STATEMENT

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Minnesota House File 1711
Prescription Drug Rebate Pass Through
March 1, 2023

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) supports the intent of Minnesota's House File (HF) 1711, which requires pharmacy benefit managers or a health carrier to remit all compensation received from a drug manufacturer related to its prescription benefit to a covered person at the point-of-sale to reduce the covered person's out-of-pocket costs. PhRMA supports legislation that requires health plans and pharmacy benefit managers to share or pass through discounts and rebates negotiated with drug manufacturers to reduce patient out-of-pocket cost-sharing. However, we have concerns that, as drafted, House File 1711 may have some unintended consequences.

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.

Health insurance companies and PBMs often receive sizeable rebates from brand pharmaceutical manufacturers. On average, more than half of spending on brand medicines is retained by health insurers, PBMs, the government and others in the pharmaceutical supply chain. In 2021, these rebates, discounts and other price concessions totaled $236 billion. At the same time, many patients are being forced to pay more out of pocket for their medicines due to an increase in deductibles and the use of coinsurance. Deductibles require patients to pay in full for their medicines before insurance coverage kicks in. And unlike copays, which are a fixed dollar amount charged per prescription, coinsurance requires patients to pay a percentage of the medicine's price.

Here's what's unfair: When patients are facing deductibles or coinsurance, the amount they must pay is often based on the full undiscounted list price of the medicine — even though their insurance company and PBM are only paying the discounted amount they negotiated with the manufacturer.

For example, for a drug with a $100 list price, a health insurance company or PBM may negotiate a discount or rebate of $40, for a net cost to them of $60. But a patient still in her deductible pays the full $100. A patient with a 25% coinsurance pays $25 for a medicine with a $100 list price (.25X100), rather than the $15 (.25X60) she would pay if the coinsurance was based on the discounted amount being paid by her insurance company. That extra money collected from the patient may go to the health insurance company or the PBM. It does not go to the manufacturer of the medicine. What's worse is that this situation is unique to health insurance coverage of prescription medicines, and it penalizes patients who need medicines the most. Right now, patients receive the benefit of negotiated discounts when sharing in costs for

doctor or hospital visits, but they often do not receive the same benefits for prescription drugs.

Legislation, like HF 1711, can make sure discounts and rebates are shared directely with patients, lowering what they pay at the pharmacy. Fixing this broken part of the system and sharing these savings will give patients immediate relief and help them better afford the medicines they desperately need.

Below we outline several concerns with HF 1711 that may create unintentional consequences where patients may not receive all discounts and rebates the bill intends for them to receive. We would be happy to work with the bill author and others in the Minnesota Legislature to ensure the bill language succeeds with its intention to lower patient out-of-pocket costs at the pharmacy counter. We would also encourage the Minnesota Legislature to look at similar bills other states have introduced on this topic, including:

- Arkansas – HB 1481
- Georgia – HB 343
- Illinois – HB 1054
- Indiana – HB1273, SB 8
- Kentucky – SB 68
- Massachusetts – HD 851
- Minnesota – SF 1319
- Missouri – SB 283
- New York – A.1962, S.2393
- Oklahoma – HB 2853, SB 879
- Virginia – HB 1782, SB 1425
- Washington – HB 1465, SB 5445

HF 1711 is unclear on the process of how the prescription drug rebate or discount would be applied to the patient's out-of-pocket costs.

The current wording of Subdivision 1(a) seems to require rebates to be directly provided to the patient as opposed to calculating a patient's cost-sharing obligation based on a price for the drug that takes rebates into account. The use of "remit," which seems to indicate either a direct transfer or return of funds to the patient, further lends itself to this reading. We suggest clarifying this section to require that the patient's cost sharing be based on a price that is reduced by 100% of all compensation received, or to be received, in connection with the dispensing or administration of the prescription drug.

HF 1711 uses the term "covered person," which is not defined.

HF 1711 amends the existing PBM statute, which uses the term "enrollee" rather than "covered person." For clarity, we would suggest using "enrollee" throughout the bill.

HF 1711 includes definitions that may allow for flexibility where pharmacy benefit managers or health carriers could not comply with the law.

The current definition of "cost-sharing obligation" in Subdivsion 2(b) does not include deductibles, which on average impose a much higher cost-sharing obligation than co-payments. We suggest that the bill include deductibles in its definition of "cost-sharing obligation" and exclude co-payments, which are not calculated based on the price of the medicine.

We also suggest that the definition of "compensation" be revised to include concepts from the definitions of "price protection rebate" and "rebate" from Minnesota Senate File 1319:

- Price protection rebate – means a negotiated price concession that accrues directly or indirectly to the health carrier, or another party on behalf of the health carrier, in the event the wholesale acquisition cost of a drug increases above a specified threshold.
- Rebate – means negotiated price consession, including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection reabtes and performance-based price concessions that may accrue directly or indirectly to the health carrier during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with dispensing or administering a prescription drug; and reasonable estimates of any negotiated prices, concessions, fees and other administrative costs that are passed through to the health carrier and serve to reduce the health carrier's liabilities for a prescription drug.

HF 1711 does not include confidentiality language.

While we support the aims of the bill, the negotiated amount of rebates, discounts or other payments between pharmaceutical manufacturers and PBMs are market sensitive information which are protected by manufacturers and PBMs as trade secret, proprietary, and confidential. We suggest that any such information received by the commissioner be considered "not public data" as defined under Minnesota law and should be restricted from public disclosure, directly or indirectly, by the commissioner or any private entity or third party that has contracted with the commissioner.

We thank Representative Elkins for introducing language that will reduce patient costs at the pharmacy counter and look forward to continuing to work together on HF 1711.