To: The Honorable John Lawn, Jr, Chair, The Honorable Cindy Friedman, Chair
and Members of the Joint Committee on Health Care Financing
From: Deirdre Cummings, Legislative Director, MASSPIRG
DT: July 13, 2021

Testimony in support of
***An Act to ensure prescription drug cost transparency and affordability* (H.729) and *An Act relative to pharmaceutical access, costs and transparency* (S.771)**

Dear Chairman Lawn and Chairwoman Friedman and members of the committee:

My name is Deirdre Cummings and I am the legislative director for MASSPIRG, a 45 year old non-partisan, non-profit, member supported consumer advocacy organization. Please accept our testimony in favor of *An Act to ensure prescription drug cost transparency and affordability* (H.729), sponsored by Representatives Barber and Santiago, and *An Act relative to pharmaceutical access, costs and transparency* (S.771), sponsored by Senator Friedman.

These bills will lower prescription drug prices, make more drugs affordable and available to consumers, and lower health care costs overall. These bills serve to protect consumers in the broken prescription drug market-place.

Rising prescription drug prices are leading to higher healthcare costs for Massachusetts residents. It's not only the patients who rely on prescription drugs who pay more at the pharmacy counter—we all shoulder the burden through higher insurance premiums, higher costs for Massachusetts businesses, and higher costs for taxpayers and the state budget.

RX drug costs climb outpacing other medical expenses

A recent report from the AARP Public Policy Institute, found retail prices for widely used brand name prescription drugs increased substantially faster than general inflation in every year from 2006 to 2020. Over this 15 year period, the retail prices for 65 chronic-use brand name drugs that had been on the market since the beginning of the study period increased cumulatively by an average of 276.8%, far outpacing the cumulative general inflation rate which was 32% during the same period. While the average annual increase was somewhat slower in 2020, it was still two times greater than the rate of general inflation.

According to the 2021 Center for Health Information and Analysis report, gross pharmaceutical spending increased by 7.2% in 2019, while overall health care expenditures grew by 4.3%. And the CHIA annual report data from the two years prior shows that in 2017 and 2018, both gross pharmaceutical spending and spending net of rebates exceeded the state's cost growth benchmark.

Further, there is little to no transparency when it comes to the actual costs required to produce a drug, and no mechanism or oversight to ensure that drugs are truly affordable for those who need them. As a result, pharmaceutical companies may set arbitrary and opaque prices for drugs, and too many people in Massachusetts cannot access these drugs due to high costs.

The market-place for prescription drugs is broken.
Nearly 1 in 4 Americans struggle to afford their prescription drugs. One reason is no one really knows how much their medicine should cost. We all know that milk or bread should cost a few dollars -- and it'll cost about the same at nearly every grocery store. But not so for critical medicines that improve the quality of our lives.

MASSPIRG released a report in 2019, *The Real Price of Medications*, and found that prices varied by nearly 900% across the country for *the exact same medicines*. And of course, **the people paying hundreds or thousands of dollars less each year got the same health benefit from those drugs as those who paid more.**

The report included a survey of 250 pharmacies in 33 communities across 11 states to find out the retail prices for 12 common medications used for heart failure, hypertension, asthma and depression. After analyzing the data, we found staggering price variations and trends. All of which demonstrate a broken market place when it comes to pricing of prescription drugs.

- Prescription drug prices are disconnected from clear factors; the median (typical) prices for the surveyed drugs varied an average by 892 percent from the cheapest available price. In Massachusetts for example, we found Lantus Solostar Insulin ranged from $150 to $609.
- Brand name drugs did not adjust to competition from generic drugs, even years after they entered the market. For instance, the median cost for the branded drug Lipitor, used to lower cholesterol, was $520/month while its generic, Atorvastatin, was $113/month, despite the generic being on the market 2011. A difference of $4,884 a year.
- Large chain pharmacies tend to have higher prices than their small chain or independent counterparts, despite having more leverage in the marketplace. **Eight of the 12 drugs** in the survey had higher median prices at large chains -- *up to 840 percent higher*, than at their smaller/independent pharmacies. (chain was 12 or more in state)

A comprehensive solution:
These bills would bring the pharmaceutical industry in line with the cost containment mechanisms applied to other health care groups in the state. To date, hospitals, insurers, businesses, providers, and consumers have all made meaningful sacrifices to ensure health care coverage for Massachusetts residents and help bring down costs, while the pharmaceutical industry has not been part of the solution. Under Chapter 224 of the Acts of 2012, payer and provider groups are held to a statewide cost growth benchmark, and the HPC may require any group with excessive spending growth to implement a performance improvement plan in order to improve cost performance. These bills would implement a parallel process for pharmaceutical companies whose drug prices substantially exceed the HPC's proposed value, thereby

bringing the pharmaceutical industry in line with the cost containment measures that apply to other health care industry groups in the state.

The provisions contained in H.729 and S.771 provide the most comprehensive framework to address prescription drug costs, including: 1) accountability to lower costs for the highest-cost drugs and steepest price increases; 2) cost assistance for chronic disease medications, with additional cost relief measures targeting insulin; 3) prescription drug pricing transparency; 4) increased transparency and state oversight of PBMs; and 5) ensuring the lowest consumer cost at the pharmacy. We believe all of these components are necessary to work together to address the challenge at hand.

Selected key provisions include:

Accountability to lower costs for the highest-cost drugs and steepest price increases: In the current system for prescription drug pricing, there is no accountability or mechanism to lower costs and prevent excessive and unwarranted price increases. Transparency is a necessary first step but accountability is key to ensure that drugs are truly affordable for those who need them, and that costs are addressed at the health system level.

H.279 and S.771 would require CHIA to gather data on the most expensive drugs and drugs with the steepest price increases, and then refer certain drugs to the HPC for further review. These bills would then authorize the HPC to conduct an affordability review and engage drug manufacturers in confidential discussions about improving affordability if prices are deemed unreasonable or excessive, taking into account both affordability for consumers and costs to the health care system. If the manufacturer declines to develop an improvement plan, does not work in good faith to develop an acceptable and complete plan, or does not work in good faith to fully implement the improvement plan, HPC could publicly disclose the final target value and hold a public hearing.

As noted above, this provision both builds on the success of the MassHealth prescription drug cost containment law by utilizing similar review and enforcement mechanisms, and brings the pharmaceutical industry in line with the cost containment measures that apply to other health care industry groups in the state, as part of the cost growth benchmark process.

Prescription drug price transparency: Pharmaceutical pricing is a complex and opaque system of middlemen and rebates that prevents consumers and policymakers from knowing the true drug prices being charged and the reasons behind price increases. Price transparency is a key first step to unlock the black box of pharmacy pricing, increase consumer awareness, and understand when additional oversight and accountability may be needed for certain drugs.

H.729 and S.771 would require drug manufacturers to report to CHIA pricing factors and information, such as research and development costs, annual changes in wholesale acquisition costs, marketing and advertising costs, and the disparities between drug costs in Massachusetts vs. in other countries.

With this information, CHIA must conduct analyses on the impact of pharmaceutical manufacturing pricing factors and methodologies and the PBM model on drug costs, in order to help the state better

understand cost growth drivers for prescription drugs. The bills also mandate that drug manufacturers and PBMs testify at the HPC annual Cost Trends Hearing, including on factors of underlying prescription drug costs and price increases.

Increased transparency and state oversight of PBMs: PBMs are companies that manage prescription drug benefits on behalf of health insurers. As part of their role, PBMs negotiate rebates with drug manufacturers, yet it's not clear what proportion of rebates are passed on to health plans and how much are retained as profit. For PBMs, higher drug prices translate to higher rebates, so PBMs have an incentive to favor more expensive drugs since their health plan clients actually pay for the drugs. It is currently hard to determine the impact of the PBM business model on health care system costs, but there is growing concern that PBMs may be contributing to rising prescription drug costs. This is why more transparency is needed about how PBMs operate.

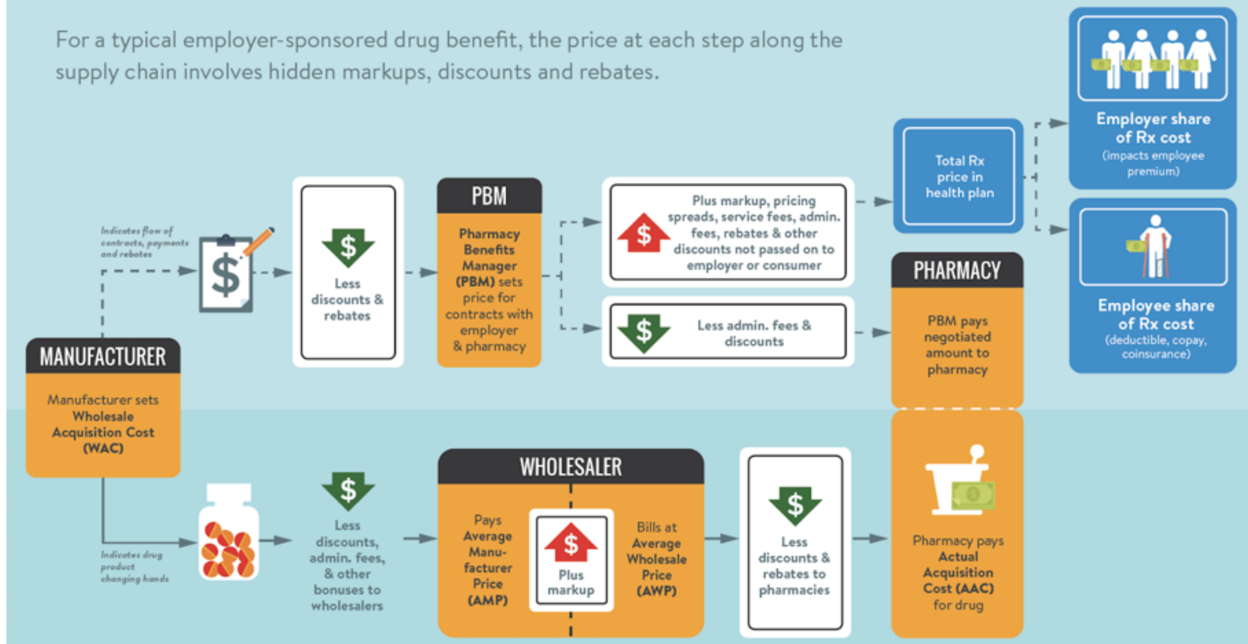
H.729 and S.771 would require PBMs to submit data to CHIA on factors such as rebates and fees received from manufacturers, as well as what proportion of rebates are retained by the PBMs and not passed on to health insurance plans. PBMs would also need to be licensed through the Division of Insurance (DOI), including requiring PBMs to report financial statements to DOI.

Ensuring the lowest consumer costs at pharmacies: Pharmacy contracts with PBMs previously contained "gag clauses," which prohibited pharmacists from discussing less-costly alternatives – including therapeutically similar drugs – and notifying consumers when the retail price of a drug without their insurance is less than their copay with insurance. While federal law now prohibits "gag clauses" in PBM contracts, pharmacists still do not have an affirmative duty to disclose to consumers when less expensive options are available.

H.729 and S.771 build on the federal law prohibition of "gag clauses" to affirmatively require pharmacists to inform consumers if purchasing a prescription at the retail price without insurance would be cheaper than the cost-sharing amount when using insurance.

Finally, I have pasted below one description of the RX drug pricing process and who are involved. It lacks transparency and accountability.

I hope you will support *An Act to ensure prescription drug cost transparency and affordability* (H.729) and *An Act relative to pharmaceutical access, costs and transparency* (S.771).



℞ PRICING ALONG THE SUPPLY CHAIN
For a typical employer-sponsored drug benefit, the price at each step along the supply chain involves hidden markups, discounts and rebates.
Indicates flow of contracts, payments and rebates
Less discounts & rebates
PBM
Pharmacy Benefits Manager (PBM) sets price for contracts with employer & pharmacy
Plus markup, pricing spreads, service fees, admin. fees, rebates & other discounts not passed on to employer or consumer
Less admin. fees & discounts
Total Rx price in health plan
Employer share of Rx cost (impacts employee premium)
Employee share of Rx cost (deductible, copay, coinsurance)
PHARMACY
PBM pays negotiated amount to pharmacy
MANUFACTURER
Manufacturer sets Wholesale Acquisition Cost (WAC)
Indicates drug product changing hands
Less discounts, admin. fees, & other bonuses to wholesalers
WHOLESALER
Pays Average Manu-facturer Price (AMP)
Plus markup
Bills at Average Wholesale Price (AWP)
Less discounts & rebates to pharmacies
Pharmacy pays Actual Acquisition Cost (AAC) for drug