HDA
Healthcare Distribution Alliance

PATIENTS MOVE US.

June 20, 2018

The Honorable Senator Richard Pan
Chair, Senate Committee on Health
State Capitol, Room 2191
Sacramento, CA 95814

Re: Healthcare Distribution Alliance (HDA) Opposition to AB 2486, Opioid Prevention and Rehabilitation Act

Chairman Pan:

On behalf of the Healthcare Distribution Alliance (HDA), I am writing in strong opposition to Assembly Bill (AB) 2486 (as amended June 18, 2018), the Opioid Prevention and Rehabilitation Act. HDA and our primary pharmaceutical distributor members understand the significance of addressing the opioid crisis and we are committed to working with policymakers to achieve effective solutions to the opioid crisis. However, the proposal set forth in AB 2486 establishes an inoperable and arbitrary tax which fails to address the root causes of the epidemic.

HDA is the national trade association representing primary pharmaceutical wholesale distribution companies. Primary distributors represent a vital link within the healthcare supply chain, connecting nearly 17,000 pharmacy and provider settings throughout California to medications and healthcare products necessary to serve their patients on a daily basis. HDA members operate 24 hours a day, 365 days a year, shipping approximately 15 million products across the nation every day through their distribution network of with nine distribution centers located in California employing nearly 6,000 citizens within the state.

HDA and our member companies have serious concerns with AB 2486 as amended. The legislation establishes an arbitrary tax liability of $100 million to be borne by pharmaceutical manufacturers or wholesalers on an annual basis, while providing no justification or basis for the required amount of funding. The $100 million tax is also in perpetuity, offering no parameters should the volume of opioid sales and distribution be reduced. The process the state will undergo to determine the ratable share of the tax creates a complex and convoluted formula to calculate, and subsequently impose, a fee on opioid products. The bill creates a recipe for confusion and litigation.

The legislation proposes the tax will be determined by the ratable share of opioid products sold or distributed by a manufacturer or wholesaler during the previous fiscal year. However, this methodology fails to take into consideration the level of complexity which exists within the pharmaceutical supply chain which ensures products are securely and efficiently shipped to patients across the nation. HDA members typically purchase pharmaceutical products directly from the manufacturer and store and warehouse the products in national or regional distribution centers. Those centers in turn ship to distribution centers in the state, which in turn ship to the dispenser. The proposed bill will effectively

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assess a fee on distributors multiple times for the same product, unlike manufacturers of opioid products (which largely do not directly sell or distribute opioid products in the state), who will likely have limited financial liability for the tax. The inclusion of "intracompany transfers" will exacerbate this issue by disproportionally taxing wholesalers with out-of-state facilities who self-distribute drugs to their distribution centers in California before distributing drugs to customers.

HDA members operate regional and national distribution centers in California for distribution of products to customers throughout the west. A portion of the opioids that will come into California will ultimately be distributed to patients outside of the state. Based on the proposed legislation, it will be nearly impossible for the state to determine which products are sold to California patients versus the products which are distributed within California but ultimately sold to a patient outside of the state. This would essentially force companies who have decided to build their regional warehouses in California and employ Californians to unfairly pay a portion of higher tax.

This proposal also raises a series of U.S. Constitutional concerns. In 2018, 17 state legislatures have considered 35 individual proposals to impose a tax or fee on the manufacture, distribution, sale and/or use of prescription opioids in a state. While not all identical to the legislation currently under consideration in California, many of the proposals in this arena have significant policy shortcomings and may also pose serious questions under federal constitutional or other statutory safeguards. To date only one of the 35 proposals introduced has passed.

California exempts pharmaceutical products from the state's sales tax specifically to avoid many of the problems a tax like this would create; this legislation would be counterintuitive to that objective. Additionally, this tax will do little to address the amount or supply of prescription opioids in the market, and instead will add greater costs to the healthcare system while potentially limiting the access to vital prescription medications.

HDA and our member companies fully understand the prescription drug abuse and diversion epidemic is a serious healthcare challenge that threatens both patient safety and the security of the healthcare supply chain. In fact, HDA and our member companies currently support several proposals under consideration by the California General Assembly which seek to address and prevent opioid addiction and abuse. Addressing the opioid abuse epidemic is a complex issue that requires all stakeholders to work together to find potential solutions. This proposal is an entirely inoperable solution. HDA respectfully request that you oppose AB 2486. Please feel free to contact Leah Lindahl at LLindahl@hda.org or (303) 829-4121 should you have any questions.

Sincerely,

John Gray
President & CEO
Healthcare Distribution Alliance