critical ODA incentive that has benefited millions of Americans and their families facing rare disease diagnoses. For more information, please contact Heidi Ross, Vice President of Policy and Regulatory Affairs for the National Organization for Rare Disorders, at HRoss@rarediseases.org or Karin Hoelzer, Director of Policy and Regulatory Affairs, at KHoelzer@rarediseases.org.

Thank you for your consideration,

National Organization for Rare Disorders
Adrenal Insufficiency United
Adult Polyglucosan Body Disease Research Foundation (APBDRF)
Alport Syndrome Foundation
ALS Association
Alternating Hemiplegia of Childhood Foundation
American Behcet's Disease Association (ABDA)
American Cancer Society Cancer Action Network
APS Foundation of America, Inc
Avery's Hope
Born a Hero, Research Foundation
CancerCare
CDH International
Children's Cancer Cause
Children's PKU Network
Cholangiocarcinoma Foundation
Chondrosarcoma CS Foundation
Coalition to Cure Calpain 3
Congenital Hyperinsulinism International
Cure CMD
Cure HHT
CURED (Campaing Urging Research for Eosinophilic Disease
cutaneous lymphoma foundation
Cystic Fibrosis Foundation
Cystic Fibrosis Research Institute
Dup15q Alliance
Epilepsy Foundation
FACES: The National Craniofacial Association
FOD Family Support Group
Foundation for Sarcoidosis Research
FOXG1 Research Foundation
Friedreich's Ataxia Research Alliance (FARA)
Gaucher Community Alliance
Glut1 Deficiency Foundation
Gorlin Syndrome Alliance
GRIN2B Foundation
HCU Network America
Hepatitis B Foundation
Hypertrophic Olivary Degeneration Association
International Foundation for Gastrointestinal Disorders
International Pemphigus Pemphigoid Foundation
International Waldenstrom's Macroglobulinemia Foundation
Juju and Friends CLN2 Warrior Foundation
KrabbeConnect
Lennox-Gastaut Syndrome (LGS) Foundation
Mississippi Metabolics Foundation
MLD Foundation
MSUD Family Support Group
Muscular Dystrophy Association
National Ataxia Foundation
National Health Council
National MALS Foundation
National Niemann-Pick Disease Foundation
National PKU News
NBIA Disorders Association
Necrotizing Enterocolitis (NEC) Society

NR2F1 Foundation
NTM INFO & RESEARCH
Oral Cancer Foundation
Organic Acidemia Association
Phelan-McDermid Syndrome Foundation
Pulmonary Fibrosis Foundation
Pulmonary Hypertension Association
Smith-Kingsmore Syndrome Foundation
STXBP1 Foundation
Superior Mesenteric Artery Syndrome Research Awareness and Support
Team Telomere
The Foundation for Casey's Cure, Inc
The Leukemia & Lymphoma Society
The Life Raft Group
The Mast Cell Disease Society (TMS)
The RYR-1 Foundation
The Sudden Arrhythmia Death Syndromes (SADS) Foundation
TSC Alliance
United MSD Foundation
United Porphyrias Association
Vasculitis Foundation
Yellow Brick Road Project- HNRNPH2 NDD

CC: Members of the Senate Committee on Health, Education, Labor & Pensions