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The Honorable Susan R. Donovan, Chair
Of the House Health & Human Services Committee
Rhode Island State House
Providence, RI 02903

RE: AHIP Comments on H-7443, An Act Relating to Food and Drugs – Prescription Drug Cost Protection

To Chair Donovan and Members of the House Health & Human Services Committee,

America's Health Insurance Plans (AHIP) appreciates this opportunity to respectfully express our opposition to H-7443, legislation that would prohibit health plans from purchasing referenced drugs for a cost higher than the referenced rate. The bill also contains provisions allowing Employee Retirement Income Security Act of 1974 (ERISA) plans to opt-in to participate in the provisions of the chapter.

For many patients, the rising cost of prescription drugs has created an affordability crisis that threatens their health and well-being. Out-of-control prices for prescription drugs are a direct consequence of drug makers taking advantage of a broken market for their own financial gain at the expense of patients. The lack of competition, transparency, and accountability in the prescription drug market has led to relentlessly climbing drug prices. Higher drug prices increase out of pocket costs for patients and threaten the affordability of – and access to – critically needed medicines.

We appreciate and share the Committee's commitment to provide Rhode Islanders access to affordable drugs. However, H-7443 does not achieve this goal and will most likely increase health care costs for Rhode Island businesses and consumers.

H-7443 does NOT address the underlying price of prescription drugs.

Health insurance is highly regulated. Health insurance providers must adhere to several federal and state laws to ensure consumers have access to affordable, quality health care coverage. Health insurance regulations act as both front end protections (rate review) and back-end protections (medical loss ratio requirements). Increases in health insurance premiums must be justified to regulators and consumers must be compensated if premium rates were set too high. Drug manufacturers are not accountable to regulators in this way and, as a result, regularly increase their list prices without providing any explanation to consumers and purchasers.

This bill does not address underlying prices set by drug manufacturers. Under the bill, referenced prices may still increase at unsustainable rates. Additionally, it does not require manufacturers to actually sell their products that the referenced prices, it only sets requirements on insurers.

Without any sort of public pressure or accountability at the pharmacy counter, drug makers are allowed – and even encouraged – to increase their already high prices. H-7443 may also have the unintended consequences of adding barriers for Rhode Islanders to access important, life-saving medications. What happens if a manufacturer refuses to sell a referenced drug at its referenced price? A plan would be prohibited from purchasing it or negotiating a higher price, making it unavailable for enrollees who rely on it. Also importantly, the bill impedes a health insurance providers' ability to negotiate with drug manufacturers for prices **below** the reference price. There is no incentive for the manufacturer to ever sell

its drug for lower than that price. Effectively, the bill sets a floor for the price of a drug, not a ceiling as intended.

Under H-7443, drug manufacturers still retain a blank check to charge whatever they want.

Extending H-7443's restrictions to ERISA plans would further increase costs for Rhode Island businesses and consumers.

Today, more than half of Americans receive their health insurance through employer coverage that is governed under ERISA, which affords employers consistency and uniformity of health plan administration, encouraging health care coverage that improves the health and financial stability of employees and their families.

Following the Supreme Court's decision in *Rutledge v. PCMA*, pharmacists are aggressively advancing legislation in states across the country that would jeopardize this consistency and uniformity of ERISA employer coverage. However, the *Rutledge* decision was narrow, fact specific, and does not authorize expansive state authority to restrict the types of tools employers can use to ensure access to affordable health care, especially when it relates to benefit administration.

Health insurance should be simple, effective, and affordable. Patients and employers should not have to jump through hoops or navigate complex regulations to get the care they need at a cost they can afford. A 50-state patchwork of complicated and inconsistent mandates for employer-provided coverage will cause more confusion and more expensive coverage.

For these reasons, AHIP supports a single, cost-saving national standard regulation of employer-provided coverage ensuring more affordable coverage for all that is easier to understand. We thus oppose any requirements placed on ERISA plans in state legislation. Rhode Islanders deserve easy-to-understand information about health care coverage.

There are better solutions to address prescription drug affordability.

AHIP and its members support market-based solutions that hold drug makers accountable for high list prices and put downward pressure on prescription drug prices through competition, consumer choice, and open and honest drug pricing.

- **Improving Drug Pricing Transparency:** Understanding drug prices is critical to affordable health care coverage. Rather than enacting copay caps, policymakers should instead focus on passing transparency laws that provide insight into manufacturers' pricing practices to better understand what causes high launch prices and increases on existing prescription drugs. Copay caps cannot be allowed to distract from addressing the root causes of increased costs for prescription drugs to consumers.
- **Partnerships:** By working together under innovative arrangements, pharmaceutical companies and health insurance providers can lower the costs of prescription drugs for consumers. In 2020, CMS launched a voluntary Medicare initiative, the "Part D Senior Savings Model" that encourages collaboration between pharmaceutical companies and health plans to lower costs for insulin and ensure those cost savings pass through to consumers. In this initiative, CMS recognized that lower prescription drug costs for seniors were possible if pharmaceutical companies reduced the cost of insulin by increasing their discounts. Health plans then use those savings to reduce the out-of-pocket costs for seniors at the point of sale. We think this approach represents a balanced solution that avoids the cost-shifting consequences of cap-the-copay legislation.
- **Value and Competition:** Nine states currently have CMS approval to enter into outcomes/value-based purchasing agreements for drugs purchased through the Medicaid program. In late December 2020, CMS issued a final rule that makes it easier for state Medicaid programs, commercial insurers, and pharmaceutical companies to enter into these

types of agreements. We believe that increasing the number of value-based arrangements for states and commercial insurers will lead to lower costs and better outcomes.

- **Banning Pay for Delay:** The pharmaceutical market is notorious for patent abuses, which harm consumers by giving higher-priced brand name drugs longer periods of exclusivity. States should follow California's lead and pass legislation banning pay for delay agreements, where drug manufacturers pay or incentivize a competing company to keep cheaper generic drugs off the market.⁸

Health insurance providers are strongly committed to ensuring that patients have access to affordable prescription drugs. It starts with addressing the list price of drugs. If drug manufacturers are allowed continue to raise prices year-over-year with no accountability, Rhode Islander businesses and consumers will not see relief when it comes to health care costs.

For these reasons, we oppose H-7443 and urge the Committee not to pass this bill. AHIP and its members appreciate the opportunity to provide these comments and look forward to continued discussions with you on this important issue.

Sincerely,

America's Health Insurance Plans



By: _____
Terrance S. Martiesian

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.