November 13, 2017

Hon. Paul Ryan
Speaker of the House
H-232, The Capitol
Washington, DC 20515

Hon. Nancy Pelosi
Minority Leader
H-204, The Capitol
Washington, DC 20515

Hon. Mitch McConnell
Majority Leader
317 Russell Bldg
Washington, DC 20510

Hon. Charles E. Schumer
Minority Leader
322 Hart Bldg.
Washington, DC 20510

Hon. Kevin McCarthy
Majority Leader
H-107, The Capitol
Washington, DC 20515

Hon. Steny Hoyer
Minority Whip
1705 Longworth Office Building
Washington, DC 20515

Hon. John Cornyn
Majority Whip
517 Hart Bldg.
Washington, DC 20510

Hon. Richard J. Durbin
Minority Whip
711 Hart Bldg.
Washington, DC 20510

Hon. Greg Walden
Chair
Energy and Commerce Committee
2125 Rayburn House Office Bldg.
Washington, DC 20515

Hon. Frank Pallone Jr.
Ranking Member
Energy and Commerce Committee
2322A Rayburn House Office Bldg.
Washington, DC 20515

Hon. Chuck E. Grassley
Chairman
Senate Judiciary Committee
135 Hart Bldg.
Washington, DC 20510

Hon. Dianne Feinstein
Ranking Member
Senate Judiciary Committee
331 Hart Bldg.
Washington, DC 20510

Dear Congressional Leaders,

We, the undersigned Attorneys General, urge you to repeal Public Law 114-145, the Ensuring Patient Access and Effective Drug Enforcement Act of 2016 (“the Act”). The Act, which was signed into law on April 19, 2016, is a step backward in our collective effort to prevent the diversion and misuse of prescription drugs and address our worsening epidemic of opioid addiction and overdose deaths.
In declaring the opioid epidemic a public health emergency, President Donald Trump stressed that “drug addiction and opioids are ravaging America” and underscored these grim statistics:

- In 2016, more than two million Americans had an addiction to prescription or illicit opioids.
- Since 2000, more than 300,000 Americans have died from overdoses involving opioids.
- Drug overdoses are now the leading cause of injury death in the United States, outnumbering both traffic crashes and gun-related deaths.
- The situation has only gotten worse, with drug overdose deaths in 2016 expected to exceed 64,000, more than the number of Americans killed during the Vietnam War.

In the midst of this deepening public health crisis – at a time when our nation needs every available weapon at its disposal to combat the opioid epidemic – the Act effectively strips the Drug Enforcement Administration (“DEA”) of a mission-critical tool, namely, the ability to issue an immediate suspension order against a drug manufacturer or distributor whose unlawful conduct poses an imminent danger to public health or safety.

The Act added language to 21 U.S.C. § 824(d)(2) that redefined "imminent danger to the public health or safety" to mean a "substantial likelihood of an immediate threat of death, serious bodily harm, or abuse of a controlled substance." According to DEA Chief Administrative Law Judge John J. Mulrooney, II, the language has created an exceedingly high burden that is nearly impossible to meet.1 As a result, the DEA’s ability to immediately suspend a registrant and institute simultaneous show cause proceedings against a manufacturer or distributor whose unlawful behavior endangers public health or safety is severely diminished.

In addition, the Act allows an applicant or registrant to file a "corrective action plan" prior to an appearance for a show cause proceeding. 21 U.S.C. § 824(c)(2)(C). This procedure, which requires review of a submitted plan and a determination of whether the proceedings should continue, hampers enforcement proceedings and puts the public at risk. As Judge Mulrooney and his co-author point out, the procedure “is akin to a state legislature mandating that law enforcement authorities allow shoplifting suspects caught in the act to outline how they intend to replace purloined items on store shelves . . . or perhaps allow bank robbers to round up and return ink-stained money and agree not to rob any more banks – all before any of those wrongdoers actually admit fault and without any consequence that might deter such behavior in the future. Such mandates sound absurd because they would be absurd.”2

In sum, the Ensuring Patient Access and Effective Drug Enforcement Act neither safeguards patient access to medication nor allows for effective drug enforcement efforts. We urge you to

---


2 Mulrooney & Legel, 101 MARQ. L. REV. at 7-8.
repeal the Act so that the public is protected and drug manufacturers and distributors may be held accountable for their actions.

Sincerely,

Pamela Jo Bondi
Florida Attorney General

Josh Stein
North Carolina Attorney General

Steve Marshall
Alabama Attorney General

Xavier Becerra
California Attorney General

George Jepsen
Connecticut Attorney General

Karl A. Racine
District of Columbia Attorney General

Doug Chin
Hawaii Attorney General

Lisa Madigan
Illinois Attorney General

Brian Frosh
Maryland Attorney General

Mike Hunter
Oklahoma Attorney General

Jazna Lindemuth
Alaska Attorney General

Cynthia H. Coffman
Colorado Attorney General

Matthew P. Denn
Delaware Attorney General

Christopher M. Carr
Georgia Attorney General

Lawrence Wasden
Idaho Attorney General

Curtis T. Hill, Jr.
Indiana Attorney General
Tom Miller
Iowa Attorney General

Jeff Landry
Louisiana Attorney General

Maura Healey
Massachusetts Attorney General

Lori Swanson
Minnesota Attorney General

Joshua D. Hawley
Missouri Attorney General

Douglas Peterson
Nebraska Attorney General

Gordon MacDonald
New Hampshire Attorney General

Hector Balderas
New Mexico Attorney General

Wayne Stenehjem
North Dakota Attorney General

Andy Beshear
Kentucky Attorney General

Janet Mills
Maine Attorney General

Bill Schuette
Michigan Attorney General

Tim Hood
Mississippi Attorney General

Tim Fox
Montana Attorney General

Adam Paul Laxalt
Nevada Attorney General

Christopher Porrino
New Jersey Attorney General

Eric T. Schneiderman
New York Attorney General

Mike DeWine
Ohio Attorney General
Ellen F. Rosenblum  
Oregon Attorney General

Peter F. Kilmartin  
Rhode Island Attorney General

Marty J. Jackley  
South Dakota Attorney General

Claude Earl Walker  
Virgin Islands Attorney General

Robert W. Ferguson  
Washington Attorney General

Josh Shapiro  
Pennsylvania Attorney General

Alan Wilson  
South Carolina Attorney General

T.J. Donovan  
Vermont Attorney General

Mark R. Herring  
Virginia Attorney General

Patrick Morrisey  
West Virginia Attorney General