STATEMENT

PhRMA
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In Opposition to Minnesota S.F. 4365, Art. 7, Sec. 7 and Art. 12, Secs. 7 and 36
April 2026

Position: The Pharmaceutical Research and Manufacturers of America ("PhRMA") respectfully opposes Minnesota S.F. 4365, Art. 12, Secs. 7 and 36. These sections repeal the July 1, 2027 sunset provision for legislation passed by the Minnesota Legislature last session, H.F. 4757,[1] that requires biopharmaceutical manufacturers to provide 340B-priced drugs to all pharmacies that contract with 340B "covered entities" ("the mandate") and allow for enforcement by the Minnesota Attorney General. Repeal of the sunset provision would further entrench H.F. 4757, a law that violates both the U.S. and Minnesota Constitutions and is preempted by federal law, and continue to increase the cost of medicines for Minnesota taxpayers, employers and patients.

PhRMA also respectfully opposes Art. 7, Sec. 7 of S.F. 4365, which would prohibit drug manufacturers from advertising drugs covered by the medical assistance program, MinnesotaCare program, or state employees group insurance program on television and streaming services in Minnesota. PhRMA is concerned that Art. 7, Sec. 7 raises serious constitutional questions and is harmful to patients.

I. Opposition to S.F. 4365, Art. 12, Secs. 7 and 36

As detailed in PhRMA's complaint challenging H.F. 4757,[2] H.F. 4757 is preempted under the Supremacy Clause of the U.S. Constitution because the mandate directly contravenes Supreme Court precedent and creates new requirements that are not in or conflict with the federal 340B statute. H.F. 4757 also violates the U.S. Constitution's prohibition on state extraterritorial regulation and the Minnesota Constitution's prohibition on laws "embrac[ing] more than one subject" which must be "expressed in its title."[3] It is unclear why the Minnesota Legislature would propose via S.F. 4365 to repeal the sunset provision in H.F. 4757 when the constitutionality of H.F. 4757 is actively being considered by a Minnesota court.

In addition to being unconstitutional, manufacturer mandates like the one in H.F. 4757 exacerbate the fiscal impact of the federal 340B program on employers, the state, and ultimately, taxpayers. Use of 340B-priced drugs displaces manufacturer rebates that would otherwise be available to health plan sponsors, raising costs for everyone. Based on analysis by IQVIA, employers and state and local governments in Minnesota pay an estimated $180 million due to rebates foregone as a result of the 340B program, and a manufacturer mandate is estimated to result in an additional $40.6 million impact.[4] Numerous studies show that the 340B program drives up costs for employers and the government in other ways too, like by

[1] Laws of Minn. 2024, ch. 121, art. 4, sec. 3 (codified at Minn. Stat. § 62J.96).
[2] *Pharm. Rsch. and Manufs. of Am. v. State*, No. 62-CV-24-5744 (Ramsey Cnty. Dist. Ct. 2024).
[3] Minn. Const. art. IV, sec. 17.
[4] CHUAN SUN ET AL., IQVIA, THE COST OF THE 340B PROGRAM TO STATES (2025), https://www.iqvia.com/locations/united-states/library/white-papers/the-cost-of-the-340b-program-to-states.

incentivizing the use of more and higher-cost medicines,[5] shifting care to more expensive settings, and driving provider consolidation.[6] By extending 340B pricing beyond that contemplated Congress, the manufacturer mandates worsen this problem.

The Legislature should have the opportunity to understand the full costs of the 340B program on stakeholders, including through Minnesota's revised 340B Covered Entity Report,[7] and whether H.F. 4757 is accomplishing its stated purposes before expanding the mandate in H.F. 4757 indefinitely.

II. Opposition to S.F. 4365, Art. 7, Sec. 7

The ban on advertising certain prescription drugs to consumers in S.F. 4365, Art. 7, Sec. 7 raises serious First Amendment concerns and is likely to be unconstitutional. The U.S. Supreme Court has developed nearly four decades of jurisprudence to proscribe efforts by the federal and state governments to regulate advertising or commercial speech, particularly where the regulation is content or speaker-based, and S.F. 4365, Art. 7, Sec. 7 would likely fail to meet the test for restricting commercial speech laid out in those cases.[8] Indeed, the Supreme Court has made clear that "[s]peech in aid of pharmaceutical marketing . . . is a form of expression protected by the Free Speech Clause of the First Amendment"[9] and, where content-based, is subject to "heightened judicial scrutiny."[10] Furthermore, because most advertising to consumers is conducted on a regional or national basis, S.F. 4365, Art. 7, Sec. 7 raises constitutional concerns because it would likely regulate advertising originating in a state other than Minnesota.

This proposed ban on direct-to-consumer (DTC) advertising of certain prescription drugs is an anti-consumer proposal that can harm patients. Advertising of prescription medications has helped millions of Americans receive medical care for diseases that might otherwise have gone untreated or undiagnosed. Biopharmaceutical DTC advertising raises awareness of disease symptoms and treatments and promotes an informed dialogue regarding health, illness and treatment options between patients and their health care providers.

According to a survey by Princeton Survey Research Associates International (PSRAI) about consumer awareness of and opinions about DTC advertisements, 79% of respondents agree that these advertisements help people be more involved with their health care.[11] In addition, consumers appreciate the informative nature of DTC advertisements, with 88% agreeing that DTC advertisements educate people about new treatments and 81% agreeing that DTC advertisements alert people to symptoms associated with conditions they may have.[12]

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[5] MICHAEL T. HUNTER ET AL., MILLIMAN, ANALYSIS OF 2020 COMMERCIAL OUTPATIENT DRUG SPEND AT 340B PARTICIPATING HOSPITALS (2022), https://edge.sitecorecloud.io/millimaninc5660-milliman6442-prod27d5-0001/media/Milliman/PDFs/2022-Articles/9-13-22_PhRMA-340B-commercial-analysis.pdf.

[6] Danea Horn, The incentive to treat: Physician agency and the expansion of the 340B drug pricing program, 101 J. HEALTH ECON. (2025), https://doi.org/10.1016/j.jhealeco.2025.102971.

[7] *See* Laws of Minn. 2024, ch. 127, art. 59, sec. 2 (codified at Minn. Stat. § 62J.461).

[8] *See Central Hudson Gas & Elec. Corp. v. Public Service Commission,* 447 U.S. 557 (1980).

[9] *See Sorrell, et al. v. IMS Health Inc., et al.,* 564 U.S. 552, 557 (2011).

[10] *Id.*

[11] Princeton Survey Research Associates International, "2017 Direct to Consumer Advertising Survey," April 2017. http://www.phrma.org/report/2017-direct-to-consumer-advertising-survey-results

[12] *Id*.

Further, a study published in the Journal of the American Pharmacists Association found that "disease-specific DTC advertising can help people remember to take their prescription medication when viewed, which may lead to more positive medication-taking behavior and increased medication adherence."[13] In fact, a 2019 study found that, due to DTC advertising, people between the ages of 40 to 60 were more likely to have visited a health care provider.[14]

For the reasons outlined above, PhRMA respectfully urges legislators to oppose S.F. 4365, Art. 7, Sec. 7 and Art. 12, Secs. 7 and 36.

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The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are focused on developing innovative medicines that transform lives and create a healthier world. Together, we are fighting for solutions to ensure patients can access and afford medicines that prevent, treat and cure disease. PhRMA member companies have invested more than $850 billion in the search for new treatments and cures over the last decade, supporting nearly five million jobs in the United States.

[13] Bhutada, NS, and Rollins, BL. Disease-specific direct-to-consumer advertising for reminding consumers to take medications. Journal of the American Pharmacists Association 2015; 55(4):434-7.

[14] Eisenberg, M, et al. Spillover Effects From Direct-to-Consumer Advertising of Prescription Drugs. ASHE Conference 2019, June 26, 2019.