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May 21, 2018

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AG Balderas to Congress: Create Stiffer Penalties for Irresponsible Drug Manufacturers

Albuquerque, NM - Attorney General Hector Balderas along with a bipartisan coalition of 39 state and territory attorneys general called on congressional leaders to promptly pass measures to help hold opioid manufacturers accountable for their role in the opioid epidemic and stem diversion.

“Congress must act to join our fight against the opioid crisis in New Mexico by creating tougher penalties for irresponsible drug manufacturers,” said Attorney General Balderas. “My office is combating the epidemic in New Mexico through our aggressive litigation, our Project OPEN training and outreach, and working with other state and federal partners to hold the giant opioid corporations accountable for the devastation they are causing to our young people, families, and entire communities.”

The coalition sent a letter to the chair and ranking member of the Health, Education, Labor and Pensions Committee, and the Judiciary Committee, the committees of jurisdiction, urging them to pass the S.2456, the Comprehensive Addiction and Recovery Act (CARA) 2.0 and S.2440, the Comprehensive Addiction Reform, Education, and Safety (CARES) Act.

Opioid manufacturers have a duty to ensure that they take steps to prevent drugs from entering the illicit market. Among other provisions, CARA 2.0 and the CARES Act increase penalties on drug manufactures that fail to report suspicious transactions and maintain effective controls against diversion of their drugs to the illicit market. The bills would increase the civil penalty from \$10,000 to \$100,000 per violation for negligence in reporting suspicious activity and double the criminal penalty to \$500,000 for companies that willfully disregard or knowingly fail to keep proper reporting systems or fail to report suspicious activity.

A copy of the letter is attached.

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May 21, 2018

Chairman Lamar Alexander
Committee on Health, Education,
Labor, and Pensions
428 Dirksen Office Bldg.
Washington, DC 20510

Chairman Chuck Grassley
Committee on the Judiciary
224 Dirksen Office Bldg.
Washington, DC 20510

Ranking Member Patty Murray
Committee on Health, Education,
Labor, and Pensions
428 Dirksen Office Bldg.
Washington, DC 20510

Ranking Member Dianne Feinstein
Committee on the Judiciary
224 Dirksen Office Bldg.
Washington, DC 20510

Dear Chairs Alexander and Grassley and Ranking Members Murray and Feinstein:

State attorneys general have been fighting the opioid crisis on numerous fronts, including protecting consumers from deceptive marketing of prescription opioids, disrupting illicit trafficking networks and closing pill mills. Recognizing the scope of this crisis, we thank you for funding provisions of the Comprehensive Addiction and Recovery Act (CARA) 2.0. By providing expanded treatment, increased naloxone access for first responders, and support for veterans treatment courts, these funds will assist states like ours that are suffering greatly from the opioid epidemic. Following up on this critical issue, we respectfully request that you now help expedite passage of the CARA 2.0 Act of 2018 (S. 2456), sponsored by Senator Portman and a bipartisan group of colleagues, to further address the devastation this epidemic has caused in our communities and to help hold opioid manufacturers appropriately accountable. In particular, we write to highlight the need for Section 14 of CARA 2.0, which is also contained in a separate bill, the Comprehensive Addiction Reform, Education, and Safety (CARES) Act of 2018 (S. 2440), introduced by Senators Maria Cantwell and Kamala Harris.

CARA 2.0 and CARES increase penalties on drug manufacturers that fail to report suspicious transactions and maintain effective controls against diversion of their drugs to the illicit market. Specifically, the bills increase civil penalties from \$10,000 to \$100,000 per violation for negligence in reporting suspicious transaction activity. The bills also double the maximum criminal penalty from \$250,000 to \$500,000 for companies that willfully disregard or knowingly fail to keep proper reporting systems or fail to report suspicious activity.

Opioid manufacturers have a duty to ensure that they take steps quickly to prevent their drugs from entering the illicit market. Moreover, these companies, which know their market better than anyone, are well-positioned

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to identify suspicious activity. Opioid manufacturers can detect certain doctors who consistently prescribe many more opioids than their peers and facilities with sudden, significant increases in opioid orders. Company sales representatives directly observe warning signs, such as large numbers of patients paying in cash or prescriptions being given or sold to non-patients.

We have seen opioid manufacturers ignore their responsibilities. For example, in response to a 2007 multi-state settlement, Purdue Pharma promised to create an abuse and diversion detection program to detect and report atypical prescribing patterns. Despite the court order, Purdue has remained silent about suspicious prescribing activity it should have reported, including ignoring the warnings of their own sales representatives about particular physicians. In Washington, for instance, Purdue waited nearly three years after a sales representative raised concerns to report a physician to the DEA. The sales representative noticed that the physician operated a largely cash-based business. Purdue analyzed his prescribing patterns and found that in the six months prior to the representative's report, he wrote more than 1,000 OxyContin prescriptions worth nearly half a million dollars, far exceeding his peers. Rather than fulfilling their responsibility to report this activity promptly, the company continued to supply opioids for nearly three years.

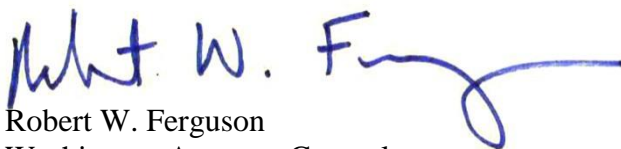
Diversion of prescription opioids has devastated communities in our states. The consequences for turning a blind eye to suspicious opioid orders cannot merely be a cost of doing business. We urge you to support CARA 2.0 and the CARES Act to ensure that penalties effectively hold manufacturers accountable and help stem diversion.

Thank you for your consideration.

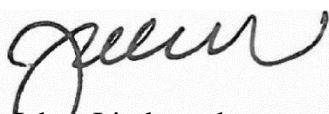
Sincerely,



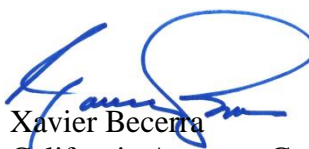
Mike DeWine
Ohio Attorney General



Robert W. Ferguson
Washington Attorney General



Jahnna Lindemuth
Alaska Attorney General



Xavier Becerra
California Attorney General



Cynthia H. Coffman
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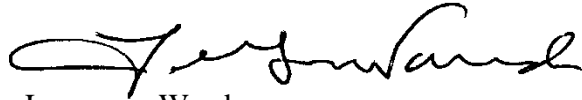
Matthew P. Denn
Delaware Attorney General



Karl A. Racine
District of Columbia Attorney General



Pamela Jo Bondi
Florida Attorney General



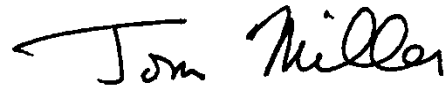
Lawrence Wasden
Idaho Attorney General



Lisa Madigan
Illinois Attorney General



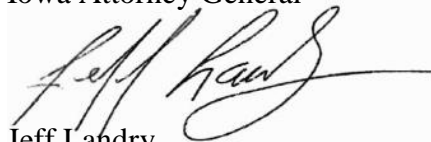
Curtis T. Hill, Jr.
Indiana Attorney General



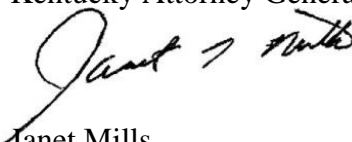
Tom Miller
Iowa Attorney General



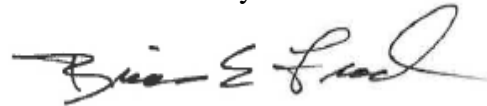
Andy Beshear
Kentucky Attorney General




Jeff Landry
Louisiana Attorney General



Janet Mills
Maine Attorney General



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Maryland Attorney General



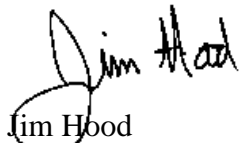
Maura Healey
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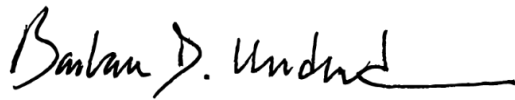
Douglas Peterson
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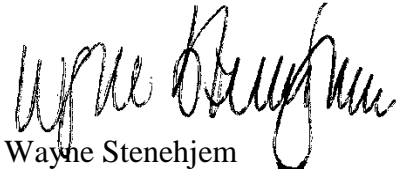
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Barbara D. Underwood
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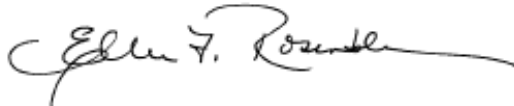
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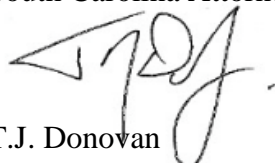
Peter F. Kilmartin
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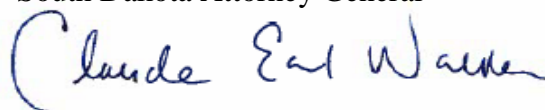
Alan Wilson
South Carolina Attorney General



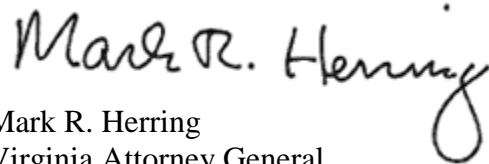
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