HEALTHCARE PURCHASER ALLIANCE OF MAINE

February 14, 2022

Senator Heather Sanborn, Co-Chair
Representative Denise Tepler, Co-Chair
Committee on Health Coverage, Insurance and Financial Services
C/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Senator Sanborn, Representative Tepler, and Members of the Committee on Health Coverage, Insurance and Financial Services,

I am writing to share with you some feedback from the Healthcare Purchaser Alliance (HPA) of Maine regarding ***LD 1938, An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program.***

The HPA is a purchaser-led organization whose mission is to advance healthcare value in Maine and support and incentivize the use of high-quality, affordable care. We have over 50 members, including some of the largest public and private employers and health trusts in Maine. Collectively, our members spend over $1 billion annually purchasing health coverage for nearly a quarter of the commercially insured people in the state. Over 22 percent of that total is spent on prescription drugs.

The HPA has worked extensively to lower prescription drug costs and improve affordability in Maine, including partnering with a transparent pass-through PBM that has significantly lowered costs for Maine employers and their employees. We are concerned that LD 1938 would prohibit employers from implementing strategies that lower prescription drug costs while at the same time maintaining convenient patient access to their prescriptions.

Specifically, LD 1938 would "allow a patient to use without penalty any pharmacy or any provider the patient chooses. . . " The prices that health plans pay to pharmacies vary, with pharmacies in the same community often charging substantially different prices for the exact same drug. Some employers financially incentivize their employees (through copay differentials, for example) to obtain their prescriptions at pharmacies that charge lower rates, which reduces plan spend and lowers costs for employers and employees alike—while still ensuring that the patient gets convenient access to their prescription. LD 1938 would prohibit employers from implementing this common-sense strategy.

We are also concerned that LD 1938 would preclude employers and commercial insurers from negotiating lower prices with entities that purchase drugs for their commercially insured plan members at deep discounts under the 340B program. The 340B program allows safety net hospitals and other entities serving low-income and other at-risk populations to purchase drugs at deep discounts—usually 20–50 percent below average manufacturer price, and sometimes for pennies. Such price breaks help these entities to cover the costs of serving those low-income and other at-risk populations.

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But 340B entities also use these discounts to purchase drugs for their *commercially insured* patients. Some employers and insurers are working to get 340B entities to share those discounts with commercial plans when they're used to purchase drugs for commercially insured patients. If a hospital procures a drug at a steeply discounted rate, we do not believe that commercially insured patients should have to pay the same amount that they would pay if the drug were procured at a much higher, non-340B price. But if LD 1938 is enacted, employers' hands will be tied, and they'll be forced to pay regular commercial rates for drugs that 340B entities were able to purchase at deep discounts. This would allow 340B entities to pocket a substantial margin on drugs they provide to commercial patients, while employers and patients pay top dollar for drugs that were procured at a fraction of what they're paying for them. Some 340B entities argue that the profits they make off commercial patients are intended to help cover the costs of serving low-income populations, but that policy comes at a significant cost to employers and consumers.

Maine employers are struggling to provide affordable health care to their employees and dependents. To avoid cutting benefits or increasing premiums and deductibles, they try to focus on strategies that will moderate plan costs while still providing their employees and dependents with high-quality, convenient, and clinically appropriate care—such as the two strategies described above, both of which LD 1938 would prohibit. We urge the committee not to take away these common-sense tools that employers in our state can use to make health care more affordable for Mainers without sacrificing quality, access, or clinical efficacy.

Thank you for the opportunity to share our feedback on LD 1938, and for your consideration. Please let me know if you have any questions or if I can be of further assistance. I can be reached at phayes@purchaseralliance.org or 844-8106.

Best,

Peter Hayes
President and CEO