August 22, 2018

The Honorable Richard C. Shelby  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Chairman Shelby and Ranking Member Leahy:

We are writing to express concerns about an amendment to the Labor-HHS Appropriations bill that has been filed by Senator Richard Durbin and Senator Charles Grassley. The amendment would require the Secretary of Health and Human Services to require that advertisements for prescription drugs and biological products include an appropriate disclosure of pricing information for these products.

The amendment language frames the authority for implementing this amendment as furtherance of the existing statutory authority of the Secretary. However, the requirement of the amendment is to mandate language to be included in advertising by private businesses. We believe that a number of opinions by the U.S. Supreme Court conclude that this mandate would not be constitutional.

We respectfully submit with this letter an issue brief that cites several of these opinions and explains why we believe the language of the amendment would not be consistent with the decisions in these cases. Thank you for your consideration.

Sincerely,

James H. Davidson  
Executive Director

Enclosure