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**TESTIMONY OF ERIC A. CIOPPA
SUPERINTENDENT OF INSURANCE
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DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
In Opposition to L.D. 1636**

“An Act To Reduce Prescription Drug Costs by Using International Pricing”

Presented by Senator Ned Claxton

Before the Joint Standing Committee on Health Coverage,

Insurance & Financial Services

February 15, 2022 at 10:00 a.m.

Senator Sanborn, Representative Tepler, and members of the Committee, I am Superintendent of Insurance Eric Cioppa. I am here today to testify in opposition to L.D. 1636.

This bill would require the State Employee Health Plan to identify its 250 most costly prescription drugs each year and submit that list to the Bureau of Insurance. The Bureau would then designate 250 “referenced drugs” and establish a “referenced rate” for each of those drugs, based on prices paid for these drugs in Canada. The final list of referenced drugs might involve changes to the list originally supplied by the State Employee Health Plan, based on an analysis of the expected savings from reference pricing for each drug conducted by the Bureau in consultation with the State Employee Health Plan and the president of the Board of

Pharmacy. The referenced rate would be the lesser of the U.S. wholesale acquisition cost (WAC) as determined under federal law or the lowest cost paid by any of four designated Canadian provincial governmental agencies, or alternatively, the Canadian federal ceiling price if the necessary provincial data is unavailable. Savings must be used to reduce costs to consumers.

The bill would make it unlawful for health insurance carriers to pay more than the referenced rate for a referenced drug, subject to a fine of \$1,000 per transaction. The same prohibition and penalty would apply to any state agency (except MaineCare) that pays health care costs, to any self-insured ERISA plan that chooses to participate in the reference pricing program, and to any licensed retail pharmacy that buys drugs for sale or distribution to anyone covered by a health plan or program subject to reference pricing.

The bill would also prohibit manufacturers and distributors of a referenced drugs from withdrawing them from sale or distribution in Maine to avoid the effect of reference pricing, or from withdrawing them for any reason without giving 180 days' advance notice. The Bureau is required to levy a \$500,000 fine for any violation.

We can all agree that the high cost of prescription drugs is a serious problem, especially when we see lower prices being paid for the same drugs just across the border. It is frustrating that Congress has not been able to take effective action. We have concerns with both the constitutionality of the bill, and whether will solve the problem of high drug prices.

The prohibition against withdrawing a drug from sale to avoid reference pricing might be attacked on grounds that include the violation of manufacturers' and distributors' protected liberty and property interests, a taking without just

compensation, unlawful state regulation of interstate commerce, and a boycott prohibited by federal antitrust laws. The mandatory half-million dollar fine each time a drug is withdrawn from sale without notice or for a prohibited purpose could be problematic as excessive. The reference pricing requirement applies only to the purchasers of drugs, not to the sellers. This raises the question whether penalizing the victims of the drug industry's pricing practices is fair. This is particularly unfair if a referenced drug is necessary for a plan to meet the health care needs of plan participants. Coverage for the drug could even be mandated by state and federal law, but the bill could produce a situation where nobody is willing to sell the drug at a price the carrier or state agency is permitted to pay.

Last, the bill would have a significant fiscal impact on the Bureau of Insurance. We do not currently have the expertise or staff to conduct the required studies and compile the annual listing of referenced rates.

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