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February 15, 2022

Senator Heather Sanborn, Chair
Committee on Health Coverage, Insurance and Financial Services
Cross Building, Room 220
100 State House Station Augusta, ME 04333

Representative Denise Tepler, Chair
Committee on Health Coverage, Insurance and Financial Services
Cross Building, Room 220
100 State House Station Augusta, ME 04333

RE: BIO Statement in Opposition to LD 1938

Dear Chair Sanborn, Chair Tepler, and Members of the Committee:

The Biotechnology Innovation Organization (BIO) respectfully **opposes LD 1938**, as it does not help patients lower their out-of-pocket costs and makes it more difficult for payers and manufacturers to identify illegal duplicate discounts (and waste in the system). BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial, and environmental biotechnology products.

LD 1938 would preclude patients from benefiting from any shared savings or lower cost-sharing, which is contrary to the federal 340B program's original intent. Preventing payers and pharmaceutical benefit managers (PBMs) from modifying a patient's copayment based upon a contract pharmacy's association with the 340B program would prevent lower cost-sharing for 340B-eligible patients. Payers sometimes adjust co-payments for patients based upon whether a drug has been purchased at the 340B discount, providing a lower copayment for the 340B drug versus a non-340B discount drug. This allows patients to share in the savings, which is arguably the original intent of the program. This legislation would prohibit this practice and could result in higher than necessary out-of-pocket costs for Maine's 340B-eligible patients.

Furthermore, disallowing payers to implement differential cost-sharing at 340B contract pharmacies and thus, sharing in savings with patients, is contrary to the spirit and original intent of the federal 340B law, to provide discounted drugs to disadvantaged patients. For example, some 340B covered entities, such as federally qualified health centers (FQHCs), must pass at least some or all – depending upon sliding income scale — of the savings to patients. Furthering the passing of 340B discounts to patients should be the true intent of this legislation, unfortunately this bill fails in that regard.

LD1938 makes it more difficult for payers to identify 340B claims to prevent statutorily prohibited duplicate discounts. The bill would prohibit payers from requiring pharmacies to modify 340B discounted claims. The Government Accountability Office (GAO) reports that contract pharmacies are a significant source of diversion and duplicate discounts, in part, because they often

do not identify patients as 340B-eligible until after the prescription has been dispensed.[1] In fact, the GAO also notes, "66 percent of the 380 diversion findings in HRSA audits involved drugs distributed at contract pharmacies. . ."[2] Yet, LD 1938 would prevent payers from requiring pharmacies to "require a billing claim to indicate that the claim is a 340B drug pricing claim." This is contrary to the spirit of the 340B statutory prohibition on duplicate discounts and makes identifying them even more difficult.

LD1938 contains language that erroneously implies manufacturers can select which pharmacies can participate as a 340B contract pharmacy. Manufacturers are not involved with contracts between pharmacies and another provider, including a 340B covered entity. Furthermore, the 340B program's requirement is for manufacturers to provide discounted drugs to 340B covered entities, and they are not required to facilitate distribution to their contract pharmacies. Therefore, it is not appropriate for legislation to dictate whether a manufacturer must allow for distribution of drugs to any pharmacy regardless of participation in the 340B program.

For these reasons, BIO **opposes LD 1938** and urges the Legislature not to move forward with the bill.

Sincerely,

/s/

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[1] *Drug Discount Program: Federal Oversight of Compliance at 340B Contract Pharmacies Needs Improvement*, GAO Report, June 2018.
[2] Ibid.