STATEMENT

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In Opposition to Maine LD 1938 (Claxton)

February 15, 2022

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) respectfully opposes LD 1938, which would require manufacturers to extend 340B pricing to all contract pharmacies in Maine. PhRMA opposes this bill because it further distorts a federal policy that has allowed for-profit pharmacies to divert savings intended for safety net care and for lowering drug costs for low income and vulnerable individuals. Furthermore, LD 1938 raises the same constitutional concerns as a nearly identical law being litigated in Arkansas, and there is currently litigation across the country about manufacturers' obligations under the federal 340B law with respect to contract pharmacies. Given this ongoing litigation, LD 1938 is premature, and Maine should allow the courts time to resolve this issue before considering any legislative action.

PhRMA represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than $1 trillion in the search for new treatments and cures, including an estimated $91.1 billion in 2020 alone.

As our nation continues to fight a global pandemic, the need for access to affordable and quality health care feels even more pressing. This is especially true for vulnerable patients who have been disproportionately impacted by COVID-19. It is important for policymakers to ensure the 340B program truly benefits the safety net that serves our underserved communities in Maine and throughout the country. Unfortunately, nearly three decades after it was originally created, the 340B program has deviated from its original mission to the benefit of entities such as hospitals, for-profit pharmacies, and other middlemen, leaving behind the patients that the program is meant to serve and threatening the sustainability of the program for true safety-net entities that provide much needed care to vulnerable communities.

This legislation further distorts the second largest federal prescription drug program by forcing manufacturers to extend 340B pricing to contract pharmacies, which are not mentioned in the federal 340B statute.

In 1992, when the 340B program was established by federal law (42 U.S.C § 256b), it was meant to help safety-net entities access affordable drugs to treat their low-income and uninsured patients. Due to weak oversight, the 340B program has expanded in a way that has allowed covered entities to divert to the benefit of the entities' bottom line money intended to help patients get better care and afford their medicines use the program. As a result, 340B has changed and grown dramatically since its establishment, while charity care at 340B hospitals has declined below national averages.[1]

1 AIR340B Coalition, "Left Behind: An Analysis of Charity Care Provided by Hospitals Enrolled in the 340B Discount Program," November 2019, https://340breform.org/wp-content/uploads/2019/11/AIR340_LeftBehind-v6.pdf.

There is little evidence to suggest that patients have benefited from contract pharmacy growth. Many contract pharmacies may often charge a patient a drug's full retail price because they are not required to share any of the discount with those in need.[2] Big-box retailers such as Walgreens, CVS Health and Walmart are major participants in the 340B program through contract pharmacy arrangements. In fact, the five largest for-profit pharmacy chains comprise 60 percent of 340B contract pharmacies, but only 35 percent of all pharmacies nationwide.[3] 340B covered entities and their contract pharmacies generated an estimated $13 billion in gross profits on 340B purchased medicines in 2018, which represents more than 25% of pharmacies' and providers' total profits from dispensing or administering brand medicines.[4]

The term "contract pharmacy" does not appear anywhere in the federal 340B statute and was created by the Health Resources and Services Administration (HRSA) solely through guidance, which does not have the force and effect of law. LD 1938 would require manufacturers to ship drugs to all Maine contract pharmacies for 340B providers, and by extension, offer 340B pricing at these locations, essentially attempting to add a state requirement to the federal statute. The bill would impose a significant financial obligation on manufacturers, which could disincentivize participation in the 340B program and impact the Medicaid program.

The contract pharmacy policy is currently being litigated in multiple lawsuits across the country.

Because there is ongoing litigation across the country about the contract pharmacy policy, Maine should allow the federal courts to address and resolve the issue before considering any legislative action. If the courts hold that the federal 340B law does not authorize a requirement that manufacturers ship drugs to contract pharmacies, LD 1938 could be preempted. In addition, LD 1938 is nearly identical to Arkansas Act 1103, an Arkansas law that is currently the subject of litigation in the United States District Court for the Eastern District of Arkansas.

If legislators truly want to advocate for meaningful improvements to the 340B program, they should ensure that patients are benefiting from the tens of billions of dollars in discounts that manufacturers provide to program participants. Covered entities and their contract pharmacies must be held accountable for how they use 340B discounts through increased government oversight and transparency requirements to make the 340B program sustainable in the long term. **Mandating that manufacturers ship 340B drugs at 340B prices to contract pharmacies benefits contract pharmacies and covered entities, not patients.**

For these reasons, PhRMA respectfully urges legislators to oppose LD 1938.

2 Conti, Rena M., and Peter B. Bach. "Cost consequences of the 340B drug discount program." *Jama* 309.19 (2013): 1995-1996.
3 Government Accountability Office, "*Drug Discount Program: Federal Oversight of Compliance at 340B Contract Pharmacies Needs Improvement*," GAO-18-480, June 2018.
4 Berkeley Research Group. For-Profit Pharmacy Participation in the 340B Program. October 2020.