Testimony of Frederick Isasi, JD, MPH
Executive Director
Families USA

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Making Health Care More Affordable: Lowering Drug Prices and Increasing Transparency

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Families USA
1225 New York Avenue, NW
Suite 800
Washington, DC 20005

Chairwoman Wilson, Ranking Member Walberg, and members of the House Education and Labor Committee, Subcommittee on Health, Education, Labor, and Pensions: Thank you for the opportunity to speak with you today. I am Frederick Isasi, the Executive Director of Families USA. For nearly 40 years, we have served as one of the leading national voices for health care consumers both in Washington, D.C. and on the state level. Our mission is to allow every individual to live to their greatest potential by ensuring that the best health and health care are equally accessible and affordable to all.

I am delighted to be speaking to this subcommittee at such a pivotal time. After decades of outrageous price increases, Congress is finally taking meaningful action to reduce the staggering price of prescription drug costs for America's families. On behalf of the millions of families struggling every day to afford basic prescription drugs, thank you for your leadership.

The Impact of High Drug Costs on Families

While high drug prices are a source of seemingly constant debate in Washington, D.C., for millions of America's families, they are a painful and burdensome reality and can impact the basic necessities of life. For example, consumers facing increased drug costs report cutting-back on key areas of their budget, such as buying food.[1] And for some, the choice is even more dire. Incredibly, nearly three in ten adults – approximately 80 million people – in our country have not taken required medicine due to its costs.[2] Another one in ten cut their pills in half or skip dosages to stretch the limited supply of drugs they can afford to buy.[3] And, approximately one in five forgo essential medications altogether because they can't afford to fill their prescription.

While people who need high-cost drugs face the most significant financial pain from high and rising prices, the impact of the skyrocketing cost of drugs is spread across all consumers. In fact, almost 25 percent of a privately-insured health care consumer's monthly premium goes to prescription drugs.[4]

Please allow me to share the story of just one of the millions of consumers struggling under the burden of high drug costs – a woman named Catherine, a 63-year-old with disabilities from Wheeling, Illinois:

> *Within three months of going to the doctor with a cough that wouldn't go away, Catherine was told that, without a lung transplant, she would not live to see the end of the year. Her condition worsened. Her doctors prepared her to die — she prepared herself to die. Catherine was eventually able to receive a new lung in November 2014.*
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> *Because lung transplants have a high risk of complications, Catherine must be constantly monitored by doctors. Catherine takes 36 pills every day, including anti-rejection and pain medications. Each year, her medication costs put her in the Medicare Part D coverage gap — the doughnut hole. In fact, before each year ends, Catherine starts to ration her medications to make them last until*

her benefits are renewed at the beginning of the year. She spends $1,000 each month on her medications, which is exactly half of her monthly income. Catherine sold her home and moved in with her parents to reduce her living expenses. She lives an extremely frugal life, but as her drug costs escalate year over year, she moves closer and closer to financial ruin and deep poverty. At the end of each year, she finds herself several thousands of dollars in the negative, wondering how she will make up the shortfall.

Catherine lives every day with a serious chronic illness. It is unconscionable that she should simultaneously deal with the stress and hardship that comes with such a significant financial burden.

Exploitative pricing is more than academic for those who rely on lifesaving drugs. Ten years ago, Naloxone, a life-saving drug used to treat opioid overdoses, cost just one dollar for a nasal spray. Now, it costs $150, and the auto-injectable version costs $4,500.[5] EpiPen — a drug intended for emergency allergic reactions, and essential in childcare settings and schools. About a decade ago, after Mylan acquired the EpiPen, they sued generic companies trying to produce it and increased costs from $100 to over $600.[6] After a great deal of public outcry the company introduced a generic version of the EpiPen priced at $300 in the U.S. , while its price is $100 in Canada, and $38 in the UK.[7]

Debunking the Innovation Canard

Despite pharmaceutical industry claims that high prices are fueled by the risk and cost of drug research and development (R&D), recent evidence suggests these costs make up a small share of their spending. In 2017, drug makers spent a fraction -- 22% of their revenues -- on R&D.[8] Meanwhile, taxpayer-funded research contributed to every one of the 210 drugs approved between 2010 and 2016.[9]

For decades, drug makers have systematically abused patent and market exclusivity rules to quell product competition.[10] For example, AbbVie has nearly 250 patent applications around a single product – Humira – helping it to generate $100 billion from this drug alone.[11] And AbbVie is not alone in these abusive practices. The makers of the top 12 best-selling drugs in the United States have filed, on average, 125 patents per drug, resulting in an average 38 years of blocked competition, far in excess of the exclusivity envisioned under Federal law.[12] Instead of investing in real innovation, drug makers would rather make outsized profits on minor tweaks to existing drugs, which is why more than three quarters of new patents are for existing drugs.[13]

When patents on blockbuster drugs do finally expire, brand name manufacturers have turned toward increased prices on their remaining products to maintain and expand high revenues.[14] According to a 2017 study, revenues generated by new drugs failed to make up for loss in revenues due to expiration of patents. Increases in invoice prices for current drugs under exclusivity, however, generated $187 billion in revenues.[15] Were it not for these price increases, revenues for name brand pharmaceutical companies would

have been flat over the last decade, and overall spending on drugs would have fallen due to increased utilization of generic drugs.[16]

And, even when drug manufacturers do allocate a small percentage of their revenue toward *bona fide* innovations, all too often they focus their resources on drugs that don't address the most urgent needs of families and instead focus on niche drugs that yield the greatest profit.[17] For example, experts agree that across the world there is an urgent need for new antibiotics to combat increasing drug resistance, but major pharmaceutical corporations continue to step back from that life-saving research.[18]

Current Medicare Drug Payment Policy Represents Total Market Failure

Critics of H.R. 3 and other legislation to allow Medicare to negotiate on prices claim that these bills will "would end the current market-based system.[19]" To suggest that the current way in which brand name drugs are purchased by Medicare as "market-based" is utterly absurd. In truth, Medicare payment for brand name drugs is as far from a competitive marketplace as can be imagined. First, the Congress has granted government-sanctioned monopolies on brand name drugs through patent and market exclusivity laws. Second, Congress tied Medicare's hands by barring it from negotiating on prices for these drugs. Finally, Congress has kept the government from refusing to buy drugs at exorbitant prices. ***Let us be very clear: this is not a competitive market. It is a hostage situation.***

State Remedies are Limited without Action by Congress

Many states are doing everything in their power to address the drug affordability crisis for their consumers but they need the federal government to take action if they are to have the ability to fully address high and rising drug prices. During the 2019 legislative session, 44 states have filed 244 bills to control drug costs.[20] Precedent-setting legislation in Maryland will create a Prescription Drug Price Review Board to determine the appropriate price for government payers in the state to pay for high-cost drugs.[21] Additionally, Oregon, California, Connecticut, Nevada, and Vermont, recently enacted drug price transparency laws to require drug makers to justify dramatic price increases.[22] These state efforts are almost always challenged by lawyers from the pharmaceutical industry. And, without action from the federal government, state legislation can only do so much. Congress created the rules that drug manufacturers have so blatantly abused, and it alone has the power to change those rules.

Legislation Under Consideration

One option Congress is currently considering to reduce drug costs is to allow Medicare to negotiate the price it pays for pharmaceuticals. H.R. 3, *the Lower Drug Costs Now Act,* represents a critical and clearly necessary step in addressing the rapidly-growing crisis around prescription drug costs.

The *Lower Drug Costs Now Act* represents is the kind of legislation consumers are demanding—it requires government to take action so that they can afford their

medicines without bankrupting themselves in the process. And it does this without risking access to lifesaving medicines through a restrictive formulary. Specifically, the *Lower Drug Costs Now Act*:

- Authorizes and mandates that the Secretary negotiate directly with drug manufacturers on insulin and at least 25 other drugs that lack competition with the greatest costs to Medicare and the U.S. health system.
- Establishes a maximum negotiated price of no more than 1.2 times the average price offered in six other countries (Australia, Canada, France, Germany, Japan, and the United Kingdom).
- Requires manufacturers to make the negotiated price available to other purchasers.
- Provides a strong incentive for manufacturers to negotiate in good faith and to provide the negotiated price to Medicare and other purchasers through the use of an escalating excise tax and civil monetary penalties.
- Limits manufacturers' ability to hike the price of drugs year after year by imposing inflation rebates in Medicare Parts B and D.
- Caps out-of-pocket spending for seniors in Part D at $2000.

When enacted, the *Lower Drug Costs Now Act*, will significantly improve the affordability of prescription drugs for consumers and produce substantial savings in the Medicare Program. A preliminary analysis from the Congressional Budget Office found that the Senate's *Prescription Drug Pricing Reduction Act*, which includes an inflation rebate and Medicare Part D out of pocket cap, but not Medicare price negotiation, would save Medicare beneficiaries $27 billion in out-of-pocket costs and would save the Medicare program $85 billion over ten years.[23] With a lower out-of-pocket cap for Medicare beneficiaries, an earlier baseline year for the Medicare inflation rebates, and real negotiating authority for the Secretary, the savings for both beneficiaries and the Medicare program from the *Lower Drug Costs Now Act* promise to be much larger.

These savings can then be reinvested in ways that promise to improve health and health care for all consumers. Families USA strongly supports using savings generated by the *Lower Drug Costs Now Act* to support the research and development of new treatments and cures, particularly for diseases and conditions that have been ignored by private industry. Additionally, Families USA supports using these savings to provide much-needed Medicare dental, hearing, and vision benefits and improved support for low-income Medicare beneficiaries.

While Families USA strongly supports the passage of the *Lower Drug Costs Now Act*, we recommend several critical improvements to strengthen the bill to ensure that it fully delivers on its promise to make prescription drugs affordable. These improvements include:

- **Expanding the selection of drugs subject to negotiation:** The minimum number of drugs for which the Secretary must negotiate a fair price annually should be increased above 25 over time and there should be stronger criteria in place to ensure that it is the costliest drugs that are negotiated. Additionally, the

definition of a negotiation-eligible drug should be expanded to include drugs that face competition from less than three generics, as it is at this level of competition that prices are significantly reduced.[24] The Secretary should also have the discretion to select additional drugs for negotiation if the manufacturer is engaging in particularly abusive pricing practices.

- **Ensuring all consumers and purchasers are protected by price spikes:** It is not only Medicare beneficiaries who are harmed when manufacturers decide to increase their prices year over year. There should be strong incentives and/or penalties in place to ensure that manufacturers cannot raise prices above the rate of inflation for non-Medicare purchasers as well. This is particularly critical for drugs which have a relatively low exposure to Medicare – such as pediatric drugs.

- **Protecting uninsured consumers:** Though under this bill manufacturers would be required to make the negotiated price available to other health plans, this leaves uninsured consumers subject to high prices. As the consumers most vulnerable to high and rising prices, Congress should ensure that uninsured consumers can purchase drugs at no more than the prices negotiated for Medicare.

The American People – Across the Political Spectrum – Want Action

In last fall's midterm Congressional elections, the American people sent a strong signal to Capitol Hill. Sixty-three percent of voters cited health care as an important issue facing the country.[25] Even more to the point, an astounding 82 percent of Republicans and 90 percent of Democrats said, "Taking action to lower prescription drug prices" should be a top priority for the new Congress.[26]

Perhaps surprisingly to those in the political trenches, various solutions to solving the problem of high drug prices have public support across the political spectrum. Public polling finds that:

- 86 percent of Americans favor allowing Medicare to negotiate with drug companies to get a lower price on medications – particularly salient for today's conversation.[27]
- 75 percent of Americans favor shortening the length of monopoly granted on prescription drugs so that cheaper generic drugs are made available sooner.[28]
- 86 percent of Americans support requiring drug companies to release information to the public on how they set their drug prices.[29]

Given these findings, it is perhaps not surprising that a recent Gallup poll found that the

pharmaceutical industry is the *least popular* industry in America, with 58 percent of people in the United States holding a "totally negative" view of the industry.[30]

Now is the time for Congress to act boldly on behalf of their constituents. I ask you today, will you support this common sense legislation to protect taxpayers and your constituents from profiteering by the least popular industry in the country, or will you side with drug makers, who hope to continue to exercise unfettered and unregulated monopolies over their products?

Thank you for your time today. I look forward to continuing to work with this committee and your colleagues across Capitol Hill to bring real relief from high drug prices to America's families.

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