HDA
Healthcare Distribution Alliance
HEALTH DELIVERED

May 15, 2023

Senator Donna Bailey, Co-Chair
Representative Anne Perry, Co-Chair
HCIFS Committee
100 State House Station
Augusta, ME 04333

HDA Testimony Opposing LD 1816/1829

Dear Chair Bailey, Chair Perry, and Honorable Members of the HCIFS Committee:

The Healthcare Distribution Alliance (HDA) would like to thank you for the chance to share our respectful opposition to **LD 1816/1829, An Act Requiring Reference Based Pricing.** HDA is the vital link between the nation's pharmaceutical manufacturers and more than 180,000 pharmacies and other healthcare settings nationwide. An estimated 93% of US prescription drugs are handled by our members, who work around the clock to save the US Healthcare System billions annually through efficient management of drug supply chain logistics. In Maine, our members serve over 261 customers (hospitals, pharmacies, and more).

Distributors are unlike any other supply chain participants – their core business **does not involve manufacturing, marketing, prescribing or dispensing medicines, and they do not set the Wholesale Acquisition Cost (WAC) list price of prescription drugs, influence prescribing patterns or determine patient-benefit design.** Rather, wholesale distributors are the logistics experts within the supply chain who ensure that drugs and other healthcare products are delivered in the most safe and efficient manner possible. Ensuring that the pharmaceutical supply chain remains stable, resilient, and secure is a top priority of our members, and to that end we respectfully oppose LD 1816/1829 due to the following concerns:

- **LD 1816/1829 seeks to implement a state-level policy mirroring Medicare's Maximum Fair Price (MFP) at a time when the federal policy has not yet been fully determined or implemented.** Considering such state-level policies during a time in which the industry is already undergoing fundamental and undefined drug policy changes at the federal level would have a severely damaging impact on the overall pharmaceutical supply chain. For example, CMS is still undergoing rulemaking regarding how to effectuate the Inflation Reduction Act's Market Fair Price, including establishing operational models that protect efficiency, accuracy, and program integrity. The comment period for CMS' recently released "Initial Memorandum on Implementation" is still open, and the wholesale distribution industry is actively working with CMS regarding the challenges their initial guidance poses for the supply chain and some data flow gaps it creates. Creating a patchwork of state policies and pricing metrics for a variety of pharmaceutical products at this time, when a myriad of issues are still being resolved in advance of the federal program roll out, would drastically increase overall costs in the supply chain and create unpredictability in the marketplace as a whole.

HDA believes that states should take time to fully realize the impact of federal policy changes before seeking to add additional complications to the marketplace, in order to ensure that Maine's patients maintain timely access to essential medications. We strongly recommend that these measures not be advanced at this time.

- **We are additionally greatly concerned with language in Section 2 which misconstrues the roles of manufacturers and distributors, and would hold distributors responsible for manufacturer actions and responsibilities.** Stating that it would be a violation of a manufacturer or a distributor to withdraw a drug due to MFP rate limits, and that both manufacturers and distributors would face fines of $500,000 for violations, puts distributors at risk for being penalized for manufacturer actions. Manufacturers- not distributors- set drug list prices, or Wholesale Acquisition Cost (WAC), so a distributor cannot "negotiate in good faith" as the measure states. Additionally, manufacturers- not distributors- bring drugs to market, so if a manufacturer withdrew a drug from the market to avoid setting the list price of that drug at the MFP rate, a distributor cannot distribute it, and therefore should not face a $500,000 fine. Finally, while a manufacturer might face a fine for one product, distributors work with over 1,500 manufacturers, distributing 94% of all products, so could face exorbitant fees due to manufacturer actions.

  We respectfully request that distributors be struck from the following clauses of Section 2:

  C. A manufacturer ~~or distributor~~ of a referenced drug may not refuse to negotiate in good faith with a payor or seller of prescription drugs a price that does not exceed the referenced rate for that drug.

  D. The Superintendent of Insurance shall assess a penalty of $500,000 or the amount of annual savings determined by the superintendent in accordance with subsection 6, whichever is greater, on any manufacturer ~~or distributor~~ of a referenced drug, that the superintendent determines has withdrawn a referenced drug from sale or distribution in the State in violation of paragraph A or B or has failed to negotiate in good faith in violation of paragraph C.

In summary, to protect the security of the supply chain and to ensure that Maine patients retain timely access to essential drugs, HDA respectfully urges the Committee not advance these measures at this juncture. However, if either LD 1816 or LD 1829 are advanced, we would further request that distributors be struck from Section 2, per the redlines above.

HDA would like to thank you for your consideration of our concerns, and invites you to contact Kelly Memphis at kmemphis@hda.org for any further discussion.

Sincerely,

Kelly Memphis

Kelly Memphis
Director, State Government Affairs
Healthcare Distribution Alliance