

Steering  
Committee:



December 1, 2023

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Ron Wyden  
Chairman  
United States Senate Committee on Finance  
221 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
United States Senate Committee on Finance  
239 Dirksen Senate Office Building  
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The Honorable Michael Johnson  
Speaker  
U.S. House of Representatives  
H-232, the Capitol  
Washington, DC 20515

The Honorable Hakeem Jeffries  
Democratic Leader  
U.S. House of Representatives  
H-204, the Capitol  
Washington, DC 20515

The Honorable Cathy McMorris Rodgers  
Chair  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank Pallone, Jr.  
Ranking Member  
House Committee on Energy and Commerce  
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The Honorable Jason Smith  
Chairman  
House Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

The Honorable Richard Neal  
Ranking Member  
House Committee on Ways and Means  
1129 Longworth House Office Building  
Washington, DC 20515

The 170 undersigned organizations representing patients, families, and the rare disease community thank you for your continued commitment to policies promoting the health and well-being of the more than 30 million Americans living with a rare disease. As Congress considers further action to strengthen our health care system, we urge you to address two technical changes to the Inflation Reduction Act that will help preserve the hope of the 95% of rare disease communities without disease-specific FDA approved treatment options<sup>1</sup>, yet will not change the number of approved indications a product can have before becoming eligible for Medicare negotiation.

The Inflation Reduction Act of 2022 (IRA) enabled the Centers for Medicare & Medicaid Services (CMS) to negotiate the price of some prescription drugs. For too many Americans living with rare diseases, out-

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<sup>1</sup> Fermaglich LJ, Miller KL. A comprehensive study of the rare diseases and conditions targeted by orphan drug designations and approvals over the forty years of the Orphan Drug Act. 2023;18(1). doi.org/10.1186/s13023-023-02790

of-pocket prescription drug costs create significant financial barriers to access. Our organizations strongly support key IRA provisions such as the \$2,000 out-of-pocket spending cap and the ability to spread out monthly out-of-pocket costs for Medicare Part D starting in 2025. These aspects of the IRA will ensure that more rare disease patients with Medicare coverage will be able to afford the life-altering therapies they need.

However, our optimism is balanced with the reality that most rare disease patients are still in urgent need of new and better therapies to treat the devastating effects of their rare disease. Over the last 40 years, starting with the passage of the Orphan Drug Act, Congressional leaders and Administrations have consistently worked to encourage more research and development into rare disease treatments. In continuing to recognize the unique needs of the rare disease community, the IRA's Medicare Drug Price Negotiation Program (MDPNP) includes a narrow exclusion for some rare disease therapies. Unfortunately, confusing legislative language inadvertently disincentivizes rare disease research, putting the progress made because of the orphan drug incentives that so effectively spurred rare disease drug development over the last four decades at risk.

Specifically, our organizations urge you to consider the following two technical fixes to the IRA's orphan drug exclusion to ensure appropriate continued incentives to invest in the research and development necessary to address the vast unmet medical need of the rare disease community:

- 1) ***Clarify that the number of orphan designations FDA grants a product has no effect on its eligibility for the IRA's orphan drug exclusion.***

Under current law, orphan drugs with only one orphan designation AND one approved indication (or multiple approved indications all tied to the same rare disease designation) are excluded from MDPNP eligibility. However, as soon as the drug is designated for a second disease, even without any associated FDA approved indications, it will lose its negotiation exclusion.

The current IRA statute fails to recognize the critical difference between designations, which only unlock R&D incentives, and approved indications, which allow for an orphan drug to enter the market. Orphan drug designations typically happen early in the clinical research process, based on data from animal models or very early clinical studies; the purpose is to unlock R&D incentives established by the ODA, NOT to obtain FDA's approval to market a drug. FDA approval for a specific indication occurs much later, after the product has been extensively studied in clinical trials and shown to be safe and effective for that specific condition and/or patient population. Many drugs fail in the R&D stage and granting a product an orphan drug designation does NOT mean a drug will ultimately be approved to treat the associated orphan indication. In fact, to date, there have been more than 6600 orphan designations made by the FDA, but only approximately 1160 FDA approved indications for orphan products.<sup>2</sup>

Congress, clarify that the number of orphan **designations** granted to a product has no effect on its eligibility for the IRA's orphan drug exclusion; this will help encourage much-needed continued research and development into rare diseases, most of which do not have any FDA approved therapies.

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<sup>2</sup> FDA Orphan Drug Designations and Approvals Database.  
<https://www.accessdata.fda.gov/scripts/opdlisting/oopd/>

2) ***Maintain the purpose of the orphan drug exclusion by clarifying an orphan product becomes negotiation-eligible 7 or 11 years after it loses that exclusion.***

To account for the need of drug sponsors to recoup R&D costs, products that otherwise meet the criteria for the MDPNP are not negotiated until they have been on the market for 7 or 11 years - for small molecule drugs or biologics, respectively. Yet, under current law, a similar time is not granted for orphan drugs that lose eligibility for the orphan drug exclusion. Once the orphan drug loses its eligibility, it is immediately negotiation eligible seven or eleven years after the product's very first approval, as if the exclusion never happened. This is true even if the orphan drug loses eligibility for the exclusion many years after the first approval. In fact, a recent article published in JAMA found that on average it takes 4.5 years for a novel orphan drug to obtain a second approved indication.<sup>3</sup> This significantly magnifies existing disincentives to further develop an orphan drug to treat additional rare diseases.

Congress, clarify that a previously excluded product will become negotiation eligible 7 to 11 years after losing eligibility for the orphan drug exemption (rather than from the very first approval); otherwise, manufacturers will have essentially no incentive to pursue continued research and clinical trials to treat additional rare diseases.

To continue long-standing efforts to develop safe and effective therapies to treat the millions of Americans living with rare diseases, our patient organizations urge Congress to support these two technical corrections to the IRA. The proposed changes do not fundamentally alter the intent of the IRA's orphan drug exclusion, but instead serve to reinforce the decades long commitment Congress has made to ensuring everyone has an opportunity for a safe and effective therapy, regardless of the rarity of their condition.

For more information, please contact:

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Sincerely,

EveryLife Foundation for Rare Diseases  
National Organization for Rare Disorders  
ALS Association  
American Cancer Society Cancer Action Network  
Friedreich's Ataxia Research Alliance  
Leukemia & Lymphoma Society  
National Health Council  
A Twist of Fate-ATS  
Abetalipoproteinemia & Related Disorders Foundation  
ACTA2 Alliance

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<sup>3</sup> JAMA Network Open. 2023;6(8):e2329006. doi:10.1001/jamanetworkopen.2023.29006 (Re

Adenoid Cystic Carcinoma Research Foundation  
Adrenal Insufficiency United  
African Americans with Ataxia Association  
Alliance for Aging Research  
Alport Syndrome Foundation  
Alström Syndrome International  
American Kidney Fund  
American Medical Women's Association  
Amyloidosis Research Consortium  
Angelman Syndrome Foundation  
APS Foundation of America, Inc  
Arthritis Foundation  
Asbestos Disease Awareness Organization (ADAO)  
Association for Creatine Deficiencies  
Association for the Bladder Exstrophy Community  
Autoimmune Association  
Avery's Hope  
BDSRA Foundation  
CACNA1A Foundation  
CancerCare  
CDH International  
Center for Patient Advocacy Leaders (CPALs)  
Centre for Community-Driven Research  
Chondrosarcoma CS Foundation, Inc.  
Choroideremia Research Foundation  
Chronic Disease Coalition  
Coalition to Cure Calpain 3  
Congenital Hyperinsulinism International  
COPD Foundation  
CSNK2A1 Foundation  
Cure 4 The Kids Foundation  
Cure CMD  
Cure GM1 Foundation  
Cure HHT  
Cure Mito Foundation  
Cure MLD  
Cure Sanfilippo Foundation  
Cure VCP Disease, Inc  
CURED Nfp  
DADA2 Foundation  
Danny's Dose Alliance  
Dravet Syndrome Foundation  
EB Research Partnership  
Epilepsy Foundation  
Fabry Support & Information Group

FACES: The National Craniofacial Association  
Family Heart Foundation  
Foundation for Angelman Syndrome Therapeutics (FAST)  
Foundation to Fight H-ABC  
Foundation for Sarcoidosis Research  
Galactosemia Foundation  
GBS|CIDP Foundation International  
Global Genes  
GRIN2B Foundation  
HCU Network America  
Hepatitis B Foundation  
Hermansky-Pudlak Syndrome Network Inc.  
Hide & Seek Foundation  
Histiocytosis Association, Inc.  
Hope For Danté  
Huntington's Disease Society of America  
Hydrocephalus Association  
Hypertrophic Olivary Degeneration Association  
ICAN, International Cancer Advocacy Network  
IDefine  
IgA Nephropathy Foundation  
Immune Deficiency Foundation  
Indo US Organization for Rare Diseases (IndoUSrare)  
International Foundation for CDKL5 Research  
International Pemphigus & Pemphigoid Foundation  
International Waldenstrom's Macroglobulinemia Foundation (IWMF)  
Jack McGovern Coats' Disease Foundation  
Jamal's Helping Hands  
Juju and Friends CLN2 Warrior Foundation  
Ketotic Hypoglycemia International  
KrabbeConnect  
Krishnan Family Foundation  
Let's Cure ACC  
Leukodystrophy Newborn Screening Action Network  
Li Fraumeni Syndrome Association  
Little Hercules Foundation  
Lupus and Allied Diseases Association, Inc.  
Mackenzie's Mission  
Muscular Dystrophy Association  
MdDS Foundation  
Mission: Cure  
Mississippi Metabolics Foundation  
MitoAction  
MLD Foundation

Musella Foundation For Brain Tumor Research & Information, Inc  
Myasthenia Gravis Association  
Myasthenia Gravis Foundation of America (MGFA)  
Myocarditis Foundation  
Myositis Support and Understanding  
NAIT babies  
Narcolepsy Network  
National Ataxia Foundation  
National Eosinophilia Myalgia Syndrome Network  
National Fragile X Foundation  
National MALS Foundation  
National MPS Society  
National Perinatal Association  
National PKU Alliance  
National Psoriasis Foundation  
NephCure  
NTM Info & Research  
Northwest Parkinson's Foundation  
Organic Acidemia Association Corporation  
Parent Project Muscular Dystrophy  
Partnership to Fight Chronic Disease  
Patient Empowerment Network  
Petronille Healthy Society  
PF Warriors  
Phelan-McDermid Syndrome Foundation  
Pompe Alliance  
Project Alive  
Propionic Acidemia Foundation  
Pulmonary Hypertension Association  
PWSA | USA  
Rare And Black  
RareKC  
Rare New England  
Rubix LS  
Sarcoidosis of Long Island  
SCA27b Ataxia Foundation  
SCAD Alliance  
Sick Cells  
Sickle Cell Disease Association of America  
Sickle cell association of Kentuckiana  
Spastic Paraplegia Foundation, Inc.  
Super T's Mast Cell Foundation  
SYNGAP1 Foundation  
T.E.A.M. 4 Travis  
Team Telomere

Team Titin, Inc.  
Texas Rare Alliance  
The Akari Foundation  
The Bluefield Project to Cure Frontotemporal Dementia  
The Bonnell Foundation: Living with cystic fibrosis  
The Desmoid Tumor Research Foundation  
The E.WE Foundation  
The Fairy Goddess Mother Project  
The Foundation for Casey's Cure, Inc.  
The Global Foundation for Peroxisomal Disorders  
The LCC Foundation  
The Mast Cell Disease Society  
The Oxalosis and Hyperoxaluria Foundation  
The RYR-1 Foundation  
The Sudden Arrhythmia Death Syndromes (SADS) Foundation  
Thrive with Pyruvate Kinase Deficiency Organization  
Trisomy 12p Support Group  
Undiagnosed Diseases Network Foundation  
United MSD Foundation  
Uriel E. Owens Sickle Cell Disease Association of the Midwest  
Usher 1F Collaborative  
Usher Syndrome Society  
Vasculitis Foundation  
wAIHA Warriors, Inc.  
World Alliance of Pituitary Organizations  
Yellow Brick Road Project