STATEMENT

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In Opposition to Minnesota House File 17/Senate File 168
Prescription Drug Affordability Board and Upper Payment Limit

Updated April 11, 2023

Position: PhRMA respectfully opposes Minnesota House File 17 (HF 17)/Senate File 168 (SF 168). PhRMA believes that discussions about the affordability of medicines are important, but the intention of this bill is for the government to decide drug prices, which could limit the prescription options available to Minnesotans. HF 17/SF 168 shortsightedly targets drug spending in ways that likely will have long-term, harmful effects on innovation and the development of new, life-saving therapies.

Specifically, HF 17/SF 168 implements a government-appointed Board to review prescription drug costs and value with the goal of setting price limits by way of an "upper payment limit" (UPL) for the entire drug supply system. Regulating drug prices in-state could lead to a shortage of or limit access to medicines for patients. Specifically, if a pharmacy or provider cannot obtain a medicine at the government price, the medicine will not be available to Minnesota residents. Further, the legislation also requires onerous disclosure of pricing information which will not benefit patients and could jeopardize the competitive market. By disincentivizing the development of innovative treatments, this legislation could threaten the positive effect that the biopharmaceutical industry has on Minnesota's economy.

Price controls on brand medicines raise constitutional concerns.

Application of this price control to patented medicines raises constitutional concerns under the Supremacy Clause because it would restrict the goal of federal patent law, which is to provide pharmaceutical patent holders with the economic value of exclusivity during the life of a patent. Congress determined that this economic reward provides appropriate incentive for invention and Minnesota is not free to diminish the value of that economic reward. Specifically, in the case of *BIO v. District of Columbia, 496 F.3d 1362 (2007)*, the U.S. Court of Appeals for the Federal Circuit overturned a District of Columbia law imposing price controls on branded drugs, reasoning that the law at issue conflicted with the underlying objectives of the federal patent framework by undercutting a company's ability to set prices for its patented products. The bill raises due process concerns as it provides broad authority to the Attorney General and the Prescription Drug Affordability Board (PDAB), with very few standards or safeguards to ensure that authority is exercised in a consistent manner. The bill gives the PDAB the authority to determine which products will be subject to a cost review, and which products will ultimately have a UPL imposed on them, but provides no clear and consistent standard for how the Board will conduct price reviews or set UPLs. The bill also raises concerns under the Dormant Commerce Clause, which precludes the States from regulating commercial activity beyond their own borders. See Association for Affordable Medicines v. Frosh, 887 F.3d 664 (4th Cir. 2018). And, by allowing the board to take prices in Canada into account in setting the upper payment limit, the bill raises questions under the Foreign Commerce Clause.

We urge you to vote no for HF 17/SF 168 for these reasons.