**TESTIMONY OF JOANNE RAWLINGS-SEKUNDA**
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**BUREAU OF INSURANCE**
**DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**L.D. 1018**

**An Act to Protect Health Care for Rural and Underserved Areas by Prohibiting Discrimination by Participants in a Federal Drug Discount Program**

**Presented by Senator Bailey**

**Before the Joint Standing Committee on Health Coverage, Insurance & Financial Services**

**April 16, 2025 at 10:00am**

Senator Bailey, Representative Mathieson, and members of the Committee, I am Joanne Rawlings-Sekunda, Director of the Consumer Health Care Division at the Bureau of Insurance. I am here today to testify neither for nor against LD 1018.

The federal 340B program, established under Section 340B of the Public Health Service Act, requires pharmaceutical manufacturers to provide discounts for drugs covered by Medicaid to all designated "covered entities," such as safety-net hospitals and federally qualified health centers (FQHCs), which serve rural or disadvantaged populations. The proponents of the bill are the hospitals and FQHCs that receive money through the program.

While the Bureau understands that the 340B program is an important source of revenue for hospitals in Maine, the Bureau has the following concerns about the bill:

**1) Lack of transparency** – Title 22 MRS Section 1728, enacted in 2023, requires that hospitals participating in the 340B program report certain information to the Maine Health Data Organization (MHDO). The MHDO recently finalized their rule implementing this section and the first report is not due until early 2026. Taking any action before seeing the Maine-specific data in this report is premature. The data in the report may not be enough, however, and one possible change to the bill as drafted would be to increase the amount of data collected, to include the amount of revenue generated by covered entities as well as information on how that money is spent. The reporting law recently passed by Minnesota may be an instructive guide for how to get better information. At any rate, the 340B program in general shows a marked lack of transparency at all levels and any movement to create more transparency, not less, is a move in the right direction.

**2) Oversimplification of the path of money** – The 340B program is not simply a matter of taking money from the pharmaceutical manufacturers and giving it to the hospitals. Because not all drugs are 340B drugs, the drug manufacturers are raising the prices of non-340B drugs in order to pay for losses they incur in providing 340B drugs at a steep discount. This stands to reason, though again, because of the lack of transparency, we do not have any accurate data to say what these numbers are. Whatever the numbers are, the drug manufacturers are passing those increased costs on to employers and individuals who pay for health insurance coverage and the drugs included in that

coverage. Furthermore, because 340B drugs do not qualify for rebates from the manufacturers, it is unclear what effect this change in law would have on drug prices generally if the changes in law enlarge the footprint of the 340B program. More information is needed to determine what policy choices would result in more manageable drug prices while maintaining an adequate stream of subsidies to the covered entities.

**3) Effect on PBM networks** – The restrictions imposed by the bill as currently written would have an effect on the ability of health insurance carriers to implement pharmacy networks. The extent of this effect is unknown due to the previously mentioned lack of transparency.

**4) Unsettled legal landscape** – Though a series of circuit court decisions and one Supreme Court cert denial have dealt with some legal aspects of the 340B program, much remains unsettled. Given this uncertainty, the only sure thing is that any law passed by Maine will be thoroughly litigated, potentially at considerable cost. It may benefit the state to let some of these legal issues play out in court before passing our own law.

**5) Issues with enforcement** – This bill allocates the substantive provisions to Title 24-A, giving the Superintendent of Insurance the duty to enforce them. The bill also specifies that violations of the Act are violations of the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S. §§ 205-A through 214. Unlike the Unfair Trade Practices chapter of the Insurance Code, the UTPA is enforced exclusively by the Office of the Maine Attorney General, not by the Bureau. Because the enforcement power of the Bureau is in addition to other remedies under Title 24-A, Section 12-A, the Bureau would still bear responsibility

for enforcement of the bill as written, requiring a significant increase in staff and resources to expand regulatory authority to drug manufacturers and pharmacies and into the sphere of contracting between those entities and health insurance carriers and PBMs. In addition to these enforcement mechanisms, this bill also creates a private right of action for violations of the chapter, something the administration opposes.

In light of these concerns, the Bureau recommends that if the bill goes forward, it should be carried over for further review.

Thank you. I would be happy to answer any questions now or at the work session.