June 13, 2023

MassBio
MASSACHUSETTS BIOTECHNOLOGY COUNCIL

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Massachusetts Biotechnology Council
700 Technology Square, 5th Floor
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The Honorable John Lawn
House Chair, Joint Committee on Health Care Financing
State House, Rm 445
Boston, MA 02139

The Honorable Cindy Friedman
Senate Chair, Joint Committee on Health Care Financing
State House, Rm 208
Boston, MA 02139

Re: Testimony Re Bills Heard Before the Joint Committee on Health Care Financing, June 6, 2023

Dear Chairman Lawn and Senator Friedman:

On behalf of MassBio and our 1,600+ members, I ask for your consideration of this written testimony relative to H 1176/ S 732; S 749; S 783; and H 1201, which were among the bills heard during a hearing of the Joint Committee on Health Care Financing (the "Committee") on June 6, 2023.

MassBio represents a wide range of member organizations, including biotechnology companies, teaching hospitals, and academic institutions -- the majority of which are directly engaged in cutting-edge research, development, and manufacturing of innovative products that improve the lives of patients around the world.

As the Committee considers legislation regarding pharmaceutical access, cost and transparency this session, we encourage you to consider the following. First, that list prices for drugs represent an unreliable measure of what patients ultimately pay at the pharmacy counter. According to the most recent CHIA Annual Report, total rebates paid by manufacturers to all payers in the Commonwealth in 2021 totaled $3.1 billion – a growth of 23.8% over the amount of rebates paid the previous year. Yet, despite these data on rebates, which can significantly reduce the cost of drugs for payors and PBMs as reflected by list prices, patients across the state continue to have trouble affording their medications because out-of-pocket costs continue to be significant.

Further, because of the way the cost-sharing system is structured for patients, and the disconnect between the increasing amount of rebates paid by manufacturers on one hand, and the increasing burdens faced by patients at the pharmacy counter in the form of higher cost sharing on the other, legislation seeking to reduce list prices through such mechanisms as manufacturer- designed affordability and access improvement plans (as proposed by S 749 and S 783), penalties on drug list price increases (as proposed in S 749 and H1 201), and mandated disclosures of broad categories of drug price transparency information unrelated to value, including confidential and proprietary information (as proposed by S 749, S 783, and H 1201), would not have a direct impact on a patients' out-of-pocket costs and the affordability of drugs. Among our chief concerns with these bills is that they are based on the assumption that manufacturer decisions with respect to list prices will automatically lead to decisions by insurers and PBMs to reduce patient cost sharing and make drugs more affordable. Instead, there is no promise that these policies will lower out-of-pocket costs for consumers.

For these reasons, MassBio urges the Committee to focus on policies that can have a meaningful and direct impact on patient access. In our view, any proposals designed to benefit patients in terms of lower out-of-pocket costs at the pharmacy counter need to reasonably address decisions by all players in the drug supply chain, including manufacturers, payers and PBMs. To that end, during the past several sessions, we have come to the Legislature with proposals that include, among other policies, requiring payors to "share the savings" by ensuring that rebates are utilized to offset cost sharing for drugs, and to permanently enact the Massachusetts law

permitting co-pay assistance in the state for certain medicines without generic equivalents - (H 978/ S 612, *An Act relative to promoting healthcare access and affordability for patients*– two bills recently heard before the Financial Services Committee on May 16, 2023).

As in past sessions, this session we also continue to propose and support meaningful transparency across the supply chain through policies that do not compromise manufacturers' confidential and proprietary information that is the life blood of our industry. For example, we support passage of H 1176 / S 749, *An Act relative to promoting comprehensive transparency in the pharmaceutical industry,* which is currently before the Committee. This legislation contains the following four components that we respectfully submit would create a thorough but also meaningful, fair, and measured review of drug pricing across the entire supply chain:

1. **New Transparency Rules for both Manufacturers and PBMs**

This bill, broadly modeled after recently enacted laws in other states, would hold manufacturers accountable for significant price increases through mandated transparency disclosures to CHIA. Since we know that focusing on manufacturers alone ignores other key drivers of costs in the drug supply chain, the bill also gives CHIA new transparency authority over PBMs to shed light for policymakers on PBM profits and business practices. We note that a similar policy, as well as further regulatory measures applicable to the PBM industry, are also contained in another bill before the Committee, H 1215.

2. **Testimony by PBMs and Manufacturers at HPC Cost Trends Hearings**

The bill would require two PBMs and three pharmaceutical manufacturers, including a publicly traded company, a generic drug manufacturing company, and a manufacturing company in existence for less than 10 years, to appear at HPC's annual cost trends hearings, with reasonable protections against testimony of confidential or proprietary information.

3. **"Horizon Scanning" for New Pipeline Drugs**

Under this proposal, HPC may contract with a third-party entity to conduct an annual study of new pipeline drugs, helping to provide further clarity and detail about new drugs coming to market.

4. **HPC's Existing Drug Pricing Review Authority**

This language would address the risk of overreach in the HPC's administration of the transparency provisions of the 2019 MassHealth drug pricing law, M.G.L. c. 6D, § 8A. The proposed changes would clarify the original legislative intent of the law and are modeled after recently enacted transparency measures in other states that protect critical confidential and proprietary information from disclosure.

With these proposals, MassBio continues its commitment to working with you to offer meaningful and impactful solutions to ensure patients can access and afford the prescription drugs they need to be and stay healthy. Thank you for your consideration of this testimony.

Sincerely,

Kendalle Burlin O'Connell
CEO & President