



Value of Care Coalition

October 18, 2024

Legislative Policy Committee
Department of Legislative Services
Annapolis, Maryland 21401

RE: Prescription Drug Affordability Board / Upper Payment Limit Action Plan

Dear Members of the Legislative Policy Committee:

As a broad coalition of advocacy organizations including patients, caregivers and health care providers, we write on behalf of the undersigned groups to share our concern with the Upper Payment Limit Action Plan as approved by the Prescription Drug Affordability Board in September, due to be considered by the Legislative Policy Committee (LPC).

We would respectfully request your consideration of our concerns that fall into three categories:

- 1) Process and procedure for setting the upper payment limit (UPL)
- 2) Risks to patient health due to diminished access to treatment resulting from the UPL
- 3) Lack of patient savings resulting from the UPL

We recognize the importance of lowering health care costs and do appreciate some aspects of the plan. However, we hope the Legislative Policy Committee will consider these concerns as it debates approval of the plan.

Concerns About Process and Procedure

The plan states that “The Board shall set an upper payment limit in a way to minimize adverse outcomes and minimize the risk of unintended consequences.” However, it does not identify what adverse outcomes or unintended consequences that are of concern and that should be minimized. Nor does the plan define the threshold for tolerance of these outcomes and consequences to be determined minimal. During its September meeting, one Board member suggested this vague language is necessary due to the uniqueness of each drug. However, the primary adverse outcome that concerns patients, providers and caregivers is a reduction of access to the drugs subject to the UPL or their competitor drugs for the same condition. When Marylanders’ health is at stake, this concern should be addressed with greater specificity.

Several options for arriving at a UPL price are suggested in the draft plan. Many options raise concerns, such as utilizing metrics used by health economists, including QALY-like metrics, that

are widely viewed as biased against certain patient populations, referring to pricing in countries with healthcare systems unlike ours, and referring to federal pricing with a still-unknown impact on access. As concerning, none of the options outlined allow for consideration of individual patient needs.

The plan references opportunities for stakeholders to provide input throughout the process but does not formalize that process. Previous input opportunities have proven inadequate, including 90-second time limits for oral comment, and prevent meaningful input. Additionally, at its meeting in September, one Board member stated they see “diminishing returns” on public comments, validating stakeholder worries that comments are not being sufficiently considered by the Board as it makes its decisions.

The plan includes concurrent timeframes for cost review report approval and UPL-setting to occur without specifying that length of time. Given previous concerns expressed by the Board about staff bandwidth, the “parallel” processes detailed in the draft plan may not allow for the very specific evaluations that must be undertaken. This in turn could be met by a lack of confidence among impacted stakeholders that recommendations are thorough and thoughtful.

Additionally, the lack of specific timeframes between preliminary determination and final determination/UPL-setting undercuts the idea that adequate time will be available for stakeholder input to be sought, received and considered. This is underscored by the fact that a UPL may be set at the same meeting as final adoption of the affordability review.

Concerns regarding a rushed process have been confirmed by recent actions. The Board moved up the date of its meeting in September to speed the process and noted that its October meeting date may be moved up if the LPC approves the plan quickly.

Risks to Patient Access Left Unaddressed

We appreciate the Board has accepted public comment throughout this process. Through public comment, the Board has been made aware of risks to access posed by the setting of an upper payment limit.

A recent survey of payers, whose formularies determine patient access and cost, validated stakeholder concerns as they noted that UPLs will result in increased utilization management (typically arising in the form of delays or denials for treatment) as well as changes to copay or coinsurance amounts (potentially increasing costs for patients).¹

¹ Partnership to Fight Chronic Disease. *Health Plans Predict: Implementing Upper Payment Limits May Alter Formularies And Benefit Design But Won't Reduce Patient Costs*. 2024 March.
<https://www.fightchronicdisease.org/sites/default/files/FINAL%20PFCD%20Avalere%20PDAB%20Insurer%20Research.pdf>

Despite this information being provided, at a subsequent meeting, one Board member wondered aloud, as quoted by State of Reform, “I don’t understand how a lower price—I mean, as somebody trained in economics, if the price goes down, affordability and access goes up— [would do that] so people who make an argument that it’s going to affect access and affordability ... I really need to understand why you think a lower price would do that.”

Board members consistently make statements indicating it is not their intention to reduce access or claim that their actions will not result in reduced access. However, the Board has not detailed *how* it will ensure continued access despite the statements from payers noted above.

When a person with a complex medical condition – much like those treated by the drugs under review by the Board – face a forced switch to a different medication, negative health outcomes can occur. This type of switch can lead to new side effects, symptom re-emergence, disease progression, more frequent visits to the doctor’s office and hospitalization, resulting in additional medical costs and burdens on both patients and providers – all to treat a condition that was previously under control.

We encourage the LPC to require the UPL Action Plan explicitly include mechanisms to ensure patients have continued access to the treatments their doctors prescribe.

Lack of Patient Savings

Despite the risks to Marylanders’ health outlined above, the UPL Action Plan does not provide for any savings by the people whose drugs are deemed to cause affordability challenges.

While the plan states, “The Board shall prioritize drugs that have a high proportion of out-of-pocket costs compared to the net cost of the drug,” no mechanism is included to ensure any savings achieved via the upper payment limit results in lower out-of-pocket costs for patients.

Patient cost is typically determined by premiums, deductibles, co-pays and co-insurances. Patients pay the amount their health plans dictate. For policy to be effective at minimizing patient costs, it must focus on benefit design and out-of-pocket expenses rather than a reimbursement limit.

The LPC should require the UPL Action Plan to address the potential patients face for increased cost sharing and ensure that patients participate in any cost savings.

Summary

In its current form, the UPL Action Plan offers great risk and little reward for people with complex medical conditions in Maryland. Given the gravity of the decisions being made by the Board and the direct impact these decisions have on Marylanders' health, we urge the Legislative Policy Committee to ask the Board for a more detailed, comprehensive plan – one that details how their policies will ensure continued access to doctor-prescribed treatments and details how out-of-pocket costs are lowered for patients.

On behalf of the undersigned organizations, thank you for your consideration.

