February 28, 2024

The Honorable Brett Guthrie
Chair, Health Subcommittee
House Committee on Energy and Commerce
2434 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Health Subcommittee
House Committee on Energy and Commerce
272 Cannon House Office Building
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
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chair Guthrie, Ranking Member Eshoo, Chair McMorris Rodgers and Ranking Member Pallone,

On behalf of the more than 30 million Americans living with one of the over 10,000 known rare diseases, the National Organization for Rare Disorders (NORD) thanks the House Committee on Energy and Commerce's Health Subcommittee for holding a hearing on Rare Disease Day 2024 focused on legislation that could have an impact on the rare disease community NORD so proudly represents.

NORD is a unique federation of non-profit and health organizations dedicated to improving the health and well-being of people with rare diseases by driving advances in care, research, and policy. NORD was founded over 40 years ago, after the passage of the Orphan Drug Act (ODA), to formalize the coalition of patient advocacy groups that were instrumental in passing this landmark law. Since that time, NORD has been advancing rare disease research and funding to support the development of effective treatments and cures; raising awareness and addressing key knowledge gaps; and advocating for policies that support the availability of affordable, comprehensive health care, including access to safe and effective therapies.

The ODA defines a rare disease as a disease or condition affecting fewer than 200,000 Americans.[1] Before the ODA was enacted in 1983, fewer than 40 drugs had been approved by the Food and Drug Administration (FDA) to treat rare diseases.[2] Thanks to the ODA, as of the end of 2022, more than 880 drugs have been approved to treat rare diseases[3] and rare disease therapies now consistently account for more than half of FDA approvals for new molecular entities.[4] Still, an estimated 95% of the more than 10,000 known rare diseases do not have an FDA approved treatment,[5] making continued investment in rare disease research and innovation critical to the rare disease community.

[1] *Rare diseases at FDA*. U.S. Food and Drug Administration. (2022, December 13). https://www.fda.gov/patients/rare-diseases-fda
[2] Orphan Drugs In The United States: An Examination of Patents and Orphan Drug Exclusivity (2021): available at https://rarediseases.org/wp-content/uploads/2022/10/NORD-Avalere-Report-2021_FNL-1.pdf; accessed 2/2024
[3] Fermaglich, L.J., Miller, K.L. 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. Orphanet J Rare Dis 18, 163 (2023). https://doi.org/10.1186/s13023-023-02790-7
[4] *New drug therapy approvals 2023*. U.S. Food and Drug Administration. (2024, January). https://www.fda.gov/media/175253/download
[5] Fermaglich, L.J., Miller, K.L. 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. Orphanet J Rare Dis 18, 163 (2023). https://doi.org/10.1186/s13023-023-02790-7

1779 MASSACHUSETTS AVENUE NW, SUITE 500
WASHINGTON, DC 20036
T 202-588-5700 ▪ F 202-588-5701

7 KENOSIA AVENUE
DANBURY, CT 06810
T 203-744-0100 ▪ F 203-263-9938

1900 CROWN COLONY DRIVE, SUITE 310
QUINCY, MA 02169
T 617-249-7300 ▪ F 617-249-7301

rarediseases.org ▪ orphan@rarediseases.org

Beyond a lack of FDA approved treatment options, many people living with a rare disease struggle to obtain an accurate diagnosis, access health care providers with expertise in their condition, and afford the often high out-of-pocket costs associated with their treatment and care. The medical needs of those living with a rare disease are complex, as are the policies necessary to enable rare disease patients to thrive. NORD is grateful to the Subcommittee for holding today's hearing examining some of these policy issues and urges Congress to work in a bipartisan manner, and with other key stakeholders including the FDA and Centers for Medicare and Medicaid Services (CMS) to strengthen rare disease drug development, improve affordable patient access to necessary diagnostics, care and treatment, and effectively address the significant unmet needs that exist within the rare disease community.[6]

A. NORD is proud to endorse the following five bills under consideration at today's hearing:

1. **The Retaining Access and Restoring Exclusivity (RARE) Act (H.R. 7383)**

Introduced by Representative Gus M. Bilirakis and Representative Doris O. Matsui, H.R. 7383, the Retaining Access and Restoring Exclusivity (RARE) Act would clarify the original intent of the ODA and codify the FDA's longstanding interpretation that orphan drug exclusivity is awarded based on FDA approved indications, not the much broader orphan designation.

The ODA provides critical incentives to encourage drug companies to undertake research and development of drugs for rare diseases, including research funding and tax credits for clinical testing expenses. Another key ODA incentive is orphan drug exclusivity – which bars FDA from approving another company's marketing application for the same drug to treat the same orphan indication for seven years after the first drug is approved. FDA has long interpreted this exclusivity to be limited to the specific approved indication for which the drug's safety and efficacy has been demonstrated, potentially allowing a different company to further develop the drug for a different population subgroup, such as children. By awarding market exclusivity only for the patient population for which a drug was studied and determined to be safe and effective, FDA aimed to "make sure pharmaceutical companies didn't get total market control for a drug after doing studies on only the 'smallest, easiest-to-study populations.'"[7]

Unfortunately, FDA's longstanding interpretation of this exclusivity was challenged in a recent court case and in November 2021, U.S. Court of Appeals for the 11th Circuit ruled that orphan drug exclusivity should be awarded based on the much broader orphan designation. NORD is deeply concerned that awarding orphan drug exclusivity based on orphan designation would provide exclusivity for a product whose uses have not been adequately substantiated by safety and efficacy data. The RARE Act would provide much-needed certainty about the scope of this important ODA incentive and ensure orphan drug exclusivity is awarded based on approved indications.

The RARE Act is supported by 78 patient organizations and NORD urges members of the Subcommittee to support swift passage of the RARE Act.

---

[6] FDA. (2022, March 4). CDER continues to make rare diseases a priority with drug approvals. U.S. Food and Drug Administration. https://www.fda.gov/news-events/fda-voices/cder-continues-make-rare-diseases-priority-drug-approvals-andprogramming-speed-therapeutic

[7] Tribble, S. J. (2023, February 23). *A bitter battle over the "orphan drug" program leaves patients' pocketbooks at risk*. KFF Health News. https://kffhealthnews.org/news/article/a-bitter-battle-over-the-orphan-drug-program-leaves-patients-pocketbooks-at-risk/

2. The Creating Hope Reauthorization Act of 2024 (H.R.7384)

Introduced by Representative Michael T. McCaul, Representative Anna G. Eshoo, Representative Gus M. Bilirakis, Representative Nanette Diaz Barragan, Representative Lori Trahan and Representative Michael C. Burgess, H.R. 7384, the Creating Hope Reauthorization Act would reauthorize the Rare Pediatric Disease Priority Review Voucher program for four years, through September 30, 2028. As many as half of those living with a rare disease are children, and rare pediatric disease priority review vouchers (PRVs) offer a crucial incentive for companies to develop therapies for these particularly challenging to study patient populations. Reauthorizing this program before the September 30, 2024 deadline is vital to maintain the progress needed to address the significant unmet treatment needs that exist within the pediatric rare disease population.

Under the Rare Pediatric Disease PRV program, companies that develop novel therapies for rare pediatric diseases – defined as rare diseases that primarily impact children and lead to their most significant health impacts in this population - can be awarded a PRV.[8] The PRV can then be redeemed at a later date to obtain priority review for another new drug application (NDA) or biologic license application (BLA) that would otherwise not qualify for priority review. Alternatively, the PRV can be sold to generate additional financial resources for a drug sponsor that ideally would be used to invest in additional research and development into new or better therapies to treat rare diseases.

The PRV program has helped spur rare pediatric disease drug development. To date, close to 50 rare disease therapies across more than 30 different rare diseases have been awarded a PRV, including many diseases that are typically fatal before children reach adulthood. Additionally, more than half of the PRVs were awarded after 2019, the cut-off for the last Government Accountability Office (GAO) analysis into the effectiveness of the PRV program. Notably, in the first 10 years of the program, more than 550 drugs have received rare pediatric disease designations[9] with more than half of these designations, 241, awarded in 2020 alone, in large part driven by the prospect of the program sunsetting at the end of that year.[10] The significant workforce challenges this sudden spike in applications created at FDA emphasizes the need for a swift program reauthorization, far ahead of the current deadline.

NORD urges Congress to pass H.R. 7384, the Creating Hope Reauthorization Act well in advance of the September 30th deadline to maintain this important tool in ongoing efforts to address the significant unmet treatment needs that exist in the pediatric rare disease population.

3. Accelerating Kids' Access to Care Act (AKACA) (H.R. 4758)

Introduced by Representative Lori Trahan and Representative Mariannette Miller-Meeks, H.R. 4758, the Accelerating Kids' Access to Care Act would streamline the credentialing processes for out-of-state

---

[8] Office of the Commissioner. (n.d.-d). Rare pediatric disease (RPD) designation and voucher programs. U.S. Food and Drug Administration. https://www.fda.gov/industry/medical-products-rare-diseases-and-conditions/rare-pediatric-disease-rpd-designation-and-voucher-programs

[9] Mease C, Miller KL, Fermaglich LJ, Best J, Liu G, Torjusen E. Analysis of the first ten years of FDA's rare pediatric disease priority review voucher program: designations, diseases, and drug development. Orphanet J Rare Dis. 2024 Feb 25;19(1):86. doi: 10.1186/s13023-024-03097-x. PMID: 38403586; PMCID: PMC10895788.

[10] Mease C, Miller KL, Fermaglich LJ, Best J, Liu G, Torjusen E. Analysis of the first ten years of FDA's rare pediatric disease priority review voucher program: designations, diseases, and drug development. Orphanet J Rare Dis. 2024 Feb 25;19(1):86. doi: 10.1186/s13023-024-03097-x. PMID: 38403586; PMCID: PMC10895788.

providers by establishing a voluntary pathway for qualified providers to enroll in other states' Medicaid and CHIP programs. This limited pathway, only available to providers in good standing with their home state program or Medicare, would enable them to bypass redundant subsequent screenings, expeditiously enroll in another state Medicaid and CHIP program, and provide essential time-sensitive care to children when necessary. It is important to note that AKACA only pertains to provider screening and enrollment; it does not change the authority states have to authorize out-of-state care and negotiate payment with accepting providers.

Both Medicaid and CHIP are core sources of health care coverage for children, with children accounting for over 46% of total Medicaid enrollment,[11] and more than one-third of all children with special health needs are enrolled in Medicaid.[12] Furthermore, the parents of children living with rare diseases often struggle to access the specialized care needed to treat their child's condition, as the best treatment for these children sometimes requires significant travel. In fact, a 2019 NORD survey of rare disease patients and caregivers nationwide found that 39% of respondents traveled more than 60 miles to receive medical care, and 17% had moved (or were considering relocating) to be closer to care.[13]

For many rare disease patients, it is not uncommon that only one or two clinical centers in the entire country have specialists with the requisite expertise to treat their condition. When a child's medical needs cannot be met by providers in their home state, the State Medicaid Agency and/or Medicaid Managed Care Organization authorizes such care with an out-of-state provider. The out-of-state provider must then be screened and enrolled by the home state's Medicaid program. While current laws and regulations allow for the child's state to rely on provider screenings done by other states' Medicaid programs or by Medicare, unfortunately, there is no single federal pathway. This means providers are often screened and enrolled every time they are called upon to treat a child from a different state. This process can delay time-sensitive care by weeks or months, resulting in the potential for disease progression and higher health care costs.

AKACA is supported by 215 organizations and NORD urges the members of the Subcommittee to support this common-sense solution that streamline the enrollment process for health care providers, facilitating access to critical, time-sensitive treatment for patients, and reducing the risk of care disruption and subsequent negative health outcomes.

4. **Innovation for Pediatric Drugs Act (H.R. 6664)**

Introduced by Representative Michael T. McCaul and Representative Anna G. Eshoo, H.R. 6664, the Innovation for Pediatric Drugs Act aims to support the development of vital safety and efficacy information specific to the use of rare disease drugs in pediatric populations.

---

[11] Centers for Medicare and Medicaid Services. October 2023 Medicaid and CHIP Enrollment Data Highlights. https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html. Accessed on February 27, 2024.

[12] MACPAC. March 2023. Medicaid Access in Brief: Children and Youth with Special Health Care Needs. https://www.macpac.gov/wp-content/uploads/2023/03/Medicaid-Access-in-Brief-Children-and-Youth-with-Special-Health-Care-Needs.pdf Accessed on February 27, 2024.

[13] NORD. 2020. Barriers and Facilitators to Rare Disease Diagnosis, Care and Treatment: 30-year Follow-up. https://rarediseases.org/wp-content/uploads/2020/11/NRD-2088-Barriers-30-Yr-Survey-Report_FNL-2.pdf

Currently, the Pediatric Research Equality Act (PREA) exempts most orphan therapies from its pediatric study requirements. Of the more than 30 million individuals in the United States living with rare diseases,[14] as many as half are children, and they need – and deserve – access to therapies that have been proven to be safe and effective for them. At the same time, pediatric studies are particularly challenging for rare diseases and can be significantly more difficult to complete than for more common diseases.

According to a report released by the FDA in August 2019, "Pediatric Labeling of Orphan Drugs," almost 40 percent (127 of 348) of orphan indications approved from January 1999 – August 2018 that warranted pediatric labeling were incompletely labeled, with 81 having no pediatric information and 46 missing some pediatric information.[15] Although some progress has been made in recent years, significant gaps in labeling instructions for pediatric patients remain. Without adequate labeling data for children, health care providers and caregivers are put in the difficult position of guessing whether and how much of a drug to give to a pediatric patient, which can have dangerous consequences for children.

The Innovation in Pediatric Drugs Act would increase research funding authorized as part of the Best Pharmaceuticals for Children Act (BPCA) to help close data gaps around pediatric uses for approved drugs and strengthen FDA's ability to enforce post-market commitments around pediatric studies. In addition, the bill would end the blanket exemption of orphan drugs from pediatric studies normally required under PREA, while instructing FDA to promulgate guidance on when and how pediatric studies for rare disease drugs may be impossible or require modifications to the standard PREA requirements (i.e., deferrals and full or partial waivers).

NORD strongly supports the intent of the Innovation for Pediatric Drugs Act, but also recognizes that its success will hinge on the mandated guidance from FDA being clear, well-balanced, practical, and on a workable timeframe for the rare disease community. The current timeline for the guidance and implementation are not practical, but NORD is grateful to the bill sponsors for their willingness to revise the timelines outlined in the current version of H.R. 6664, as this will be essential to NORD's continued support for the bill.

5. **Providing Realistic Opportunity to Equal and Comparable Treatment for Rare (PROTECT Rare) Act (H.R. 6904)**

Introduced by Representative Doris O. Matsui, Representative Neal P. Dunn, Representative Mike Thompson, and Representative Mike Kelly, H.R. 6904, the PROTECT Rare Act would refine the resources used to determine health program or insurance coverage for therapies used to treat or manage a rare disease.

Off-label drug use occurs when a physician prescribes a product that the FDA has deemed to be safe and effective for a condition other than the one it is being prescribed to treat. The practice of prescribing off-label drugs is rather frequent, with estimates ranging between 20% and 30% of all prescriptions written

[14] U.S. Government Accountability. (2021, October 18). *Rare diseases: Although Limited, available evidence suggests medical and other costs can be substantial*. Rare Diseases: Although Limited, Available Evidence Suggests Medical and Other Costs Can Be Substantial | U.S. GAO. https://www.gao.gov/products/gao-22-104235

[15] Department of Health and Human Services, Food and Drug Administration. Pediatric Labeling of Orphan Drugs Report to Congress. Table 5. https://www.fda.gov/media/130060/download

for off-label uses.[16,17] As mentioned previously, over 95% of known rare diseases do not have an FDA approved treatment and as a result, many rare disease patients must rely on off-label use of prescription drugs to manage their condition.

However, insurance coverage of off-label prescriptions varies widely. While some payers may agree to cover the off-label use of a product as long as the off-label use is listed in a drug's compendium (a collection of data regarding the use of the product in patients), others may not, which can create significant barriers to patients obtaining affordable, timely access to the prescribed treatment. The PROTECT Rare Act is an important step towards ensuring rare disease patients have access to the drugs they need by requiring Medicare, Medicaid, and private insurers to utilize peer-reviewed medical literature, including clinical guidelines, when making treatment coverage determinations.

NORD urges members of the Subcommittee to support the PROTECT Rare Act and urges its swift consideration by the Committee to support rare disease patient access to necessary treatment.

B. NORD would further urge the Subcommittee to consider the following at the hearing:

NORD recognizes that the Subcommittee will consider legislation that would make changes to the Inflation Reduction Act (IRA). NORD has **not** taken a position on any of these three IRA-related bills under consideration at the hearing, as NORD's current focus is working as part of a coalition of 170 patient advocacy groups advocating for two small, technical corrections to the IRA's orphan drug exclusion.

The IRA currently includes a limited exclusion for some rare disease therapies from the drug price negotiation program. Under current law, otherwise qualifying therapies that have been approved only for a single indication for a rare disease tied to a single orphan designation are excluded from the negotiation process. A company can lose the exclusion under current law by applying for, and being granted, additional orphan **designations**, or receiving **approval** for a second indication not tied to the initial designation. If a company receives approval for a second indication, the countdown, or "clock," for when the product loses its exclusion begins with the date of the **very first approval**, rather than the approval of the second indication that caused the product to lose its exclusion.

Starting with the passage of the Orphan Drug Act, Congressional leaders and Administrations have consistently worked in a bipartisan manner to encourage more research and development into rare disease treatments. Unfortunately, NORD is concerned that the IRA language specific to the orphan drug exclusion will discourage even the most basic rare disease research, putting at risk the progress made because the ODA's incentives have so effectively spurred rare disease drug development over the last four decades.

The two, small technical corrections being sought by 170 patient organizations would **not** change the number of approved indications an orphan product can obtain to remain eligible for the orphan exclusion, but would clarify:

---

[16] AHRQ. September, 2015. Off-Label Drugs: What You Need to Know. https://www.ahrq.gov/patients-consumers/patient-involvement/off-label-drug-usage.html. Accessed February 27, 2024.

[17] Van Norman GA. Off-Label Use vs Off-Label Marketing of Drugs: Part 1: Off-Label Use-Patient Harms and Prescriber Responsibilities. JACC Basic Transl Sci. 2023 Feb 27;8(2):224-233. doi: 10.1016/j.jacbts.2022.12.011. PMID: 36908673; PMCID: PMC9998554.

1. **The number of designations that a product receives is not tied to the exclusion from negotiation.** Orphan drug designations are a key part of the drug development processes for rare diseases, as they unlock crucial research incentives. Designations are granted early in the process and are based on a preliminary proof of concept. Designations *do not* grant the manufacturer the ability to market the product. Penalizing manufacturers for seeking additional designations risks disincentivizing research into additional rare diseases. Almost 6,800 designations have been granted, compared to just over 1,200 FDA approved indications. Existing law strikes a product's exclusion from the negotiation period as soon as a manufacturer seeks a secondary designation to research the drug for additional uses. NORD urges Congress to protect vital rare disease research by allowing manufacturers to leverage the full intent of the Orphan Drug Act and seek multiple designations while remaining exempt from negotiation until a product is FDA approved to treat a second rare disease.

2. **Protecting the exclusion "clock" for rare disease products.** Under current law, the drug price negotiation process **cannot** begin until a product has been on the market for 7 or 11 years, for small molecule drugs and biologics, respectively. However, for an orphan product that loses exclusion from drug price negotiation, the 7 or 11 year countdown begins with the approval date for the **very first indication**, even if the product loses its exclusion status many years later. NORD believes this unfairly penalizes rare disease drug developers by artificially reducing the exclusion period established by Congress. To fix this issue, NORD urges beginning the countdown "clock" for a previously excluded orphan product from the start date of the second approved orphan product.

A careful balance between continued innovation and affordable patient access to treatment and care is vital to the rare disease community. NORD is grateful for the Subcommittee's attention to these critical issues as part of today's hearing and looks forward to working with the Subcommittee to better support the rare disease community. Please do not hesitate to reach out to Heidi Ross at HRoss@rarediseases.org, Karin Hoelzer at KHoelzer@rarediseases.org, Hayley Mason at HMason@rarediseaess.org or Mason Barrett at MBarrett@rarediseases.org when NORD can be of assistance to the Subcommittee's important work.

Sincerely,

Heidi Ross, MPH
Vice President, Policy and Regulatory Affairs
National Organization for Rare Disorders

Karin Hoelzer, DVM, PhD
Director, Policy and Regulatory Affairs
National Organization for Rare Disorders

Hayley Mason, MPA
Policy Analyst
National Organization for Rare Disorders

Mason Barrett
Policy Analyst
National Organization for Rare Disorders