

March 4, 2016

Senator Charles Grassley, Chair  
Senator Ron Wyden, Ranking Member  
Committee on Finance, United States Senate

Re: Requested comment on Sovaldi report and related issues

Thank you for the opportunity to provide comment on the Committee on Finance's groundbreaking report on the pricing of Sovaldi and policy options for responding to the increasing financial burden of high-priced prescription drugs.

The Oregon State Public Interest Research Group (OSPIRG) is a statewide, grassroots consumer group that stands up to powerful interests whenever they threaten our health and safety, our financial security or our right to fully participate in our democratic society. For decades, OSPIRG has stood up for consumers, countering the influence of big banks, insurers, chemical manufacturers and other powerful special interests. OSPIRG has long supported stronger action from state and federal policymakers to address the root causes of rising prescription drug costs, and we applaud the Committee's efforts to shed light on the problem and explore solutions.

The high cost of prescription drugs has been a perennial concern for Oregon consumers. A new crop of life-changing but extraordinarily expensive specialty drugs that have come on the market in recent years has brought new urgency to the issue. Rising prescription drug costs are a burden on all Oregonians—not just the patients who depend upon expensive specialty drugs—through rising health insurance premiums, rising costs for Oregon businesses and a growing burden on state and federal budgets.

By throwing back the curtain on Gilead's decision-making process in pricing Sovaldi, the Committee's report puts this growing burden into stark relief. The report makes clear that the high price of this drug was attributable not only to reasonable factors such as the cost of developing and producing this potentially life-saving medication—and ensuring a reasonable return on investment—but to what Gilead believed the market would bear. This included an effort to estimate the level of public and policymaker outrage that would be generated by different price points. Since the widespread public outrage following the release of the drug does not appear to have slowed the trend toward accelerating prescription drug price increases, we believe that the case of Sovaldi strongly demonstrates the need for action, not just outrage.

For decades, the United States has provided lengthy exclusivity periods and strong patent protection to pharmaceutical manufacturers to create incentives for developing innovative new cures. While these incentives surely contributed to the development of many life-saving medications, they also leave consumers, businesses and state and federal budgets without much leverage or protection. We do not object to pharmaceutical companies making a profit—making money treating and curing diseases can be a great way to do well by doing good—but without meaningful market competition or regulatory scrutiny of prices, there is simply no counterbalance to keep prices reasonable. For this reason, we strongly support

efforts to put in place counterbalances to the largely unchecked pricing power of the pharmaceutical industry.

We would urge the Committee to consider supporting efforts in the following areas:

### **Competition**

The best check on unreasonable prices is robust market competition, where possible. We urge the Committee to consider whether the current policy regime of exclusivity and strong patent protection strikes the right balance between creating incentives for innovation and fostering a robust, competitive marketplace.

Even within the framework of current policy, however, there are tools available to strengthen competition, including:

- Heightened anti-trust scrutiny of pharmaceutical and generic drug industry consolidation.
- Exercise the National Institutes of Health's "march-in" rights under the Bayh-Dole act to facilitate price competition in cases where drug prices are unreasonable and patients cannot afford to access needed treatments. Such action would also enable NIH to ensure that the public reaps real benefits from public dollars spent on pharmaceutical research.
- Ending anti-competitive practices like "pay-for-delay" and "product hopping" that manipulate the current structure of the pharmaceutical patent system to prevent generic entry and prop up prices.

### **Transparency**

As the Sovaldi report demonstrates, there is often much that policymakers and the public do not know about the basis of pharmaceutical prices. While increasing transparency will not directly address the sources of rising costs for consumers and other payers, it could provide consumers, other health care purchasers and policymakers with valuable, actionable information about the rising cost of prescription drugs. Done right, this information could inform drug purchasing decisions and pharmacy benefit designs to help consumers achieve greater value for their dollar. It could also help create a baseline of accountability for drug manufacturers to keep drug prices reasonable.

Through OSPIRG's involvement with Oregon's health insurance rate review program, we have seen the profound impact of transparency and public accountability on health insurance rates for Oregon families and small businesses. We estimate that Oregon's rate review process has helped cut over \$179 million in waste and unjustified costs from health insurance premiums since 2010.<sup>1</sup> In the face of this scrutiny, Oregon's health insurance market has not only remained one of the most competitive in the nation, it has become more competitive.

Oregon's rate review program shows that accountability and transparency work to bring down costs. We would encourage the Committee to consider how to apply those lessons to the market for prescription drugs. Many states, including Oregon, have considered state-level legislation requiring makers of high-cost prescription drugs to file detailed data about the basis of these costs with the state, and the same

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<sup>1</sup> See our [in-depth report](#) on the issue from 2013, as well as our follow-up reports from [2014](#) and [2015](#).

idea has been repeatedly proposed at the federal level. While we believe that this is only a first step, it could be a crucial one, and we would urge its consideration.

To ensure that drug pricing transparency lives up to its potential, it will be important to ensure that the information it requires of prescription drug companies is made available to the public in a meaningful, actionable format. One potential model to consider in this connection is the Oregon Department of Consumer and Business Services' health insurance rate review website, [www.oregonhealthrates.org](http://www.oregonhealthrates.org), widely considered the best and most user-friendly rate review website in the country.

### **Accountability and Cost Containment**

Increased competition and transparency would be salutary steps, but we believe that stronger action will likely be needed to address rising prescription drug prices. Since pharmaceutical companies receive unusually strong federal protections that help ensure that they can achieve a return on their substantial investments in research, we believe it is appropriate that these protections are paired with some degree of accountability for keeping prices reasonable. In having strong monopoly pricing power, pharmaceutical companies have much in common with public utilities and other industries with strong regulatory price scrutiny, like health insurance. We believe it is appropriate that pharmaceutical prices be held to a similar level of scrutiny.

While outright price controls may not be feasible in the foreseeable future, there are government actions short of full price regulation that would help keep costs in check. Allowing Medicare to negotiate drug prices with manufacturers is one such step. There is some debate among experts about the extent of the savings this would create, but it could make a difference and there is no legitimate reason not to give it a try. Restricting pharmaceutical marketing to patients and physicians is another such step; these marketing practices are extraordinarily expensive and there is little reason to believe that the greater awareness generated has a significant positive impact on patient health.

We would also encourage the Committee to think creatively and explore the feasibility of untried policy options to contain costs. In this vein, we would urge you to consider working in partnership with state governments. Many states, including Oregon, are exploring policy options to address rising costs, and would deeply value your support and collaboration.

In conclusion, please bear in mind that consumers in Oregon and nationwide are counting on you to stand up for them. Rising prescription drug costs are putting a squeeze on budgets at all levels, and action is urgently needed. Again, we thank you for shining a light on these critical issues with your hard work on the Sovaldi report.

Thank you for your time and consideration.

Jesse Ellis O'Brien  
OSPIRG Policy Director