STATEMENT

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**In Opposition to Minnesota HF 1752**
**Prescription Drug Purchasing Program**
**March 1, 2023**

**Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) respectfully opposes Minnesota's House File (HF) 1752, which creates a Prescription Drug Purchasing Program for its Medicaid and MinnesotaCare participants, including participants in managed care plans. PhRMA does not oppose bulk purchasing for non-Medicaid populations, but does oppose efforts to include Medicaid populations in combined purchasing programs with other state-funded programs, or with any other private or public entity. Minnesota's proposal to obtain Medicaid rebates for non-Medicaid populations requires federal approval, and the state's burden to demonstrate compliance with federal requirements would likely be a costly and uncertain effort.**

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 $102 billion in 2021 alone.

HF 1752 would establish a Prescription Drug Purchasing Program for the state of Minnesota, requiring the Minnesota Department of Human Services (DHS) to: (1) purchase prescription drugs and coordinate comprehensive prescription benefit services for each of its Medicaid and MinnesotaCare recipients; (2) adjudicate pharmacy claims and transmit program information to pharmacies; (3) establish a single preferred drug list (PDL) and drug formulary for the program; (4) engage in price negotiations for rebates and discounts for program participants; and (5) make prescription drugs available at the lowest possible cost to program participants.

**Minnesota does not have the authority to require Medicaid rebates for non-Medicaid populations for which there are no Medicaid expenditures.**

HF 1752 would place Medicaid and non-Medicaid recipients under a single, comprehensive drug purchasing and benefit program, with jointly negotiated rebates and discounts for Medicaid and non-Medicaid participants. At least one court has found that Congress did not intend to allow a state to require manufacturers to pay Medicaid rebates for drugs purchased with non-Medicaid funds. Specifically, in *PhRMA v. Thompson*, when examining Vermont's proposal to "'extend the Medicaid ... rebate structure' to nearly 70,000 new ... beneficiaries" who were "not otherwise covered by Medicaid," the U.S. Court of Appeals for the D.C. Circuit stated that "[N]othing in the [Medicaid Drug Rebate] statute's language or legislative history suggests that Congress considered the possibility of requiring rebates where no Medicaid funds are expended."[1]

1 *PhRMA v. Thompson*, 251 F. 3d 219, 222-26 (D.C. Cir. 2001) (internal quotations omitted).

By placing Medicaid and non-Medicaid recipients under the same drug rebate program, HF 1752 impermissibly leverages rebates for the Medicaid population outside of the Medicaid Drug Rebate Program for the benefit of programs other than Medicaid.

**Medicaid may only be leveraged to obtain rebates for non-Medicaid populations when doing so benefits the Medicaid population as a whole and/or increases the efficiency and economy of the Medicaid program.**

CMS and the U.S. Supreme Court have made clear that in order to obtain rebates for non-Medicaid populations within its Medicaid drug rebate negotiations, the state must show that doing so furthers the goals and objectives of Medicaid. Specifically, CMS has said that the state must submit appropriate evidence to CMS demonstrating that securing such rebates for non-Medicaid populations would "further the goals and objectives of the Medicaid program," such as evidence that doing so would "increase the efficiency and economy of the Medicaid program."[2]

CMS has made clear that the burden is on the state to explain how leveraging Medicaid lives to obtain rebates for non-Medicaid populations would advance the goals and objectives of the Medicaid program.

**Implementing the requirements of this bill would need significant resources.**

HF 1752 requires DHS to seek the necessary federal approvals for this proposal, which will require time and resources. However, there is currently no Minnesota Management & Budget (MMB) Fiscal Note for HF 1752, so there is no clear funding for seeking such federal approval. Without funding, it is unclear how DHS will be able to complete the necessary research to identify how this proposal would sufficiently benefit the Medicaid population as a whole as well as demonstrate how this proposal would increase the efficiency and economy of its Medicaid program.

**For all of these reasons, we respectfully oppose HF 1752 and ask for a no vote.**

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2 CMS, Letter to State Medicaid Directors, SMDL #02-014 (Sept. 18, 2002); see also *Thompson*, 251 F.3d at 226. ("[B]ecause we think it so obvious that Congress's purpose in requiring manufacturer rebates was to reduce the cost of the Medicaid program, we think that Congress's silence cannot provide a basis for allowing the Department to extend the rebate requirement to situations where, as here, rebates produce no Medicaid savings"); *PhRMA v. Thompson*, 362 F.3d 817, 825 (D.C. Cir. 2004) ("If the ... program prevents borderline populations in Non-Medicaid programs from being displaced into a state's Medicaid program, more resources will be available for existing Medicaid beneficiaries.").