



April 17, 2019

The Honorable Chuck Grassley (R-IA)
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Amy Klobuchar (D-MN)
225 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Grassley and Klobuchar:

The National Business Group on Health (Business Group) writes in strong support of your bipartisan bill ([S.64](#)) that would deter traditional and biologic brand manufacturers from providing anything of value to generic and biosimilar drug manufacturers in exchange for delaying market entry, a practice commonly referred to as pay for delay. As lawmakers respond to public outcry over prescription drug spending, [which in 2017 totaled \\$333 billion](#), we urge a focus on deterring anticompetitive behavior by manufacturers. If enacted, your bill would accelerate generics and biosimilars to market, boost competition and help reduce prescription drug prices for all payers.

According to a 2010 study by the [Federal Trade Commission \(FTC\)](#), pay for delay deals cost American consumers \$3.5 billion per year. As you know, your bill would authorize the FTC to initiate proceedings against manufacturers who enter into pay for delay agreements; stipulate that these agreements are presumed unlawful if generic or biosimilar manufacturers receive anything of value and agree to limit or forego research, development, manufacturing, marketing, or sales of their products for any period of time; provide opportunity to the parties to provide “clear and convincing evidence” that agreements have procompetitive benefits that outweigh the anticompetitive effects; and impose civil penalties up to 3 times the value of the benefit.

The National Business Group on Health, representing 438 primarily large employers (including 75 of the Fortune 100) who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families, strongly supports federal action to promote sustainable, affordable pricing for prescription drugs [as indicated in our Public Policy Brief](#). Enacting S.64 would strongly deter a long standing anticompetitive business practice and boost competition, leading to lower prices for all purchasers including employers and employees.

Again, the National Business Group on Health appreciates your efforts to enact S.64. Please contact me or Steven Wojcik, the National Business Group on Health’s Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,

Brian J. Marcotte
President and CEO

CC: The Honorable Mitch McConnell (R-KY), Majority Leader, U.S. Senate
The Honorable Chuck Schumer (D-NY), Minority Leader, U.S. Senate