Statement of Senator Richard Blumenthal
"Treating the Problem: Addressing Anticompetitive Conduct and Consolidation in Health Care Markets"
Testimony before the House Judiciary Committee
April 29, 2021

We've seen some alarming trends in the health care industry lately. One trend: drug prices are too high.

Americans spend more on prescription drugs than citizens of any other country in the world, at an average cost of $1200 per person each year.[1] The costs of prescription drugs continues to grow at alarming rates. In 2019 alone, Americans spent nearly $370 billion on prescription drugs, up more than 5% since 2018, and more than 40% since 2013—and the prices continue to climb.[2]

Generic drugs and biosimilars play a critical role in making drugs more affordable. When generics and biosimilars enter the market, more expensive branded drugs are forced to compete on price. According to the Federal Trade Commission, if a single generic drug competitor enters the market, it can reduce drug prices by up to 30%. If another generic competitor enters the market, it can further reduce drug prices, with discounts of 85% or more.[3]

Paving the way for generics and biosimilars to enter the market is essential to lowering drug prices for all Americans. That is why I'm proud to reintroduce the bipartisan Affordable Prescriptions for Patients Act with Senator Cornyn, which does just that. Our bill puts an end to two key abuses of our patent system designed to inhibit generic entry.

First, our bill—along with Representative Cicilline and Representative Buck's companion in the House—puts an end to "product hopping," a tactic in which large, branded pharmaceutical companies abuse our patent system, raise prices on drugs, and block access to generic alternatives.

A prominent instance of product hopping featured a branded Alzheimer's treatment produced by Actavis. Knowing that its market exclusivity was running out, Actavis sought to replace its twice-daily dosage of the Alzheimer's treatment with a new extended release, once-daily version. After the FDA approved the new drug, Actavis strategically waited three years to introduce the new extended release version, with the goal of extending its exclusivity in the U.S. market. Once introduced, Actavis used the patent system to "hop" from the old product to the new, pushing all of its customers onto the new drug while pulling the old drug from the market. As a result, Actavis was able to continue charging monopoly prices long after their market exclusivity for the original version was expected to expire.

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[1] Robert Langreth, *Drug Prices*, Bloomberg (Sep. 16, 2020), https://www.bloomberg.com/quicktake/drug-prices.
[2] Anne B. Martin, Micah Hartman, David Lassman, Aaron Catlin, and The National Health Expenditure Accounts Team, *National Health Care Spending In 2019: Steady Growth For The Fourth Consecutive Year*, Ctrs. for Medicare and Medicaid Services (2021) at 3.
[3] Statement of Markus H. Meier, Acting Director, Bureau of Competition, Fed. Trade Comm'n (July 2017), at 3.

I am deeply troubled by instances like these, where pharmaceutical companies risk their customers' health and access to critical medication to improve their own profits. The Affordable Prescriptions for Patients Act would put an end to this anticompetitive practice. Our bill would prohibit branded drug manufacturers like Actavis from artificially extending their monopolies on certain prescription drugs, and removing a barrier to entry for generics and biosimilars.

Second, in partnership with Representatives Johnson and Issa's House companion, our bill also shuts down abuses of the "patent dance." In 2010, Congress enacted a law designed to resolve any patent litigation quickly before a biosimilar is introduced to the market, creating a patent dispute resolution process known as the patent dance. Under current law, however, there are no limits on the number of patents that a branded manufacturer of biologics can assert during the patent dance. Our bill imposes a reasonable limit to deter pharmaceutical companies from using gaming tactics to abuse a process designed to facilitate biosimilar entry, not hinder it.

Abuses of our patent system may have colorful names, like "product hopping" and the "patent dance," but make no mistake: these tactics are designed to crush competition and stifle access to cheaper generic drugs. By putting an end to product hopping and addressing delay tactics in the patent dance process, our bill will pave the way for generics and biosimilars to enter the market as competitors, and aggressively lower drug prices for hardworking Americans.