

# United States Senate

WASHINGTON, DC 20510

December 24, 2009

The Honorable Harry Reid  
Senate Majority Leader  
S-221 U.S. Capitol  
Washington, DC 20510

The Honorable Richard Durbin  
Assistant Senate Majority Leader  
S-321 U.S. Capitol  
Washington, DC 20510

The Honorable Max Baucus  
Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Tom Harkin  
Chairman  
Senate Committee on Health, Education, Labor and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Reid:

We believe the final health care reform bill should put a stop to “pay-for-delay” settlement agreements between brand name and generic drug companies. These agreements delay market entry of generics and greatly increase the costs of prescription drugs. Specifically, we ask that you preserve Section 2573 of the House passed H.R. 3962, “Protecting Consumer Access to Generic Drugs.”

As you know, we supported Senate adoption of a similar provision, S. 369, the “Preserve Access to Affordable Generics Act,” which passed the Senate Judiciary Committee with a strong majority and with bipartisan support on October 15, 2009.

By adopting this provision, Conferees can significantly address the rising costs of prescription drugs. These “pay for delay” agreements between brand name and generic drug companies deny consumers the benefits of generic drug competition and costs consumers and the federal government billions of dollars. Studies have shown that robust competition from generics can reduce drug prices by 80 percent or more. In June, the Federal Trade Commission estimated that stopping these pay-for-delay settlements will save consumers at least \$35 billion

over 10 years. Congressional Budget Office estimates these anti-competitive deals cost the federal government nearly \$2 billion on top of that, because we end up paying more for branded drugs through Medicare and Medicaid.

Pay-for-delay settlement agreements are anti-consumer and anticompetitive backroom deals in which branded companies pay their would-be generic competitors to stay off the market. In other words, brand name drug companies pay generic drug companies – their competition – to *not* sell their products. The brand name drug companies win because they get rid of the competition. Generic drug companies win because they get paid without having to manufacture a product. And consumers lose because they have been robbed of a competitive marketplace.

As we work together to make healthcare more affordable, we cannot afford to leave this money on the table, and inclusion of the provision to stop “pay for delay” agreements in the final health reform legislation will make sure we do not.

Herb Kohl

Mark Feinberg

Jim Johnson

Amy Klobuchar

Shirley Houn

Jeanne Shaheen

Al Franken

Paul Begala

Byron L. Daye