

Families Need Relief from Runaway Prescription Drug Costs: Congress Must End Patent Abuses That Drive Up Prices

THE PROBLEM:

PRESCRIPTION DRUG PRICES ARE TOO HIGH, AND THE IMPACTS ARE FELT FAR BEYOND THE PHARMACY COUNTER

Americans are increasingly struggling to manage rising health care expenses and are fearful of what a medical emergency could mean for their finances.¹ Prescription drugs are — as they have been for decades — a major source of these rising costs, both at the pharmacy counter and in the form of higher premiums and cost-sharing.²



More than 40% of adults reported not taking their medications as prescribed in the past year, rationing their medications, skipping doses, or never filling their prescriptions at all due to cost.³



Almost 25% of high health insurance premiums are due to high prescription drug costs.⁴

The end result is clear: High and rising drug prices are making it harder for Americans to get by.⁵

DRUG COMPANIES ARE ABUSING THE PATENT SYSTEM TO PRICE-GOUGE PATIENTS AND TAXPAYERS

The abuse of drug patents is a fundamental driver of high and rising prescription drug prices. The patent system allows big drug companies to amass significant market and monopoly power at the expense of families who must bear the brunt of the high cost of necessary medications with no avenue for relief.

When drug companies get approval on a patent, they receive “exclusivity” on that drug, during which time no other company can sell a competing generic version.⁶ The goal of these exclusivity periods, which average from 6 to 14.5 years depending on the type of drug, is to ensure that a company has enough time to recoup research and development costs and to incentivize the development of innovative treatments.⁷

ANTICOMPETITIVE PRACTICES

However, drug companies have found ways to take advantage of this arrangement through harmful and anticompetitive practices for the explicit goal of maximizing profits by extending drug exclusivities as long as possible. Some of these behaviors include:

- **Patent thickets.** When a drug company blankets one drug with multiple or overlapping patents to block future generic competition past the period of exclusivity envisioned under federal law. For example, an average of 143 patents have been filed for each of the 12 top selling drugs in America.
- **Product hopping.** When a company makes minor tweaks to existing drugs that typically do not provide additional clinical benefit in an effort to shift demand from brand-name drugs about to face competition to similar, newer products with market exclusivity.
- **Pay for delay.** When drug companies pay potential competitors not to produce a generic drug. According to the Federal Trade Commission (FTC), as many as 142 generic versions of brand-name drugs have been delayed by pay-for-delay arrangements between drug manufacturers since 2005.

Once big drug companies have manipulated the patent system to block competition, they are free to raise prices year after year at shocking rates, long after a drug's initial release and with no justification of additional benefits or effectiveness of the drug.

THE SOLUTION:

MORE COMPETITION MEANS MORE OPTIONS AND LOWER PRICES FOR CONSUMERS

Congress must address patent abuses — a major driver of out-of-control prescription drug prices. Time and again, drug companies demonstrate that it is easier and more profitable to abuse their market position and exclusivity periods, block competition, and raise prices on existing patented drugs rather than invest in new, innovative treatments that could help families and individuals live longer, healthier lives.⁸

Congress should address the loopholes that allow for price gouging and limit competition by ending patent abuses such as patent thickets, product hopping, and pay-for-delay schemes, while ensuring generics can enter the market faster.

Currently proposed legislation that would address patent abuses, include:

- ETHIC Act (S.2276/H.R.3269) reforms patent litigation rules to limit patent thickets.
- Interagency Patent Coordination and Improvement Act of 2025 (S.1097/H.R.4570) establish better coordination between the Patent and Trademark Office and the Food and Drug Administration (FDA) to improve each agency's patent-related activities.
- Drug Competition Enhancement Act (S.1040) prohibits product hopping.
- Affordable Prescriptions for Patients Act (S.1041) addresses patent thickets.
- Preserve Access to Affordable Generics (S.1096) limits pay-for-delay schemes.
- Stop Stalling Act (S. 1095) stops drug companies' abuse of citizen petitions before the FDA, which are often used to delay market entry.

No one should have to choose between their lifesaving or life-sustaining medications and basic needs.

Endnotes

- ¹ West Health, “New Study Reveals More Struggling to Afford Healthcare,” July 17, 2024, <https://westhealth.org/news/new-study-reveals-more-struggling-to-afford-healthcare/>. See also, Sara R. Collins, Shreya Roy, Relebohile Masitha, “Paying for It: How Health Care Costs and Medical Debt Are Making Americans Sicker and Poorer: Findings from the Commonwealth Fund 2023 Health Care Affordability Survey,” The Commonwealth Fund, October 26, 2023, doi: [10.26099/bf08-3735](https://doi.org/10.26099/bf08-3735).
- ² Benjamin N. Rome, Alexander C. Egilman, and Aaron S. Kesselheim, “Trends in Prescription Drug Launch Prices, 2008–2021,” *JAMA* 327, no. 21 (2022): 2145–2147, doi: [10.1001/jama.2022.5542](https://doi.org/10.1001/jama.2022.5542).
- ³ Audrey Kearney, Alex Montero, Julian Montalvo III, Isabelle Valdes, Ashley Kirzinger, and Liz Hamel, “Public Views on Prescription Drug Costs: Regulation, Affordability and TrumpRx,” KFF, March 13, 2026, <https://www.kff.org/public-opinion/public-views-on-prescription-drug-costs-regulation-affordability-and-trump-rx/>.
- ⁴ AHIP, “Where Does Your Health Care Dollar Go?” October 24, 2024, <https://www.ahip.org/resources/where-does-your-health-care-dollar-go>; Sam Hughes, Emily Gee, and Nicole Rapfogel, “Health Insurance Costs Are Squeezing Workers and Employers,” Center for American Progress, November 29, 2022, <https://www.americanprogress.org/article/health-insurance-costs-are-squeezing-workers-and-employers/>.
- ⁵ “Poll: Nearly 1 in 4 Americans Taking Prescription Drugs Say It’s Difficult to Afford Their Medicines, Including Larger Shares Among Those with Health Issues, with Low Incomes and Nearing Medicare Age,” KFF, March 1, 2019, <https://www.kff.org/health-costs/poll-nearly-1-in-4-americans-taking-prescription-drugs-say-its-difficult-to-afford-medicines-including-larger-shares-with-low-incomes/>; Hughes et al., “Health Insurance Costs Are Squeezing Workers and Employers.”
- ⁶ Tahir Amin, “Patent Abuse Is Driving Up Drug Prices. Just Look at Lantus,” STAT, December 7, 2018, <https://www.statnews.com/2018/12/07/patent-abuse-rising-drug-prices-lantus/>. See also, Aaron S. Kesselheim, Michael S. Sinha, and Jerry Avorn, “Determinants of Market Exclusivity for Prescription Drugs in the United States,” *JAMA Internal Medicine* 177, no. 11 (2017): 1658–1664. 2017, doi: [10.1001/jamainternmed.2017.4329](https://doi.org/10.1001/jamainternmed.2017.4329).
- ⁷ Xavier Becerra, “A Report in Response to the Executive Order on Lowering Prescription Drug Costs for Americans,” U.S. Department of Health and Human Services, accessed June 2, 2026, <https://www.cms.gov/priorities/innovation/data-and-reports/2023/eo-rx-drug-cost-response-report>.
- ⁸ Eliot Fishman and Sandra Wilkniss, “Our Broken Drug Pricing and Patent System Diverts Resources Away from Innovation and into Mergers, Patent Gaming and Price Gouging,” Families USA, August 9, 2021, <https://familiesusa.org/resources/our-broken-drug-pricing-and-patent-system-diverts-resources-away-from-innovation-and-into-mergers-patent-gaming-and-price-gouging/>.
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